

As Cold as Charity

Did anybody notice when Catholic Christianity ceased to be a religion in the United States? Not when it stopped being a popular or even a permissible religion, but when it became simply a nonreligion? I ask this because a recent court decision in California threatens to launch a legal revolution, in a way that would be dazzlingly ingenious if it were not so sinister. After years of tinkering selectively with the First Amendment to favor certain religious ideas and views while undermining others, one important court has now taken the imaginative step of simply removing whole spiritual traditions from the definition of *religion*.

The case in question has its roots in the late 1990's, when the California legislature demanded that health-insurance plans include coverage for contraception. Realizing the obvious moral and religious conflicts that might arise, the law—the Women's Contraceptive Equity Act (WCEA)—provided conscientious exemption for groups with a principled objection to contraceptives. The term "religious employer" was defined quite freely, the main criterion being that the group in question had as its main purpose "the inculcation of religious values" and that it principally employed and served people who shared those religious tenets.

The intention of the law was anything but mysterious, and nobody thought that any great Church-state issues were involved. Very shortly, however, the seemingly ironclad language of the WCEA's religious exemption came under attack, when employees of the Catholic Charities of Sacramento claimed the right to contraceptive coverage. At first sight, the claim appears outrageous. Clearly, Catholic Charities is an arm of the Catholic Church, which evidently has something to do with "the inculcation of religious values," and those values reject contraception. Nevertheless, the lower courts held against the Catholic cause, and, in early 2004, those decisions were upheld by the majority of the California Supreme Court. (The case, *Catholic Charities of Sacramento, Inc., v. The Superior Court of Sacramento County*, can be explored in detail at clsnet.org/clrf/Pages/amicus/charitiesvStateCalif.php.)

While the specific decision seems unreasonable or onerous, the underlying grounds are terrifying. The state supreme court ruled that, though the Catholic Church *as a church* might be religious, this qualification does not extend to its worldly manifestations—such as Catholic Charities. The notion of "religious values" does not comprehend such blatantly secular pursuits as "counseling, mental health and immigration services, low income housing, and supportive social services to the poor and vulnerable." These tasks evidently have nothing to do with religion, though I think that a few obstinate exegetes insist that they have found passages in the Scriptures that *might* conceivably provide some kind of religious coloring to these acts—something about clothing the naked, feeding the hungry, and helping the stranger—but I'm sure that these themes only surface in a few odd biblical translations. No reputable religious authority would ever suggest that these critical functions should fall to anyone other than the secular state and its accredited social-service agencies.

Now, these were not the only grounds for the decision. The court also felt that Catholic Charities had failed abysmally in its duty to exercise wide-ranging bigotry in its daily operations. After all, if it had insisted on employing only people who accepted its warped views, and, still more, if it had demanded a religious test before offering social services, then the agency would have been clear under the law. It did not, however, and so it lost the claim to exemption. Unaccountably, Catholic Charities also failed to exploit and oppress its employees. Though the law allows employers to refuse all prescription-drug coverage to employees, this particular charitable organization insisted on referring to some strange and nonlegal concept called the "moral obligation" of the employer "at all times to consider the well-being of its employees." This moral imperative required that employees be treated decently, even at the risk of running up against the wise laws of California. At every point, Catholic Charities of Sacramento behaved reprehensibly, by its consistent refusal to exercise religious discrimination and its willful application of



a social conscience. One can have little sympathy for such hardened offenders.

But to return to the issue of religion and religious exemption: What the legislature of California did—and in such a way that it was subsequently upheld by the state supreme court—was to offer a staggeringly narrow definition of religion, one that is strikingly at variance with standard usage and with much legal precedent. Religion in this sense is only taken as "inculcating values," that is, as preaching or evangelizing, to the exclusion of all other associated activities. If that definition is widely adopted—and the California courts are influential—that heralds a dramatic curtailing of religious exemptions and exceptions not just in employment law but in all financial and tax matters, not to mention clergy-privilege cases. Yes, the First Amendment safeguards freedom of religion—but organizations the judges do not like or approve of are not religious, so they cannot claim protection.

If that accusation of extreme subjectivity sounds unfair, recall how *religion* is defined when the matter at hand is one closer to judicial sympathies. In 1965, the U.S. Supreme Court broadened the definition of religion for purposes of draft exemption to groups lacking any orthodox belief or structure provided they held "a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption" (*United States v. Seeger*). Religion, in short, was whatever you wanted it to be. But when judges confront a religious system they despise, such as Roman Catholicism, then totally different standards apply. To quote that legendary jurist, Mr. Justice Humpty Dumpty, "When I use a word, it means just what I choose it to mean—neither more nor less." ☪

America in Europe, Europe in America

A Shared Disease

by Claude Polin

What the Europeans call *America*—that is, Canada and the United States—was fostered by what we usually refer to as *Europe*. If men and women had not left the Old World, there would not be any New World as we know it. Hence, any investigation into the relationship between Europe and America must begin with an investigation into the nature of Europe itself. Only then can we ponder the extent to which the child has been faithful—or unfaithful—to the mother or speculate about the countereffect of the creation on its creator.

I could argue that *Europe* is nothing but a word, an easy way to refer to a vague and rather fluctuant geographical area—the westernmost part of the Asian continent—in which, over the course of many centuries, the lives of a rather imposing number of men have been more closely intertwined than in other parts of the world, an area where the intensity of interactions has been particularly high, but an area which has never been able to achieve a real, lasting entity.

There is no material proof for the existence of an easily recognizable being called *Europe*: no definite borders, no common language, no structural body of similar political behavior, no economic unity, no uniform pecuniary or dietary habits, clothing, styles, manners, and so forth. From an empirical point of view, Europe must be recognized as something made up of such irreducibly diversified parts that there is no way to sum them up.

Nevertheless, Europe can be construed as an entity of its own, provided you look not at the different ways a principle may be applied but at the principle itself. You will never find Europe if you limit your observation to the manifestations, which are quite varied indeed, of the “spirit of Europe.” You will, however, find them very European, and what Europe is will appear very clearly indeed, if you start looking for a common inspiration, something beyond the empirical evidence, but without which there is really no evidence. Siblings are different individuals—very often extremely different—but it takes a very rare difference between them to obliterate their *air de famille*. If you look for a reality that you can call *Europe*, you should look for something that is a spiritual reality, for Europe is nothing but a spirit and was indeed born as a spiritual principle. Disregard the soul, and the body is but the sum of members that tend to be disjointed, having lost their common purpose. Europe is everything upon which a certain soul stamped its unique mark.

To look for the true soul of Europe, we must bypass modern times: Even though the numerous failures at making Europe a going concern may seem today on the verge of being over-

come, we are not observing the birth of a living creature but the clumsy making of a mechanical puppet that is, to a true Europe, what the Terminator is to a warrior. The spirit of Europe is long gone, and we are left with a marionette controlled by more or less hidden puppeteers.

There was, however, and maybe still could be, though hidden within the deep recesses of the public mind, a spirit of Europe that resembles an invisible thread binding the actions of millions of men together over the centuries. It inspires them with a similar and common yearning for the same goals, respect for the same values, admiration for the same ideals that they may disregard because of their private vices but can never forfeit in their hearts, as though against their own will. By and by, from the time of Plato until the French Revolution, there were men living in roughly the same area of the planet for whom the same things were ugly or beautiful, true or false, natural or unnatural, even though it never prevented numbers of them from preferring the negative values to the positive ones, while the different peoples translated the good norms into their own language, adapting them to their own customs and traditions.

How was this spirit born? Where did it originate? The same question applies to any man, and the same answer obtains: A child has parents but is more than the sum of their characteristics. One minute, there are only his parents; the next, he is. He exists as an entirely new being. In a similar manner, the spirit of Europe, one day, was born.

Is it not outrageously ambitious to try to define such an extraordinary thing as this generating principle of Europe?

To answer, we must acknowledge what is blatantly evident. What is—what purports to be—philosophy, since the time of Socrates, if not indeed an inquiry into the nature of things in general and man in particular (*Connais-toi toi-même*)? And how can the philosophical system, all the ideas derived from this basic questioning, be anything but descriptive of a certain type of mind that happens to be Greek at its origin? How can it be anything but a summary of what the Greeks believed, felt, loved, hated, and, generally speaking, considered the true norms a man had to live up to? We can trace the influence of Greek thinking all the way to yesterday, relayed, of course, by the Romans and the Christians, which is to say by men deeply respectful of a culture that they considered not only as their ancestor but their mentor.

The spirit of Europe, then, is a religious and/or philosophical one (which may have occurred elsewhere), stemming from a set of principles which I dare think unique (and never born anywhere else). In a nutshell, that spirit was born when, seeking, as most men do, an explanation for the universe in general and mankind in particular, it laid as a foundation for that explanation these two closely related ideas: first, that the universe in

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