"Stewardship in the *Bible* and its implications for the management of religious bodies"

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Abstract

The sustainable management of public and not-for-profit organisations is not as new a concept as it may at first appear to be. The Christian Church is among the earliest of the not-for-profit organisations, and developed practices designed to safeguard and preserve the heritage of the Church. This was partly because of the need to maintain the operation of the Church in the future, but was also influenced by biblical injunctions to stewardship. This paper considers the implications of that charge for the management of religious bodies, in particular the legal obligation imposed by canon law and/or theology, to be sustainable.

Introduction

The sustainable management of public and not-for-profit organisations is not as new a concept as it may at first appear to be. The Christian Church is among the earliest of the not-for-profit organisations, and developed practices designed to safeguard and preserve the heritage of the Church. This was partly because of the need to maintain the operation of the Church in the future, but was also influenced by biblical injunctions to stewardship.

The *Bible* includes a charge to mankind to steward the earth. This charge is reflected today in the legal obligation imposed by canon law and/or theology, to be sustainable. Religious bodies, in particular, bear this responsibility, though the extent to which they have actively implemented this principle has varied over time, and from place to place. Stewardship goes side-by-side with a duty to one's fellow people.

Concepts of interest, and legitimate compensation and illegimate demanding usury, are common to Christianity and Islam.[1] The religious injunctions to avoid usury also meant that the Church long acted against excesive commercial enterprise – while itself maintaining considerable commercial holdings, especially but not exclusively in land. The Church's attitude to accounting practices,[2] and usury, also reflected the fact that the Church is the Church of God, in the world but not of this world, and is eternal and unchanging in its essential nature.[3] Secular laws relating to usury were only abolished in the United Kingdom in 1854.[4]

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[1] Constant J. Mews and Ibrahim Abraham, "Usury and Just compensation: Religions and financial perspective" (2007) 72(1) Journal of Business Ethics 1-15.

[2] Kerry Jacobs, "The sacred and the secular: examining the role of accounting in the religious context" (2005) 8(2) Accounting, Auditing and Accountability Journal 189-211.

[3] "It is misleading to speak of religious experience as something distinct from ordinary experience for the latter possesses a dimension of holiness"; J.G. Davies, *Every Day God: encountering the holy in world and worship* (1973), 80.

[4] Constant J. Mews and Ibrahim Abraham, "Usury and Just compensation: Religions and financial perspective" (2007) 72(1) Journal of Business Ethics 1-15.

In 1279 and again 1290 Statutes of Mortmain were passed by King Edward I to circumscribe the church's holding of property, although limits on the church's power to hold land are also found in earlier statutes, including the Magna Carta of 1215 and the Provisions of Westminster of 1259. The broad effect of these provisions was that the authorisation of the Crown was needed before the land could vest perpetually in a corporation. Although statutes prohibiting mortmain have been abolished in most countries today, the principle still subsists to a certain extent in relation to trust law in the form of the rule against perpetuities.

Religious individuals do tend to hold broader conceptions of the social responsibilities of businesses than non-religious individuals,[5] but we can probably no longer see significant religious influence on secular laws of accounting, or on management practices outside the institutions of the Church.

The biblical charge to mankind

God, in creating mankind, ordered it to subdue the earth and to exercise dominion over the earth.[6] Whether this "dominion" is understood in a traditional way as a form of sovereignty – as perhaps Sir Robert Filmer,[7] and other earlier writers might have done – or through a new age Gaia-inpired lens,[8] or some mid-way perspective of stewardship, it reflects a belief that humanity has a special place in God's created universe. But mankind, in attempting to establish separate dominion and autonomous jurisdiction over the earth,[9] fell into sin and death. Presumption, whether literally by eating the forbidden fruit, or figuratively through arrogance and boastful tyranny, brought mankind to its knees.

Subsequent efforts have been directed at recovering from this fallen condition, though always progress has been painfully slow, and sometimes, as (universally) in the Deluge, and (locally) in the destruction of the Cities of the Plains, it has been reversed, whether these events are seen as historical events or metaphors. Biblical law is a covenant, a plan for dominion under God,[10] and is based on revelation. This revelation involved the patriarchs of the Old Testament, but also, through Christ, the church of the New Testament. Since the time of Christ the Holy Spirit has remained active, but we have not been vouchsafed a direct revelation from God – at least not one which has been generally accepted by the universal church. In this situation recourse must be made to the authority of Holy Scripture, and church

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[5] S. Brammer, Geoffrey Williams, and John Zinkin, "Religion and Attitudes to Corporate Social Responsibility in a Large Cross-Country Sample" (2007) 71 Journal of Business Ethics 229-243.

[6] Genesis 1.28:

> And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth.

This and later biblical quotations are, unless otherwise indicated, from the King James Version of the *Bible*.

[7] *Patriarcha and other writings* ed. J.P. Sommerville (1991).

[8] From James Lovelock's Gaia hypothesis; *Gaia: A New Look at Life on Earth* (1979).

[9] Genesis 3.5: "For God doth know that in the day ye eat thereof, then your eyes shall be opened, and ye shall be as gods, knowing good and evil".

[10] Rev'd. Rousas John Rushdoony, *The Institutes of Biblical Law* (1973), 6-7.

tradition, particularly in the formulation of laws and institutions. But even laws made by mankind, including those made by secular authorities, are in a limited sense laws of God.

The exact meaning and nature of the biblical origins of the authority of the church – or even the nature of the church – may be the subject of debate, but it is reasonably clear that there was some form of structured authority within each local church in apostolic times.[11] This can be seen in the lists of ministries in the *Bible*, and in references to elders and overseers,[12] however these words may be translated. But in these early years the government of the church was quite distinct from that of the State, though this was not to long remain so.[13] From the adoption of Christianity as the state religion of the Roman empire in the early fourth century, until the modern era, Christian doctrine, ideology, and processes of thought dominated the State in all countries which comprised eastern and western Christendom. The legacy of this era remains with us, to a greater or lesser extent. In contrast, modern humanism, the religion of the State, locates law in the State and thus makes the State, or the people as they find expression in the State, the "god" of the system.[14] It may be true to say that we live, not in a post-Christian world, but in one which is in some degree post-Christian. But both the church and the State retain the effects of this long-term influence.

Law, and therefore government, is perhaps in any culture religious in origin. Because law governs mankind and society, and because it establishes and declares the meaning of justice and righteousness, it is inescapably religious, in that it establishes in practical fashion the ultimate concerns of a culture.

In any society, any change of law is an explicit or implicit change of religion. Nothing more clearly reveals, in fact, the religious change in a society than a legal revolution. When the legal foundations shift from Biblical law to humanism, it means that the society now draws its vitality and power from humanism, not from Christian theism.[15] This means that the laws enacted by secular authorities can only with difficulty be seen as being truly the laws of God. Yet the law of God remains important within the Church, if not beyond it. The difficulty is in how to identify and interpret this law. Of course it remains uncertain whether the State is post-Christian, and therefore it is probably more accurate to access government and society as multivariate in nature. This may be well enough understood in the west, as a matter of abstract reality. But it may be less apparent to those outside such States, such as the more extreme Islamic radicals, with their talk of the infidel, "crusader" west. They may once have been right, but it is many years since the expression Christendom had much significance in the west outside religious discourse – though exceptions do of course appear – and longer still since western Christendom has been active in attempting to recover those parts of the Mediterranean and Near East which had been overrun by Islam.

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[11] See e.g. Right Rev'd. Kenneth Kirk (ed.), *The Apostolic Ministry* (2nd ed., 1957).

[12] 1 Corinthians 12.28 ("And God hath set some in the church, first apostles, secondarily prophets, thirdly teachers, after that miracles, then gifts of healings, helps, governments, diversities of tongues"); Ephesians 4.11 ("And he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers"); and Philippians 1.1 ("Paul and Timotheus, the servants of Jesus Christ, to all the saints in Christ Jesus which are at Philippi, with the bishops and deacons") respectively; see the Rev'd. James Coriden, *An Introduction to Canon Law* (1991), 4.

[13] The church benefited from the nexus of church and State from the fourth century, but also suffered some negative consequences; see, for example, Stephan Kuttner, *The history of ideas and doctrines of canon law in the Middle Ages* (1980).

[14] See, for example, John Locke, *Two Treatises of Government* ed. Peter Laslett (1988).

[15] Rev'd. Rousas John Rushdoony, *The Institutes of Biblical Law* (1973), 5.

Every State, whatever its history, reflects aspects of contemporary and historical religious and secular thought. Some are theocratic – with the exception of the Vatican City State, now exclusively Muslim rather than Christian. Most but not all mediæval and earlier States (at least in Europe) were governed by secular princes, but there were often a minority of States which had ecclesiastical governments, such as the States of the prince bishops of Germany. In other States the influence, and the role, of the church, varied over time. The position in pagan and non-Christian States outside Europe was of course distinct.

There are a number of consequences of the close relationship between Church and State. Places used for public worship, together with church halls and other buildings ancillary to public worship, were traditionally exempt from rates.[16] Equally importantly, much Church machinery, in a number of countries including the United Kingdom, and New Zealand, is based on Acts of Parliament. These however reflect certain key principles, including equality before the law, the rule of law, and accountability. Yet these are not unique to secular laws, and indeed reflected long-held religious beliefs.

The charge to humanity was reflected in the law of the Church – and sometimes in part in state law such as the laws of usury, now long gone in the west. But it survives in the Church.

The legal obligation to be sustainable imposed by canon law and/or theology

Successive Lambeth Conferences have recommended the adoption throughout the Anglican Communion of a basic "principle of financial independence" stresses the need for individual churches to be self-supporting ("the management and financial support of the Church should be theirs from the first").[17]

The property of the Church, like all other property, is either real or personal. As such it is essentially governed by the same rules as other property. Broadly speaking, real property is land and personal property is any other sort of property. But superimposed on the basic general law are many special incidents peculiar to ecclesiastical property. The most fundamental of these special incidents is the distinction between consecrated land and unconsecrated land. The former is held in perpetuity for religious purposes.

Consecration must not be confused with dedication, though theologically it would seem that there is no difference between the two. Each is an act by man whereby he gives back to God what God has given or lent to man to do therewith what he will. By freely giving it back to God man in effect declares himself a trustee of the land for godly purposes.[18] But such a declaration, if expressed by dedication, amounts in law to no more than an expression of pious intention.

To be clothed with legal effect it is necessary that there should be a sentence of consecration by the bishop, which occurs only after the freehold of the land has been secured. Though in practice there is invariably a religious ceremony devised and performed by the bishop, the legal effect of consecration is brought about by his signing the sentence of consecration. The effect of this is two-fold: first, it brings the land and everything on it within

[16] For an extension of this principle, see *Glasgow City Corporation v. Johnstone* (1965) 1 All E.R. 730.

[17] Lambeth Conference [hereafter "L.C."] 1897, Res. 56. "The Conference urges that the Church in every field be encouraged to become self-supporting"; L.C. 1958, Res. 64.

[18] See the *Report of the Committee on Deconsecration* (Church Assembly, London, 1961), headed C.A. Misc. 3.

the jurisdiction of the ordinary;[19] second, it preserves the land for ever by setting it aside *in sacros usus*.

The practice of consecrating churches is very ancient.[20] Mediaeval bishops employed chaplains to consecrate new churches for them,[21] a practice continued by the Pluralities Act 1529 (Eng.),[22] which permitted bishops to have six chaplains for this purpose.

Since consecrated lands and buildings are set aside *in sacros usus* for ever, they may thus be regarded as given back to God. But it is, nevertheless, human beings who have to deal with them and upon whom obligations and rights in respect of them devolve. It is the policy of the common law always to seek some individual in whom the legal estate of property is vested. The beneficial interest of such an individual may well be limited, and it is a mistake to regard the legal owner as necessarily the person with the greatest beneficial interest. They are, in point of fact, little more than trustees.

The doctrine of stewardship is the basis for church financial management. An example in New Zealand is trusteeship. Any trustees holding land or personalty for the General Synod, for general church purposes, or for a diocese or parish, must report annually to the Diocesan Synod showing investment, assets and liabilities as the Diocesan Synod directs, and yearly accounts must be audited.[23]

Further examples, also from New Zealand, can be cited. Generally, all property is entrusted to ecclesiastical bodies for the benefit of the church. Property is held at diocesan level, with trustees acting under the direct control of the Diocesan Synod.[24] The Diocesan Trusts Board, appointed by the Diocesan Synod, is empowered to appoint trustees to administer the property of the diocese. All property held for the use of the diocese must be transferred to the Diocesan Trusts Board and "the specific application [of land] shall be determined by the Diocesan Synod, subject to the control of the General Synod". The diocesan trustees must "carry out the objects of each Trust in such manner ... as the Diocesan Synod shall ... direct".[25] Trusts ensure stewardship reflects religious objectives.

At a local level similar principles apply. It is a general principle that day-to-day control of the church building is vested in the local parish council. Parishioners have the right to appeal to the bishop in cases of dispute.[26] But the minister has a right of access.[27] Personal interest does not prevail.

It is a general rule that episcopal consent must be obtained for any alteration, addition, or removal of the structure of a church. The direct consent of the bishop is required. An

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[19] Who is not necessarily the bishop, though it is almost invariably so in New Zealand.

[20] E.C. Herrington, *The Object, Importance, and Antiquity of the Rites of Consecration of Churches* (London, Oxford, Cambridge and Exeter, 1847); Gratian, *De Cons*., D.1 cc.3 and 15; That this was so in England is confirmed by the Constitution of Otho, at the Council of London 1237 (and reiterated in the Constitution of Othobon 1268); *Constitutiones Legatinae sive Legitimae Regionis Anglicanae D. Othonis, et D. Othoboni* (Oxford, 1679) 6-7.

[21] Edmund Gibson, *Codex Iuris Ecclesiastici Anglicani* (2nd ed. Oxford, 1761) 190; R. Phillimore, *The Ecclesiastical Law of the Church of England* (2nd ed. London, 1895) 1383. Both cite Coke's *Institutes*; 3 Co. Inst. 203.

[22] 21 Hen. VIII c. 13 (Eng.).

[23] Can. F.III.4.

[24] A requirement of the Charitable Trusts Act 1957 (N.Z.) is that freehold and leasehold property acquired by or on behalf of any religious denomination should be vested in trustees.

[25] Cans. F.I.1, F.III, F.VIII.1; see also the Anglican Church Trusts Act 1981 (N.Z.).

[26] Can. B.V.5.3.1.

[27] Can. B.V.5.3.1.

episcopal faculty system is employed in New Zealand.[28] For the erection or addition to church buildings the consent of the bishop is required.[29] Major capital expenditure decisions are thus entrusted to diocesan level bodies, while the day-to-day control is entrusted to the individual parish. All maintain democratic decision-making processes in accordance with the principles of stewardship.

The incumbent (the minister in charge of a parish) is entitled to a residence.[30] But he or she doesn't have absolute control over it. No additions may be made without episcopal consent.[31] As in England, the incumbent's rights over the residence are strictly limited.

Each diocese must contribute a quota to the provincial church.[32] Similarly, the parishes must support the diocese. The quota must be set by formal procedures.[33] The Distribution Advisory Committee advises the standing committee on allocations with "regard to the principles of partnership and the covenant relationship" expressed in the Constitution "and the need for fair and equitable sharing and allocation of financial resources in this Church".[34]

Pensions are also subject to the principle of stewardship. The Church Pension Board has powers of investment.[35] Investment by trustees must accord with the terms of the Anglican Church Trusts Act 1981 (N.Z.).[36] All other assets are held in trust by various statutory or private trusts.

The Anglican Church Trusts Act 1981 (N.Z.) was originally enacted as the Church of England Trusts Act 1913 (N.Z.). Statutory trusts had originally been instituted in New Zealand in 1858,[37] empowering the Bishop of New Zealand to convey certain hereditaments (which had been granted, conveyed, or assured to him and his successors, Bishops of New Zealand, in trust for certain religious, educational, charitable, and other purposes) to such trustee or trustees as the General Synod should appoint, subject to the trusts upon which the same hereditaments were held by the Bishop. By the constitution and canons of the Church of the Province of New Zealand, no sale or exchange of any land held on behalf of the General Synod might be made without the authority of the General Synod. There were, however, doubts regarding the authority of General Synod to direct the trustees. To remove such doubts a new Act was passed in 1913. Specifically, the 1913 Act empowered diocesan boards of trustees to sell, exchange, mortgage, and lease land. At parochial level also trustees must adhere to the terms of any trusts, and with the general law.

There is a general duty to insure against listed risks.[38]

Perhaps unsurprisingly, the major capital work in the Church is the construction of new church buildings, and the upkeep of existing buildings. Although all property held for the use of the diocese is held by the Diocesan Trusts Board, "the specific application [of land] shall be determined by the Diocesan Synod, subject to the control of the General Synod". Individual parishes are responsible for the upkeep of their property, which is thus funded both locally and through Diocesan Trust Board grants. Control of expenditure is divided between

[28] Cans. F.III.15-17.
[29] Can. F.III.13.
[30] Can. F.III.19.
[31] Can. F.III.19.
[32] Can. B.I.4.
[33] Can. B.I.4.
[34] Can. B.I.4.
[35] Can. B.XIV.4.
[36] Can. F.III.11.
[37] Bishop of New Zealand Trusts Act 1858 (N.Z.), Bishop of New Zealand Trusts Act 1868 (N.Z.).
[38] Can. F.III.14.

parish – where it is assigned to parochial councils. The bulk of the membership of the parish council is elected lay representatives, the core qualification being that they are adult communicant members of the Church. The Bishop, and through her or her also the diocesan synod, retain oversight of capital work, in conjunction with the diocesan trusts board.

Specific provisions are designed to ensure stewardship, for the church is perpetual in nature, and its property must be preserved to this end. In addition to the general requirement to be sustainable, and the specific provisions which provide for this, there are many rules which impose other forms of sustainable management on church bodies. Some are aided – directly or indirectly – by the state.

The responsibility of religious bodies

Gifts to religious bodies or gifts for religious purposes will be prima facie charitable.[39] The advancement of religion is one of the accepted categories of charitable purpose in the Charitable Uses Act 1601 (Eng.), which establishes the four categories that are charitable purposes under the law.[40] This was a means of ensuring perpetual stewardship. Not all religious purposes will be charitable however. They will be charitable only if they tend directly or indirectly towards the instruction or edification of the public.[41]

It has been said that if the tenets of a particular sect inculcate doctrines that are adverse to the foundations of all religions and are subversive of all morality, the general immoral tendency of a bequest to the religion will make it void.[42] However, if the tendency of the bequest is not immoral, but the opinions that the religious body promulgates are foolish or have no foundation, the bequest will not be void on that account.[43]

Advancing religion means to promote it, spread its message wider, and to take positive steps to sustain and increase religious belief.[44] The promotion of religion is the promotion of spiritual teaching in a wide sense and the maintenance of the doctrines on which it rests and of the observances that serve to promote and manifest it.[45] An element of public benefit is necessary for a religious body to be a charitable purpose for the advancement of religion.[46]

[39] *Nelson Diocesan Trust Board v. Attorney-General* [1924] G.L.R. 259; *Standing Committee of Diocese of Auckland v. Campbell* [1930] G.L.R. 162; *Re Brewer* [1933] N.Z.L.R. 1221; [1933] G.L.R. 831 (C.A.).

[40] Charitable Uses Act 1601 (43 Eliz. I c. 4) (Eng.).

[41] *Chesterman v. Federal Commissioner of taxation* [1926] A.C. 128 (P.C.), applied in *Re Brewer* [1933] N.Z.L.R. s. 134 (reversed on other grounds [1933] N.Z.L.R. 1221; [1933] G.L.R. 831 (C.A.).

[42] *Centrepoint Community Growth Trust v. Commissioner of Inland Revenue* [1985] 1 N.Z.L.R. 673; *Thornton v. Howe* (1862) 31 Beav. 14; 54 E.R. 1042.

[43] Ibid.

[44] Ibid, applying *United Grand Lodge of Ancient Free and Accepted Masons of England v. Holborn Borough Council* [1957] 1 W.L.R. 1080; [1957] 2 All E.R. 281.

[45] *Centrepoint Community Growth Trust v. Commissioner of Inland Revenue* [1985] 1 N.Z.L.R. 673, applying *Keren Kaymeth Le Jisroel Ltd v. Commissioner of Inland Revenue* [1931] 2 K.B. 465 (C.A.).

[46] *Molloy v. Commissioner of Inland Revenue* [1981] 1 N.Z.L.R. 688 (C.A.) and *Centrepoint Community Growth Trust v. Commissioner of Inland Revenue* [1985] 1 N.Z.L.R. 673. Gifts to contemplative orders have been found not to be charitable: *Re Brewer* [1933] N.Z.L.R. s. 134; *Gilmour v. Coats* [1949] A.C. 426; [1949] 1 All E.R. 848; and *Re Delany* [1902] 2 Ch.

That a religious body has a public benefit may be prima facie assumed.[47] For the purpose of determining whether a purpose is charitable, the law does not distinguish among religions or among sects.[48]

Gifts for mission work must be shown to be for the advancement of religion in order to be charitable.[49] The repair of churches is also a charitable purpose, being specifically listed in the Charitable Uses Act 1601 (Eng.).[50] Gifts for the upkeep of churches will be charitable, as will gifts for the upkeep of graves in a churchyard, and gifts for maintaining or providing a cemetery or burial ground for a particular sect.[51] However, the maintenance of a particular grave or monument to the dead will only be a charitable purpose if it is part of the fabric of the church.[52] A gift for the use of the clergy may be charitable on the grounds of being for the advancement of religion.[53] Establishing a bishopric is also charitable, as is a gift for the benefit of a convent.[54] Gifts for the provision of clergy or preachers, for increases in their stipends, or for a superannuation fund for ministers in their retirement may also be charitable.[55]

Bible teaching in schools has been found to be a charitable purpose, as has the study of religion generally.[56]

If a gift is made to the holder of a particular office within a religious body, the gift is prima facie on trust for the charitable purpose inherent in the office.[57] If the gift includes

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642. Gifts to private charities have also been found to be charitable: *Re Mackin* [1931] G.L.R. 152.

[47] *Centrepoint Community Growth Trust v. Commissioner of Inland Revenue* [1985] 1 N.Z.L.R. 673, applying *National Vivisection Society v. Inland Revenue Commissioners* [1948] A.C. 31; [1947] 2 All E.R. 217.

[48] *Public Trustee v. Commissioner of Stamps* (1907) 26 N.Z.L.R. 773; 9 G.L.R. 40 (C.A.); *Carrigan v. Redwood* (1910) 30 N.Z.L.R. 244; 13 G.L.R. 183; *Standing Committee of the Diocese of Auckland v. Campbell* [1930] G.L.R. 162; and *Re Gawith* [1952] N.Z.L.R. 106; [1952] G.L.R. 208.

[49] *Re Kenny* (1907) 97 L.T. 130; *Re Rees* [1920] 2 Ch. 59; [1920] All E.R. 15; *Re Norman* [1947] Ch. 349; and *Re Moon's Will Trusts* [1948] W.N. 55; [1948] 1 All E.R. 300.

[50] Charitable Uses Act 1601 (43 Eliz. I c. 4) (Eng.).

[51] *Re Vaughan* (1886) 33 Ch.D. 187; *Re Pardoe* [1906] 2 Ch. 154; *Re Eighmie* [1935] Ch. 524; and *Re Norton* [1948] W.N. 395; [1948] 2 All E.R. 842 (upkeep of churches); *Re Pardoe* [1906] 2 Ch. 154 (upkeep of graves); *Re Hone Tutere* [1920] N.Z.L.R. 733; [1920] G.L.R. 47; and *Attorney-General v. Blizard* (1855) 21 Beav. 233; 52 E.R. 848 (maintaining or providing cemetery or burial ground).

[52] *Re Norton* [1948] W.N. 395; [1948] 2 All E.R. 842, 844.

[53] *Attorney-General v. Gladstone* (1842) 13 Sim. 7; 60 E.R. 3; and *Re Forster* [1939] Ch. 22.

[54] *Attorney-General v. Bishop of Chester* (1785) 1 Bro. C.C. 444; 28 E.R. 1229 (bishopric); *Alacoque v. Roache* [1998] 2 N.Z.L.R. 250 (C.A.) (convent).

[55] *Attorney-General v. Brereton* (1752) 2 Ves. Sen. 425; 28 E.R. 272; *Attorney-General v. Bishop of Chester* (1785) 1 Bro. C.C. 444; 28 E.R. 1229; *Dundee Magistrates v. Dundee Presbytery* (1861) 4 Macq. 228; 149 E.R. 330 (H.L.) (provision of clergy and increase in stipends); *Presbyterian Church of New Zealand Beneficiary Fund v. Commissioner of Inland Revenue* [1994] 3 N.Z.L.R. 363 (superannuation fund).

[56] *Re Williams* [1950] N.Z.L.R. 854, 858; [1950] G.L.R. 325; *Attorney-General v. Stepney* (1804) 10 Ves. 22; 32 E.R. 751; *Re Michel's Trust* (1860) 28 Beav. 39; 54 E.R. 280; *Re Anderson* [1943] 4 D.L.R. 268. See also *Association of Franciscan Order of Friars Minor v. City of Kew* [1967] V.R. 732.

words that may limit or extend the purposes for which the gift is to be used by the holder of the office, the court will have to determine the purposes for which the gift is given, and whether it is still charitable.[58] A gift in perpetuity to a minister of a religious body will fail if it states that it is given to the minister for his or her personal use.[59] If the holder of the religious office is not given sole control over the application of the property that has been given, the presumption that the purposes of the gift are the charitable purposes of the office will not apply.[60]

It has often been necessary for secular courts to determine what is meant by "religion", yet this has proved to be a difficult task in practice.[61] One of the main questions which must be asked is whether the definition should be restricted to theistic beliefs or belief systems, those which are based upon belief in a god or gods. There has been a difference of opinion between English and New Zealand courts on this point, with the English preferring a strongly theistic viewpoint.[62] Faith in a god and worship of that god by submission, veneration, thanksgiving, and prayer are essential attributes of the theistic view of religion.[63]

This has been criticised in both Australia and New Zealand as too narrow a legal test.[64] In New Zealand the courts appear to prefer a definition of religion which involves a belief in a supernatural being, thing, or principal, and the acceptance of canons of conduct in order to give effect to that belief.[65]

The importance of being able to define "religion" lies in the day to day use of charitable trusts, and the question of whether a particular trust is for the advancement of religion.[66] It

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[57] *Re Delany* [1902] 2 Ch. 642; *Re Garrard* [1907] 1 Ch. 382; [1904-7] All E.R. Rep. 237; *Re Davies* [1915] 1 Ch. 543; [1914-15] All E.R. Rep. 939; *Re Simpson* [1946] Ch. 299; [1946] 2 All E.R. 220; *Re Flinn* [1948] Ch. 241; [1948] 1 All E.R. 541.

[58] *Re Rumball* [1956] Ch. 105, 115; [1955] 3 All E.R. 71 (C.A.).

[59] *Re Clark* [1961] N.Z.L.R. 635, applying *Donellan v. O'Neill* (1870) I.R. Eq. 523 and *Re Delany* [1902] 2 Ch. 642.

[60] *Re Flinn* [1948] Ch. 241; [1948] 1 All E.R. 541; *Re Spensley's Will Trusts* [1954] Ch. 233; [1954] 1 All E.R. 178 (C.A.).

[61] *Adelaide Company of Jehovah's Witnesses (Inc.) v. The Commonwealth* (1943) 67 C.L.R. 116, 123 per Latham C.J.; *Church of the New Faith v. Commissioner for Pay-roll Tax (Victoria)* (1983) 154 C.L.R. 120, 171; 49 A.L.R. 65 per Wilson and Deane J.J.

[62] *Re South Place Ethical Society v. Attorney-General* [1980] 1 W.L.R. 1565; [1980] 3 All E.R. 918, 924 per Dillon J.: "If reason leads people not to accept Christianity or any known religion, but they do believe in the excellence of qualities such as truth, beauty and love, or believe in the Platonic concept of the ideal, their beliefs may be to them the equivalent of a religion, but viewed objectively they are not religion."

[63] *Re South Place Ethical Society v. Attorney-General* [1980] 1 W.L.R. 1565; [1980] 3 All E.R. 918.

[64] *Church of the New Faith v. Commissioner for Pay-roll Tax (Victoria)* (1983) 154 C.L.R. 120; 49 A.L.R. 65, where Mason A.C.J. and Brennan J. took the view that a test limiting religion to theistic religions was too narrow; Wilson and Deane J.J. held at 175 that religion is not confined to the relationship of "man with his creator" either as a matter of law or as a matter of theology.

[65] *Centrepoint Community Growth Trust v. Commissioner of Inland Revenue* [1985] 1 N.Z.L.R. 673, applying *Church of the New Faith v. Commissioner for Pay-roll Tax (Victoria)* (1983) 154 C.L.R. 120; 49 A.L.R. 65 per Mason A.C.J. and Brennan J.

[66] *Presbyterian Church of New Zealand Beneficiary Fund v. Commissioner of Inland Revenue* [1994] 3 N.Z.L.R. 363.

also remains important with respect to matters of religious freedom and discrimination,[67] the criminal offence of blasphemous libel,[68] and the entitlement to celebrate marriage.[69]

Places used for public worship, together with church halls and other buildings ancillary to public worship, are exempt from rates. This exemption is in danger of being lost if the building is let for other purposes. But it is a hidden asset of considerable value.[70]

Conclusion

Constitutional provisions are designed to preserve the estate of the Church. Specific state laws exist to ensure that this trusteeship is enforced – not because the state desires this, but because the Church chose the form of government. They also make provision for certain types of charitable gifts – including religious. The obligations imposed on the Church derives from biblical principles and injunctions, which are reflected in canon law. Sustainable management in the Church is thus derived from religious principles. It is nonetheless consistent with newer concepts of corporate social responsibility.

[67] Principally under the New Zealand Bill of Rights Act 1990 (N.Z.) and the Human Rights Act 1993 (N.Z.).
[68] Crimes Act 1961 (N.Z.) s. 123.
[69] Marriage Act 1955 (N.Z.) s. 8.
[70] For an extension of this principle, see *Glasgow City Corporation v. Johnstone* (1965) 1 All E.R. 730.