

When religious faith got the right to scam people: United States v. Ballard, 1944

The Ballard pair, leaders of the I AM Movement led sick people to believe they could supernaturally cure them - for a fee. They were found guilty of fraud.

This led to the jury having had to decide upon the truth or otherwise of the Ballard religious doctrines or beliefs.

Their criminal conviction was subsequently reversed because it was decided that people must make up their own minds about religious claims and this was not a jury's job. Also, it would open the floodgates to religious persecution. And considering that if a religion claims to be the true one, it claims that the others might be guilty of fraud, this could lead to a lot of civil unrest and cripple the legal system.

Chief Justice Stone (with Justices Roberts and Frankfurter) stated wanted the criminal conviction to remain: "I am not prepared to say that the constitutional guaranty of freedom of religion affords immunity from criminal prosecution for the fraudulent procurement of money by false statements as to one's religious experiences, more than it renders polygamy or libel immune from criminal prosecution." It was added that the Ballards should have been put on trial for sincerity "with the instruction that if the jury did not so find, then it should return a verdict of guilty. On this issue the jury, on ample evidence that respondents were without belief in the statements which they had made to their victims, found a verdict of guilty. I think the judgment below should be reversed and that of the District Court reinstated."

Justice Jackson said, "The Ballard family claimed miraculous communication with the spirit world and supernatural power to heal the sick. They were brought to trial for mail fraud on an indictment which charged that their representations were false and that they 'well knew' they were false. The trial judge, obviously troubled, ruled that the court could not try whether the statements were untrue, but could inquire whether the defendants knew them to be untrue; and, if so, they could be convicted. The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. I doubt if the vigilance of the law is equal to making money stick by over-credulous people. But the real harm is on the mental and spiritual plane. There are those who hunger and thirst after higher values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the principle of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish. Prosecutions of this character easily could degenerate into religious persecution. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt. I would dismiss the indictment and have done with this business of judicially examining other people's faiths."

COMMENTS: Justice Stone and Roberts and Frankfurter were correct that freedom of religion does not allow fake religionists to lie and get money off the gullible. This practice should get no social tolerance especially when the fraudsters clearly do not believe their own claims. Jackson points out that religionists taking money illicitly is the least of the worries that arise from freedom of religion. As freedom of religion is very important, it is not up to the state to stop the frauds for this amounts to the state acting like an Inquisition where one point of view is imposed on others. Losing freedom of religion would be a bigger evil than having to put up with religious frauds. And religion is not the only operation that is susceptible to fraud. Do you want a world where beauty companies are sued for saying their creams reverse skin ageing when they do not? Also, if the pope were criminally convicted as a religious fraud for claiming to be the vicar of Christ on earth, would that make Catholics come to their senses? Most would not. It is better to instill in them a love of reason and truth and then they will walk away from the fraud.

Many religious claims have a secular or scientific or pseudo-scientific side as well as a spiritual side. For example, Catholicism says that Adam was the first man and our ultimate father. This is a religious statement and a scientific one. It can be treated as one or the other as well as both.

The problem is that the Church could and indeed should be sued for scientific fraud. Adam did not exist according to the scientific evidence. It is a fact that there was no Adam. Suing the Church would not be a violation of the separation that

needs to exist between Church and state nor would it be religious persecution.

A court of law cannot verify if the communion wafer really is Jesus' flesh or not. But overlaps between religion and science or history can be verified in a court of law to be either true or false. If a religion rewrites the Bible claiming it is the real one, it should not get away with it.

A religion should not be sued over controversial historical claims. It needs to be a clear cut contradiction of the truth. For example, Catholicism should not be sued for saying that the resurrection of Jesus was a historical event. There is no clear evidence for or against. If the Church however started saying that the historical evidence showed that sex outside marriage always leads to AIDS that would be a different story.

If a religion sells holy water to cure cancer, those who buy it should have the legal right to get it convicted of fraud and at least forced to give them their money back plus compensation.

If a religion of lies or that lacks evidence in its favour compels members to give it money, the mandatory requirement to cough up should be considered a fraudulent practice based on deceptive claims.

A lawsuit against a religious leader or Church could be made according to England's 2006 Fraud Act, which consists of:

1 "Fraud by false representation" is defined by Section 2 of the Act as a case where a person makes "any representation as to fact or law ... express or implied" which they know to be untrue or misleading.

2 "Fraud by failing to disclose information" is defined by Section 3 of the Act as a case where a person fails to disclose any information to a third party when they are under a legal duty to disclose such information.

3 "Fraud by abuse of position" is defined by Section 4 of the Act as a case where a person occupies a position where they are expected to safeguard the financial interests of another person, and abuses that position; this includes cases where the abuse consisted of an omission rather than an overt act.

How do you sue a religion though especially one that is multi-national? The best thing to do is to find some official teacher who lies about science or history and sue her or him as a private individual.

Conclusions

If a religion tells people, "Write your will up so that we will get everything when you die and you will never get cancer" that is not the same as a religion saying, "Jesus is the son of God and the Bible is true." People seem to think that if you convict a religion getting money by fraud that it amounts to opening the door to a religion being sued for its views on Jesus.

It is true that the courts should not judge a religious belief true or false but they must be careful that this does not lead to the religious fraud getting away with it while the man who sells snake oil as a cure for cancer goes to jail.

Also, a religion can be sued for contradicting science. It is speaking as a scientist then and can be judged as such. A teaching might be both religious and scientific. Separation between Church and state requires the state to cross-examine the science side.

And a religion can be sued for saying something is evidence for such a doctrine when it is not. For example, if the Catholic Church says the Koran teaches that Pope Francis is infallible that is a clear misuse of evidence. Taking the Church to court is not about the court judging the religion but about it judging that what is presented as evidence is not evidence at all.

If it were right to convict a religion for fraud, then the heaviest penalty belongs to those who are clearly insincere.

The right to encourage people to adopt your religion's teachings or to join your church needs to be seen as being about freedom of expression not freedom of religion. The two are often confused which leads to religion getting privileges that unnecessarily allow it to get power and use and exploit people.

APPENDIX

Justice Robert H. Jackson, stated, "William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. It's vitality is in the religious experiences of many people. If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways. If religious liberty includes, as it must, the right to communicate such experiences to

others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand, and are almost certain not to believe, him."

