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Pushing the boundaries: legal approaches to the definition of religion

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Abstract

Deconstructing the definitional boundaries between religion and non-religion is recognised as a fruitful area of investigation for scholars of religion. Taking a critical perspective in understanding the gatekeeping practices of legal institutions, norms and practices in shaping the boundary between religion and non-religion is an important aspect of this methodological approach. Investigating legal gatekeeping practices can prompt critical exploration of how they impact on category formation and facilitate analysis of whose interests are served by legally mandated acts of inclusion or exclusion. This discussion will identify recent instances, where the courts have been active in shaping the boundary between religion and non-religion.

Firstly, it will consider recent developments in the definitional approach of domestic UK law. Secondly, it will discuss legal responses to the registration of religious groups in Europe and, thirdly, it will explore attempts to extend freedom of religion protections to commercial corporations. Finally, it will offer some concluding remarks on how this survey of recent developments highlights the contemporary configuration of the legal boundaries between religion and non-religion.

Key words

Human Rights - Freedom of Religion – Definition of Religion - Legal Personality

Introduction

Deconstructing the definitional boundaries between religion and non-religion is recognised as a fruitful area of investigation for scholars of religion and has been the subject of renewed

¹ The first draft of this paper was presented as at the Contemporary Religion in Historical Perspective Conference at The Open University in February 2018

interest and debate within this journal.² Despite disagreements regarding the acceptable limits of deconstruction (Hedges 2018), a consensus has been claimed for certain methodological assumptions that inform the study of religion, including that religion is not separate from human practices and discourse but is ‘the product of certain historically emergent and politically invested ways of speaking and living’ (Schilbrack 2013, 108).

Taking a critical perspective in understanding the gatekeeping practices of legal institutions, norms and practices in shaping the boundary between religion and non-religion is therefore an important aspect of this methodological approach. Investigating these legal gatekeeping practices can prompt critical exploration of how they impact on category formation and facilitate analysis of whose interests are served by legally mandated acts of inclusion or exclusion. This discussion will identify recent instances, which will be of interest to scholars of religion, where the courts have been active in shaping the boundary between religion and non-religion.

This paper will begin by offering an overview of the legal approach to the definition of religion, with reference to the architecture of the European Convention of Human Rights (ECHR). It will then outline three brief case studies where the definitional parameters of ‘religion’ have been modified, or used as a means of excluding nonstandard manifestations of religious belief and practice. Firstly, it will consider recent developments in the definitional approach of domestic UK law. Secondly, it will discuss legal responses to the registration of religious groups in Europe and, thirdly, it will explore attempts to extend freedom of religion protections to commercial corporations. Finally, it will offer some concluding remarks on how this survey of recent developments highlights the contemporary configuration of the legal boundaries between religion and non-religion.

Part I Defining religion within the human rights framework

Approaches to the legal definition of religion are best understood in relation to the overarching protections for the freedom of religion and belief that have become well established in international human rights instruments. In addition to the ECHR, which will be the focus of this paper, Article 18 of the International Covenant on Civil and Political Rights, Article 12 of the American Convention on Human Rights and article 10 of the EU Charter of

² See Taira 2018; Newton 2018; Nye 2018.

Fundamental Rights all define freedom of religion and belief as a fundamental right. Article 9 of the ECHR defines the right as follows:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to 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.

Broadly in common with the range of instruments outlined above, Article 9 highlights that the protection extends to both individual and collective aspects of religious practice and includes the right to manifest religious belief both in public and in private. Freedom of religious belief and practice is also protected by a series of related rights widely recognised in international human rights instruments, including the right to freedom of association and assembly, the right to freedom of expression, the right to privacy and the right not to be discriminated against.³

Case law of the European Court of Human Rights (ECtHR) illustrates that the definition of religion and belief in these instruments is to be interpreted broadly. It is accepted that freedom of religion should 'not be limited to traditional religious or to institutional characteristics analogous to those traditional views' but that a starting point should for defining the application of freedom of religion protections should be the 'self-definition' of religion (OSCE/ODHIR 2014,9). However, it is recognised that domestic 'authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case (OSCE/ODHIR 2014, 9).

The judiciary have shown reluctance in being drawn into nuanced discussions of whether the term 'religion' should apply in particular cases, illustrated in the ECtHR's assessment of the status of Scientology in *Kimlya and others v. Russia* (2010):

It is clearly not the Court's task to decide *in abstracto* whether or not a body of beliefs and related practices may be considered a "religion" within the meaning of Article 9 of the Convention (at para 79).

³ Within the ECHR these rights are defined in Articles 11, 10, 8 and 13 respectively.

However, when considering a novel claim for the application of religious freedom protections, it is accepted that the ECtHR will seek to establish whether claimants possess 'views that attain a certain level of cogency, seriousness, cohesion, and importance' (*Eweida v United Kingdom* (2013) at para 81).

Despite the professed reluctance in *Kimlya*, human rights courts do routinely find themselves being asked to adjudicate on cases where definitional issues are of relevance. This is largely due to the fact that religious belief is subject to some form of state control in the majority of jurisdictions:

All States support, regulate or limit religion and belief to some extent. Some Governments declare official religions; other Governments give preferential treatment to one or more religions; Governments also control or restrict religious organizations and practices within their domain; and some Governments single out the manifestation of certain religions or beliefs for restrictions that are not placed on all adherents within their territory (Shaheed 2018, 4).

Such restrictions are not necessarily in breach of international human rights law standards, as some levels of restrictions on the manifestation of religious belief are permissible under international human rights law if certain conditions apply. This can be seen in relation to Article 9 of the ECHR, reproduced above, where a limitation on the *manifestation* of religious belief can be lawful if it is:

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.

Thus, for a State to demonstrate that it is not in breach of human rights protections the restriction or regulation of religious freedom must not be arbitrary, but clearly articulated in domestic law so that it is foreseeable and has clear limitations. In addition, the purpose of the restriction must be proportionate to protecting one of the permitted aims such as protecting the public interest or individual rights or freedoms of others. For example, restrictions on the freedom to manifest belief by the Osho movement in Germany was considered not to be in breach of human rights protections by the ECtHR in *Leela Förderkreis e.V. and others v. Germany* (2008):

The Court reiterates that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety (at para 93).

The application of the restriction cannot be discriminatory, as outlined in Article 13 of ECHR. However, the limitation or regulation of religious belief can only be justified in relation to the manifestation of belief. The freedom to hold, or not to hold, religious belief cannot be subject to any permitted limitations under international human rights law (OSCE/ODHIR 2014, 9).

This brief summary of the of international human rights law shows that signatory States have a duty respect and protect freedom of religion, but often engage in the regulation or restriction of religious practice. Given that legal mechanisms are used to enforce and oversee the regulation of religion, the courts are put in the position of acting as gatekeepers between religion and non-religion, as will be explored below.

Part II Testing the boundaries in UK law

This section will illustrate how the boundary between religion and non-religion has been tested within UK law in two areas. Firstly, Scientology's attempt to seek legal recognition as a religion, and secondly attempts to use the Equality Act 2010 to extend legal protections normally associated with religious belief to include political beliefs.

The human rights architecture surrounding freedom of religion and belief, sketched in outline above, illustrates that courts are reluctant to engage in substantive definitional debate regarding whether a particular manifestation of belief should properly be characterised as religious belief. However, litigation by Scientologists required such judicial engagement and has led to changes in the boundary between religion non-religion in the UK context.

It is well documented that Scientology has experienced some resistance from achieving legal recognition as a religious group by domestic European jurisdictions, as confirmed by the ECtHR in *Kimlya* which noted 'the absence of any European consensus on the religious nature of Scientology teachings.' Scientology's status as a religion was the subject of a UK Supreme Court Ruling in *R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages* [2013]. Here the UK's most authoritative court was asked to rule on whether Scientology could be classed as a religion for the purposes of the Places of Worship Registration Act 1855. The applicants wished to be able to use a Church of Scientology chapel as the venue for their wedding.

This issue had previously been dealt with in *R v Registrar General, ex p Segerdal* [1970]. On similar facts, the Court of Appeal was asked to consider an application by the Church of Scientology challenging a decision of the Registrar General which refused permission for a

Scientology chapel to be registered as a place of meeting for religious worship. This would have allowed the chapel to be used for state recognised wedding ceremonies. In the ruling, the influential jurist Lord Denning offered the following justification for rejecting the argument that a Scientology chapel could be considered a place of religious worship as Scientology could not be defined as a religion:

I must say that it seems to me to be more a philosophy of the existence of man or of life, rather than a religion. Religious worship means reverence or veneration of God or of a Supreme Being. I do not find any such reverence or veneration in the creed of this church When I look through the ceremonies and the affidavits, I am left with the feeling that there is nothing in it of reverence for God or a deity, but simply instruction in a philosophy. There may be belief in a spirit of man, but there is no belief in a spirit of God (*Segerdal* at para 485).

Denning's ruling helped draw the boundary between religion and non-religion on a theistic conception of a personal God as a qualifying characteristic; although he did, somewhat inconsistently, make an exception for Buddhism.

The *Hodkin* case was an opportunity to revisit the *Segerdal* decision. In *Hodkin* the court noted that:

There has never been a universal legal definition of religion in English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word (at para 34).

It accepted that the definitional parameters of religion are dynamic and that the definition of religion in *Segerdal* was unduly narrow for contemporary understanding. The court noted the reform to UK charity law under s 3(2)(a) of the Charities Act 2011 which gives a definition of 'religion' that includes 'belief in more than one god' in addition to on which 'does not involve belief in a god.' The current understanding of the term was therefore understood to be much broader and functioned to encompass a wider range of ideologies including– Buddhism, Taoism Theosophy Janism, parts of Hinduism in addition to New Religions Movements. Contemporary understanding of worship is broad enough to encompass Church of Scientology services and therefore the more restrictive definition of religions worship given in *Segerdal* is no longer good law. So, *Hodkin* overruled *Segerdal* and a declaration given that the Church of Scientology was a place of meeting for religious worship.

In the course of the judgement the UK Supreme Court gave the following broad guidance on how UK domestic law should approach the definitional question:

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 (at para 57).

So, in this context at least, the boundaries between religion and non-religion were moved to reflect changes in societal understandings of religion and thereby incorporate the Church of Scientology within a much more loosely defined set of parameters. The result being that Scientology Chapels could be registered as places of worship for the purpose of performing state recognised wedding services.

However, for other purposes Scientology does not have the protection and benefits of being defined as a religion. In UK charity law Scientology is not categorised as a religion. Its 1996 application to Charity Commission failed on grounds of not meeting the definition of religion and providing public benefit has yet to be overturned. This of course excludes Scientology from the favourable tax arrangements enjoyed by most established religious organisations who do have charitable status. The *Hodkin* decision indicates that Scientology would, at least, be likely to be successful in challenging the Charity Commission's 1996 on the definitional ground.

Closely related to the issue of the legal definition is what types of belief can be given the equivalent level of legal protection to religious belief. As outlined in Part I, the legal protections afforded to religion in Article 9 ECHR extend to belief. This is equally true for the UK Equality Act 2010, which defines religion or belief as a protected characteristic for the purposes of discrimination law.⁴ The approach to defining what amounts to a belief worthy of protection has been the subject of a number of cases arising from employment disputes and heard before judges of the Employment Tribunal. In *Grainger PLC v Nicholson* [2009] the

⁴ Section 10 of the Equality Act 2010 provides that 'Religion means any religion and a reference to religion includes a reference to a lack of religion. Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.'

court were asked to consider whether a belief in the environmental importance of combating climate change could count as a 'philosophical belief' for the purposes of protection under the Equality Act 2010. The court outlined the following guidance, informed by the case law of the ECtHR:

- (i) 'The belief must be genuinely held.
- (ii) It must be a belief and not ... an opinion or viewpoint based on the present state of information available.
- (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.
- (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.
- (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others' (at para 24).

In *Grainger* the court concluded that a belief in the existence of climate change and the associated commitment to the need to take action to combat it was sufficient to meet these tests and to therefore be worthy of protection under the Equality Act 2010, to the same extent as a religious belief. Similar questions have been raised in a series of cases coming before the Employment Tribunal which has decided that democratic socialism and Scottish nationalism can be considered a philosophical belief for the purposes of the Equality Act but that English Nationalism could not.⁵

Sandberg (2015, 197) has critiqued this line of case law for being 'confused and contradictory' and argued that for clarity, political and other opinions should be given protection on a distinct legal basis so as to dispel the 'misleading and ultimately unsatisfactory impression that political beliefs are religious now.' However, despite these misgivings regarding the conceptual clarity of the decisions, these attempts to gain legal equivalency for religious and non-religious belief in the context of the Equality Act can be seen both as an example of the legal fluidity between religion and non-religion and also as an interesting manifestation of the phenomenon of implicit religion identified by Bailey (1998; 2012).

⁵ See *Mr C Olivier v Department for Work & Pensions* [2013]; *Mr C McEleny v Ministry of Defence* [2018] and *Mr S T Uncles v NHS Commissioning Board and others* [2017] respectively.

Part III Registration of religious organisations

The *Hodkin* case illustrates that legal norms are sufficiently fluid to respond to wider cultural movements within society and can thereby reflect changing attitudes to the definitional parameters of religion. However, a recent flow of ECtHR caselaw concerning the registration of religious groups in European jurisdictions illustrates that, in other contexts, States make use of legal norms to attempt to narrow the definitional parameters of religion and thereby exclude minority expressions of religious belief and practice.

At issues in many of these cases is whether a minority religious organisation, can enjoy the benefits that result from being afforded legal personality. An entity with legal personality can be the subject of legal rights and duties and thereby enforce rights in court and also be held liable for breach of legal duties. Legal personality is broadly synonymous with human personhood but remains conceptually distinct. It is a legal status that is shorthand for a collection of legal rights and duties and can also be applied to artificial persons or corporations such as businesses, States or religious groups.⁶

To say that a subject has legal personality is to say that it is a party to legal relations without indicating in particular what the relations are. To say that one has title, is to say that one is a party to a particular class of legal relations, namely, those which go with the ownership of property. In either case, if one takes away all the rights, powers, privileges and immunities that shelter under the term, there is nothing left except the shelter which, thereafter, is but a word without a meaning (Smith 1928, 94).

Decisions by domestic legal authorities to grant or withhold the conferral of legal personality to religious groups has a direct impact on the public manifestation of their religious beliefs, as well as the communal aspects of their religiosity. The acquisition of legal personality generates clear advantages for the religious communities, allowing access to a range of domestic benefits in terms of autonomy, finance, property, marriage and in spiritual care within state run institutions. (Doe 2011, 110) The right for a group to seek recognition as a

⁶ The conferral of the status of legal personality, similarly to the conferral of the category 'religion' can be contested and, like 'religion' can be revealing of wider cultural, sociological and political forces. For example, denying legal personality to slaves and women was a legal mechanism that facilitated their subjugation and recent efforts to extend legal personality to great apes is illustrative of a change in the understanding of the relative status of animals. s seen as a key aim in improving their legal protection. For a wider discussion of these points see McFaul 2014.

legal person, is protected by Article 11 of the ECHR and has been affirmed by the ECtHR in *Sidiropoulos v. Greece* (1998):

That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning (at para 40).

This aspect of religious freedom protections is seen as being of particular importance by the ECtHR in facilitating religious pluralism and State neutrality toward religion:

the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable (*Hasan and Chaush v. Bulgaria* at para 62).

The OSCE /ODHIR have also highlighted that:

When the organizational life of the community is not protected by the freedom of religion or belief, all other aspects of the individual's freedom of religion become vulnerable. The ability to establish a legal entity to act collectively in a field of mutual interest is one of the most important aspects of the freedom of association, without which that right would be deprived of any meaning. As regards the organization of a religious community, a refusal to recognize it as a legal entity has also been found to constitute an interference with the right to freedom of religion under Article 9 of the ECHR as exercised by both the community itself and its individual members (OSCE /ODHIR, 2014 at para 18).

In the last ten years, a significant number of Article 9 cases concerning the legal recognition of minority religious groups have been heard by the ECtHR. Many, but not all, of these have resulted from legislation requiring the registration of religious groups in states which had previously been under the umbrella of influence of the Soviet Union. They involve disproportionate or discriminatory domestic registration requirements relating to the numbers, longevity and citizenship status of members of minority or nonstandard religious groups such as Scientologists, Mormons,

Jehovah's witnesses and the Salvation Army (OSCE /ODHIR, 2014 at paras 27-39 18).

For example, in *Church of Scientology of St Petersburg and Others v. Russia* (2014) the Church of Scientology had been refused permission to register as a religious organisation by the domestic authorities, which the ECtHR found to be in breach of the protection of religious freedom under Article 9. It observed that:

pursuant to Russia's Religions Act, a "religious group" without legal personality cannot possess or exercise the rights associated exclusively with the legal-entity status of a registered "religious organisation" – such as the rights to own or rent property, to maintain bank accounts, to ensure judicial protection of the community, to establish places of worship, to hold religious services in places accessible to the public, or to produce, obtain and distribute religious literature – which are essential for exercising the right to manifest one's religion ... Thus, the restricted status afforded to "religious groups" under the Religions Act did not allow members of such a group to enjoy effectively their right to freedom of religion, rendering such a right illusory and theoretical rather than practical and effective, as required by the Convention (at para 38).

The discriminatory impact of domestic registration requirements on minority religious groups has been an issue in a significant number of Russian cases (Mikhail 2018) but has also been an issue in other ECHR jurisdictions including Macedonia⁷, Bulgaria⁸, Hungary⁹, Turkey¹⁰ and Azerbaijan¹¹. Cases that are brought before the ECtHR with evidence of discriminatory or disproportionate registration requirements are invariably found to be in breach of Article 9. As such, at the international level, their religious rights are recognised and an appropriate remedy is awarded. However, the legal process to reach this point takes several years and these cases provide evidence of political attempts to promote particular forms of acceptable religious belief and practice at the expense of minority, nonstandard or otherwise 'foreign' forms of religious expression. In this way, these cases illustrate how domestic legal mechanisms are being used as means to promote a redrawing of the boundary between

⁷ *Bektashi Community and Others v 'the former Yugoslav Republic of Macedonia'* [2018]

⁸ *National Turkish Union v Bulgaria* [2017]

⁹ *Magyar Keresztény Mennonita Egyház and Ors v Hungary* [2014] ; see Cranmer for a wider discussion on the Hungarian system of registration of religious groups.

¹⁰ *Altinkaynak and Others v Turkey* [2019]

¹¹ *Asadbeyli and Others v. Azerbaijan* (2012)

religion and non-religion, which has the effect of narrowing the definitional parameters of religion and promoting acceptable forms of religious practice to the exclusion of minority and nonstandard religious groups.

Part IV For profit corporations and freedom of religion

The preceding discussion makes it clear that is the religious liberty protections that exist in various human rights instruments give protection both the individual and collective expressions of religious belief and practice. The discussion has also illustrated that minority or non-conventional forms of religious belief can often find themselves at the boundaries of accepted definitional parameters of what can be classed as religion, which has a detrimental impact on their ability to access the administrative advantages afforded to conventional forms of religious belief and practice.

Another example of how collective activity can test the definitional boundaries of religious belief and practice is the issue of the extent to which a corporation which engages in business transactions for the purpose of making a profit can also benefit from human rights protections designed to facilitate the free expression of religious belief and practice. This particular boundary has been tested in the recent United States Supreme Court case of *Burwell v Hobby Lobby Stores Inc* (2014); and the issues has also been considered in a small number of cases heard in the UK system. This paper will outline the issue and reasoning behind the US decision in Hobby Lobby, before contrasting it with three UK cases.

Hobby Lobby involved a challenge to President Obama's flagship Obamacare health reforms enacted under the Patient Protection and Affordable Care Act 2010. This included a requirement for employers with over 50 staff on the payroll to provide medical insurance which included a range of contraceptive options for female employees. A number of family run for profit business who fell under the ambit of the legislation, objected to this aspect of the insurance arrangements for religious reasons and sought an exemption for the demands of the act under the Religious Freedom Restoration Act 1993 (RFRA) and the Free Exercise Clause of the First Amendment. Exemptions existed for religious groups and certain not for profit religious organisations. This case sought to test the boundary of whether for profit organisations could benefit from these religious freedom protections.

By majority of 5 to 4, the US Supreme Court extended the freedom of religion protections to these particular for-profit companies. The key argument being that corporations were able to

benefit from the freedoms projected under the RFRA and the First Amendment, being a for profit corporation did not necessarily disqualify access to these rights, which are available to not for profit corporations. The following excerpt from the majority judgment provides a useful illustration of the court's reasoning:

As the activities of the for-profit corporations involved in these cases show, some for-profit corporations do seek 'to perpetuate the religious values shared,' in these cases, by their owners. Conestoga's Vision and Values Statement declares that the company is dedicated to operating 'in [a] manner that reflects our Christian heritage and the highest ethical and moral principles of business.' ... Similarly, Hobby Lobby's statement of purpose proclaims that the company 'is committed to ... [h]onoring the Lord in all we do by operating ... in a manner consistent with Biblical principles' (*Burwell* 2014, 22).

This argument would not necessarily apply to larger corporations such as McDonalds, Amazon or Facebook, as the larger the enterprise the less likely it would be to be able to show that the corporation could have the ascertainable, sincere and coherent beliefs that could warrant the protection of human rights protections.

The companies in the cases before us are closely held corporations, each owned and controlled by members of a single family, and no one has disputed the sincerity of their religious beliefs (*Burwell* 2014, 29).

Similar reasoning was employed in the following recent UK cases: *Exmoor Coast Boat Cruises Ltd v Commissioners for Her Majesty's Revenue & Customs*, *Blackburn & Anor v Revenue & Customs* [2013], *Harvey (T/A Sun Ice Air Conditioning) v Revenue & Customs* [2016].

In *Exmoor Boat Cruises*, Mathew Oxenham, the sole director and shareholder of Exmoor Coast Boat Cruises Ltd, attempted to submit Exmoor's value added tax (VAT) returns by paper, rather than online as required by the Finance Act 2002. Regulations made under the 2002 Act provides an exemption for practising members of religious organisations 'whose beliefs are incompatible with the use of electronic communications.' The court considered whether or not a company could benefit from the Article 9 protections on freedom of religion. The Tribunal took the view that

a company has human rights if and to the extent it is the alter ego of a person (or, potentially, a group of people)...Therefore, while it is ludicrous to suggest a company has a religion, or private life or family, nevertheless a company which is the alter ego of a person can be a victim of a breach of [Article 9] (the right to manifest its religion)

if, were it not so protected, that person's human rights would be breached (at para 82).

Mr Oxenham was not successful as the court decided he was not, in fact, a member of a religious organisation whose beliefs prevented the use of internet technology for the submission of his VAT return. *Blackburn* was on a similar issue and concerned beekeepers who successfully argued online filing would be contrary to their beliefs as Seventh Day Adventists, despite the fact that this Church doesn't preclude members from using electronic communications (Cranmer 2013). In *Harvey* the claimant failed to win an exemption from filing an online VAT return on the grounds that he had not provided sufficient evidence to support his claim that his religious beliefs precluded him from doing so.

The same issue was given some consideration in the Supreme Court decision in *Lee v Ashers Baking Company Ltd & Ors* (2018). The case concerned a number of legal points relating to the refusal of a Christian family business to provide cake with a slogan supporting gay marriage, the most pertinent to this paper is whether the bakers as a company could benefit from the Article 9 protections for freedom of religion.¹² Lady Hale gave the following comment, which is broadly in line with the cases discussed above:

to hold the company liable when the McArthurs are not would effectively negate their convention rights. In holding that the company is not liable, this court is not holding that the company has rights under article 9; rather, it is upholding the rights of the McArthurs under that article (at para 52).

The willingness of the courts to provide religious freedom protections to commercial corporations is fact sensitive (Cranmer 2016) but it does broadly echo the development of the US Supreme Court in *Hobby Lobby*. This line of case law illustrates further dynamism in the legal boundaries between religion and non-religion, showing that where a clear link between the corporation and the religious beliefs of the individuals who constitute it can be established, the courts are willing to consider granting religious freedom protections to commercial entities. It also illustrates the increasing prevalence of faith-based profit-making companies which eschew a simple a rigid dualism between sacred worldviews and secular business activities (Ahdar 2016, 4).

¹² For a wider discussion of the *Ashers* judgement see Henderson 2018.

Conclusion

This paper has been informed by the methodological approach to the study of religion which sees its subject as the product of historically emergent and politically invested ways of speaking and living (Schilbrack 2013). It has argued that examining the ways in which legal norms and processes are influential in the construction of boundaries between religion and non-religion is a potentially fruitful approach in the deconstruction of religion as an analytic category.

By focusing on three contemporary areas of legal activism relating to the definition of religion it has demonstrated that legal processes play a dynamic part in category formation. Changes in the legal definition of religion within UK law, as illustrated by *Hodkin*, demonstrate that changes in societal and academic understandings of non-theistic forms of religious belief and practice have broadened the parameters of legally mandated religion, but not yet so far as to provide charitable status on the Church of Scientology. Further, the discussion of the remarkable flow of registration cases to the ECtHR points to the existence of political interests in using legal norms and processes as a gatekeeping mechanism to exclude minority and nonstandard religious groups. Finally, it has addressed recent attempts by profit making companies who have sought, with some success, religious freedom protections from the courts, pointing to the desire of some business owners to integrate their religious commitments into their secular business activities and thereby bridge the boundary between religion and non-religion in their working life.

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