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The Church of Scientology: In Pursuit of Legal Recognition

Derek H. Davis

Scientology emerged in the early 1950s as a movement that found its inspiration in the voluminous writings of L. Ron Hubbard (1911-1986). According to new religions expert Gordon Melton, Scientology has overcome “one controversy after another, each of which inhibited growth in one country or the other for a brief period, [but] the overall trend has been one of continuous expansion.”¹ Members of the church (which claims about 15 million adherents) can today be located in most countries around the world, and its vast written materials are now translated into fifty-four languages. Many countries, including the United States, now give official recognition to Scientology as a religion, but many do not. It is widely condemned in many parts of Europe, especially Germany, as part of a growing “anti-cult” movement, yet it continues a meteoric growth not only in Europe but also worldwide. It claims among its devotees a host of well-known Hollywood stars, including John Travolta, Tom Cruise, Kelly Preston, Catherine Bell, Anne Archer, Isaac Hayes, and Kirstie Alley. Scientologists proudly make the claim that they are the only major new religion to have emerged in the twentieth century.

Scientology is full of mystery for most non-Scientologists.² Indeed, its history is checkered, marked by some amazing achievements but also marred by some suspect practices. Its theology is nontraditional, perhaps “modern” in the highest sense, but clearly its social betterment and social reform programs, and its impressive commitment to religious freedom and other human rights, are to be applauded. All in all, the jury of public opinion is still out on the Church of Scientology. Its ongoing struggle for *legal* recognition, a struggle that matches its pursuit of social acceptance, is the subject of this essay.

Scientology: A Brief History of Belief and Practice

L. Ron Hubbard’s seminal work, *Dianetics: The Modern Science of Mental Health*, published in 1950 and an immediate best seller, contained Hubbard’s conclusions about mental aberrations experienced by all human beings and how to “clear” them through a counseling technique called auditing. *Dianetics*, however, presented no comprehensive worldview that might be called a religion; it was strictly an analysis of

¹ J. Gordon Melton, *The Church of Scientology* (Salt Lake City, Utah: Signature Books, 2000), 12.

² For a useful, scholarly summary of the beliefs of Scientology, see Frank Flinn, “Scientology: The Marks of Religion,” which can be accessed at <http://theology.scientology.org/eng/pdf/scientology-11-marks-religion.pdf>.

how the mind functions. But Hubbard soon shifted his emphasis away from the mind to an emphasis on the greater entity that observes and directs the mind—what Hubbard called the thetan, from the Greek letter theta, for “thought” or “life”—what many religions call the spirit or soul. One’s thetan is eternal and, in keeping with Eastern thought (with which Hubbard was familiar), is continually reincarnated. The term Scientology emerged as a description of this deeper understanding of humanity’s place in the cosmos. Scientology was soon serving as a religion for many of Hubbard’s followers; thus the first Church of Scientology was founded in 1954.

The heart and soul of Scientology is the belief that every human being, by practicing the proper techniques, can eliminate harmful psychological influences and in turn find happiness and fulfillment. Through the officially sanctioned use of a device Hubbard developed called an “E-Meter,” coupled with a technique administered by authorized church representatives called “auditing,” members believe they can rid themselves of unwanted negative spiritual and psychological influences and eventually achieve a state of “clear,” which Scientology claims is similar to the state of awareness in Buddhism called the Bodhi, or “enlightened one.” According to Scientology teachings, though man is by nature basically good, he indulges in bad behavior because of painful past experiences stored in the memory bank and in the thetan’s own record of experiences in past lives.³ These experiences must be purged in order to become “clear.” During the auditing process, the counselee holds a device in each hand which is attached to the E-Meter, which in turn registers fluctuations in galvanic skin conductivity as he relates information about his own history, problems, repressed feelings, and aspirations. This information is interpreted by an auditor reading the E-Meter, who then offers therapeutic counseling. The process is believed by Scientologists to be “scientific” and “accurate,” producing positive results essential for proper and healthy living. According to church spokeswoman Cathy Norman at the Church of Scientology in Austin, Texas, the state of “clear” achieved in Scientology is a permanent state of spiritual awareness never attainable prior to dianetics and Scientology.⁴

Scientology grew swiftly in the 1960s and is still growing. Dianetics and Scientology technologies are available in some 74 countries worldwide. Over the years, the Church of Scientology has developed a number of community and volunteer organizations, which operate independently of the church but are considered a part of the church's “social betterment program.” Such organizations as Narconon, Applied Scholastics, The Way to Happiness, Criminon, and Association for Better Living and Education are all Scientology-affiliated groups. Scientologists, sporting bright yellow t-shirts, were the most visible and most numerous assistance group to injured persons in New York City immediately following the 9/11 attack by the al-Ouaida terrorist organization on the Twin Towers.

³ Omar V. Garrison, *The Hidden Story of Scientology* (Secaucus, New Jersey: The Citadel Press, 1974), 51.

⁴ Richard Williams, “Church of Scientology. What is the Church of Scientology? What do Its Members Believe?”, available at amarillonet.com/stories/020499/bel_church.shtml, posted November 5, 2003.

Beginning membership for new Scientologists is free. What is not always made immediately clear to new Scientologists is that the auditing and training services are expensive. Entry level courses are less than \$100 for 8-16 hours of study, but costs rise rapidly thereafter. Some training can cost \$500-600 per hour. Membership without taking expensive training or auditing is possible, but the higher states of Scientology cannot be attained this way. The cost of "OT IX Readiness," one of the highest levels, costs approximately \$375,000, but it is absolutely necessary to achieve "full spiritual improvement."⁵ The Church of Scientology reportedly earns more than \$300 million annually from auditing fees, training courses, and the sale of literature. The high cost of auditing and training is, in fact, the most frequently criticized feature of Scientology expressed by non-Scientologists.⁶

The church also conducts basic ceremonies and services common to many religions, such as sermons at church meetings, naming ceremonies (similar to baptisms), weddings, and funerals. In Scientology, the concept of God is expressed as the "Eighth Dynamic"--the urge toward existence as infinity, also identified as the "Supreme Being."⁷ According to its own literature, Scientology "has no dogma concerning God. While Scientology affirms the existence of a Supreme Being, its practice does not include the worship of such." Scientology claims to allow one to reach his own conclusions of eternity and God, and to attain salvation through personal spiritual enlightenment.⁸ The final sentence in the creed of Scientology reads: "And we of the church believe that the spirit can be saved and that the spirit alone may save or heal the body."⁹

Pursuing Legal Recognition

All new religions must endure, in their early stages, trials and persecution. This was true of Catholics as they emerged in pagan Rome nearly two thousand years ago, and it was equally true of Lutherans, Puritans, and Baptists as they rose to challenge Catholicism in the sixteenth-century Reformation. In more recent times it has been true of Jehovah's Witnesses, Mormons, and Seventh-day Adventists, and now the same is true of Scientology. But with the church's growing prominence and visibility has come recognition and understanding. Today the religiosity of Scientology is acknowledged by

⁵ "Church of Scientology," in *Wikipedia, the Free Encyclopedia*, http://en.wikipedia.org/wiki/Church_of_Scientology.

⁶ Douglas Frantz, "The Shadowy Story Behind Scientology's Tax-Exempt Status," *New York Times*, March 9, 1997, www-2.cs.cmu.edu/~dst/Cowen/essays/nytimes.html.

⁷ According to Scientology teachings, the basic urge of all organic life, including human beings, is survival. In the case of humans, this urge expresses itself in eight dynamics: self, creativity (including sex and family life), group survival, mankind, life forms, the physical universe, the spiritual universe, and the Supreme Being (also called infinity). See the Scientology publication, *What is Scientology?* (Los Angeles, California: Bridge Publications, Inc., 1998), 71-73.

⁸ Williams, "Church of Scientology."

⁹ *Ibid.*

most courts and governments on both sides of the Atlantic and throughout the rest of the world.¹⁰

A. Scientology and the IRS in the United States

Courts in the United States since 1993 have formally recognized Scientology as a religion. Its battle to receive its tax-exempt status was not won easily, however; after being recognized as a tax-exempt religious organization in 1957, its exemption was revoked by the Internal Revenue Service (IRS) in 1967. While this revocation applied only to the Church of Scientology in California, and none of its branches, the ruling was important because the California entity was the main church and generally directed the activities of the other branches around the world. In its revocation letter, the IRS said that Scientology's activities were commercial and that the church was operated not for charitable or religious reasons but for the benefit of Hubbard. Scientology essentially ignored the ruling and continued to treat itself as tax-exempt. Moreover, the church embarked on a program code-named Snow White. Reportedly, in a document labeled "secret," Hubbard outlined a strategy to root out all "false and secret files" held by governments around the world regarding Scientology. "Attack is necessary to an effective defense," Hubbard wrote.¹¹

Snow White soon turned sinister. Under the supervision of Hubbard's third wife, Mary Sue, Scientologists reportedly infiltrated the Department of Justice and the IRS to uncover information on Hubbard. In Watergate-like fashion, they broke into offices at night and copied mountains of documents. At one point, an electronic bugging device was hidden inside an IRS conference room the day before a meeting about Scientology. Critics say those actions fell under a church doctrine that Hubbard had called the Fair Game policy. Hubbard wrote that church enemies may "be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. [They] may be tricked, sued or lied to or destroyed." The apparent conspiracy was uncovered in 1977, and Mrs. Hubbard and ten others were eventually sentenced to prison. Hubbard was named an unindicted co-conspirator because investigators could not link him to the crimes. The church immediately took steps to change its ways. Members who broke the law were purged, including Mrs. Hubbard, and the church was restructured to protect against a recurrence. The Fair Game policy, church leaders said, was never intended to justify breaking the law.¹²

In an aggressive but more "legal" application of the Snow White policy, the church's hundreds of affiliated entities filed a steady stream of lawsuits against the IRS to have their tax-exempt status approved. In addition, members of the church began filing thousands of lawsuits against the IRS, claiming entitlement to tax deductions for auditing and training expenses. Believing that their "bombardment" strategy against the IRS would eventually pay off, they were finally rewarded in October 1993 when the Internal

¹⁰ Heber Jentszsch, "The Growth of Scientology Throughout Europe," http://www.scientology-europe.org/en_US/europe/pg001.html, posted 2003.

¹¹ Douglas Frantz, "The Shadowy Story Behind Scientology's Tax-Exempt Status," *New York Times*, March 9, 1997, www-2.cs.cmu.edu/~dst/Cowen/essays/nytimes.html.

¹² *Ibid.*

Revenue Service granted full non-profit status and tax exemption to all churches of Scientology and related social betterment organizations, concluding after an exhaustive and thorough review that Scientology churches are “organized and operated exclusively for religious and charitable purposes.”¹³

The Church of Scientology paid the IRS \$12.5 million as part of a comprehensive settlement under which the main branch of the church and its branches across the United States secured tax-exempt status. The church agreed to drop all of its lawsuits. The church’s \$12.5 million settlement was intended to cover the church’s payroll, income, and estate tax bills for an undisclosed number of years before 1993. This was considered a windfall since, according to some, the Church of Scientology might have owed as much as a billion dollars in back taxes. The IRS agreed not to audit the church or its affiliated entities for any year prior to 1993, and ensured that “auditing and training expenses” of members were tax deductible. All of this was remarkable in that the IRS is rarely so easily accommodated. Critics charged that the IRS had purchased its peace with Scientology at a bargain basement price.¹⁴

B. Scientology in Other Jurisdictions

European governments have since bestowed similar recognitions of religious and charitable status on churches of Scientology. According to Heber Jentsch, President of the International Church of Scientology, as early as 1980 an appeals court in Paris ruled that Scientology must be granted full protection as a religion under the French Constitution. This decision was later supported by an appeals court in Lyon, a ruling subsequently upheld by the French Supreme Court.¹⁵

In 1997, the Milan branch of the Church of Scientology won a ruling that many scholars regard as one of the most important legal precedents on religion issued by any court in Europe. The Italian Supreme Court overruled a lower court that had narrowly defined religion as Judeo-Christian, noting that Taoism, Buddhism, and many other great religions had thereby been excluded. In answering the charge that Scientology is “excessively” interested in making money, the Court noted that this charge “appears much less excessive if we consider how money was raised in the past by the Roman Catholic Church.”¹⁶ The Court described in considerable detail why Scientology deserves to be regarded as a religion--a decision followed by the Italian Ministry of Finance, which soon afterward granted non-profit recognition and tax exemption to Scientology churches in Italy.

¹³ Ibid.

¹⁴ Elizabeth McDonald, “Scientologists and the IRS Settled for \$12.5 Million,” *The Wall Street Journal*, December 30, 1997, <http://www.rickcross.com/reference/scientology/scien29.html>.

¹⁵ Jentsch, “The Growth of Scientology.”

¹⁶ Quoted from testimony delivered by Massimo Introvigne before the OSCE, 30 July 1998. For an excellent treatment of the economic activity of the Catholic Church in the Middle Ages, see Robert E. Ekelund, Robert F. Hébert, Robert D. Tollison, Gary M. Anderson, and Audrey D. Davidson, *Sacred Trust: the Medieval Church as an Economic Firm* (New York: Oxford University Press), 1996.

Only a few weeks later, the Federal Administrative Court in Germany announced that Scientology religious practices are “spiritual counseling” aimed at “the attainment of a higher level of being.” Germany’s administrative courts and appeals courts have consistently held in more than forty rulings over the last three decades that Scientology is to be afforded the protection of Article 4 of the German Constitution, which guarantees the freedom of religious belief and practice as well as ideological opinion. In no state in Germany, however, is Scientology granted “public law” status, which would entitle it to receive taxes from the government for its support. This status is reserved for only longstanding, traditional religions in Germany, which excludes not only Scientology, but also Islam, Buddhism, and Hinduism, among others.¹⁷

In early 2003, a German court granted a tax exemption for 10% license fees that are sent to the United States. This exemption, however, is related to a German-American double taxation agreement, and has nothing to do with exemption as a charitable organization. Germany is at the forefront of countries that remain somewhat hostile to Scientology. Most significantly, in January 2003, the German Federal Finance Office granted the Church of Scientology International, the mother church of the Scientology religion, full tax exemption on monies given in support of the mother church by nine churches of Scientology in Germany--a decision reported in hundreds of newspaper articles across the country. Similar recognitions have been issued in Holland, Hungary, Portugal, Switzerland, Kazakhstan, Kyrgyzstan, Mexico, India, Albania, Hungary, Holland, South Africa, Slovenia, Croatia, and Japan.¹⁸

In November 1999, the government of Sweden declared the Church of Scientology to be a charitable, non-profit organization with a religious purpose. The following year, the Swedish government officially recognized the church by granting its ministers the right to perform marriages.

While official status as a charitable organization has been denied to Scientology in England, there have been some notable decisions in that country. The Ministry of Defense, specifically the Royal Navy, recognized Scientology as one of the faiths that sailors must be allowed to practice. In May 2001, the Customs and Excise granted churches of Scientology exemption from value added tax on the basis that they are religious organizations. That same year, England’s Internal Revenue decreed that employees of the church who are part of its religious order are not subject to the ordinary wage laws but must be treated in alignment with the rules for religious institutions. A near-identical determination was made by Germany’s Federal Labour Court in October 2002 which stated explicitly that the staff members of Scientology churches are “seeking idealistic purposes and [their] own spiritual perfection through the teachings of Scientology.”¹⁹

In 2002, the Austrian tax office also came to the conclusion that the work of the Church of Scientology in Vienna is for the public benefit and not for anyone’s personal profit. It thus granted that church tax-exempt status as a charitable religious organization.

¹⁷ Jentzsch, “The Growth of Scientology.”

¹⁸ Ibid.

¹⁹ Ibid.

In December 2002, the government of New Zealand issued an official decree fully recognizing the Church of Scientology of New Zealand as an exempt religious and charitable organization. And in March 2003, the National Ministry of the Interior for Taiwan also recognized the Church of Scientology of Taiwan as a charitable religious institution and officially added it to the rolls of the recognized religions of the country.²⁰

Nevertheless, there are countries where Scientology is struggling for recognition. Germany and France are at the forefront of countries that remain somewhat hostile to Scientology, especially in the court of public opinion. Moreover, in Scotland Scientology is not permitted to call itself a religion, and in Russia it is deemed a totalitarian organization.²¹ But Scientology has experienced far more successes than failures in recent years in being recognized as a religion. None of these recognitions came easily. Church officials frequently had to deal with misconceptions about Scientology, false reports, and time and again had to tell their story and make the case for the religious character of Scientology. Scientologists understandably cite with pride the words of the Australian High Court, which found in 1983 that “Scientology is irresistibly a religion.”²²

Is Scientology a Religion?

While the details of the 1993 IRS settlement in the United States were not disclosed, the main feature of the settlement was that it ensured the tax-exempt status of Scientology in the United States as a “religion.” Given the nature of Scientology, is this a valid judgment?

A. The U.S. Courts’ Definition of Religion²³

The American judiciary's formal inquiry into the constitutional meaning of religion commenced in 1878 when the United States Supreme Court decided the case of *Reynolds v. United States*.²⁴ In that case the Court considered a Mormon's argument that his practice of polygamy was a religious duty and therefore protected under the Free Exercise Clause. The Court held that the trial court had not been in error to refuse to charge the jury that if Reynolds believed it was his religious duty to practice polygamy, he must be found not guilty of bigamy. In searching for the scope of protected religious activity in the Constitution, the Court stated: “The word ‘religion’ is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the

²⁰ Ibid.

²¹ “Church of Scientology,” in *Wikipedia, the Free Encyclopedia*, http://en.wikipedia.org/wiki/Church_of_Scientology.

²² Ibid.

²³ For an expanded treatment of this subject, see Derek Davis, “The Courts and the Constitutional Definition of Religion: A History and Critique,” in *The Role of Government in Monitoring and Regulating Religion in Public Life*, eds. James E. Wood and Derek Davis (Waco, Texas: J.M. Dawson Institute of Church-State Studies, 1993). Much of this section is drawn from that treatment.

²⁴ *Reynolds v. United States*, 98 U.S. 145 (1878).

provision was adopted.”²⁵

The Court examined statements made by James Madison and Thomas Jefferson for guidance in ascertaining the framers' meaning of the word “religion.” For Madison, religion was “the duty we owe to our creator,”²⁶ and for Jefferson, “a matter which lies solely between man and his God.”²⁷ While these statements are far from being exhaustive definitions, they accord with the common understanding of religion in late eighteenth-century America as a relationship between a person and some Supreme Being. But while Madison, Jefferson, and most of the founders were theists, there is no evidence that the constitutional framers wrote the First Amendment to protect only theism. Some of the founders clearly sought religious freedom for nontheists. Jefferson, for example, wrote that his Virginia Statute for Religious Freedom was to “comprehend within the mantle of its protection the Jew and Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.”²⁸ The Court's inquiry into the founders' understanding of the meaning of religion produced no clear answers. Satisfied that the defendant's polygamous practices were too unconventional to be protected by the First Amendment, the Court found it unnecessary to formulate a definition of religion.

Twelve years later the propriety of polygamy was again the issue before the Supreme Court. In *Davis v. Beason*,²⁹ the Court upheld an Idaho statute that required individuals registering to vote to swear that they neither practiced polygamy nor belonged to any organization that looked upon polygamy favorably. The defendant, a devout Mormon, asserted that the statute violated the Free Exercise Clause. This time the Court was more specific in stating its understanding of the term “religion”: “The term ‘religion’ has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will.”³⁰ But while the defendant's beliefs and practices clearly fit within this definition, the Court held that only his beliefs, and not his practices, were protected under the First Amendment. In finding the statute not to be in violation of the First Amendment, the Court stated: “Whilst legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not the less odious because sanctioned by what any particular sect may designate as religion.”³¹ The First Amendment provides no protection, the Court said, for “acts inimical to the peace, good order and morals of society.”³²

²⁵ *Ibid.* at 162.

²⁶ James Madison, “A Memorial and Remonstrance on the Religious Rights of Man,” in *The Papers of James Madison*, William T. Hutchinson and William M.E. Rachal, eds. (Chicago: University of Chicago Press, 1973), 8:293.

²⁷ Thomas Jefferson to Danbury Baptist Association, 1 January 1802, in Philip B. Kurland and Ralph Lerner, eds., *The Founder's Constitution* (Chicago: University of Chicago Press, 1987), 5:96.

²⁸ William A. Blakely, ed., *American State Papers Bearing on Sunday Legislation*, rev. ed. (Washington, D.C.: Review and Herald, 1911), 133 n. 1.

²⁹ *Davis v. Beason*, 133 U.S. 333 (1890). 8.

³⁰ *Ibid.* at 342.

³¹ *Ibid.* at 345.

³² *Ibid.* at 342.

The *Davis* Court's substantive definition of religion emphasizing traditional ideas of obedience to and worship of a deity continued to be affirmed by American courts well into the twentieth century.³³ As late as 1931, the Supreme Court seemed to reaffirm this interpretation when Chief Justice Charles Evans Hughes concluded that “the essence of religion is belief in a relation to God involving duties superior to those arising from any human relation.”³⁴ Such narrow, content-based interpretations of religion, however, were to become much less common as courts were increasingly confronted with pleas by adherents of nontraditional religions for First Amendment protection.

Beginning in the 1940s, American courts began to move away from narrow, substantive definitions of religion to broader, functional ones. The shift seems to have come in two significant cases: *United States v. Ballard*,³⁵ decided by the U.S. Supreme Court in 1944, and *United States v. Kauten*,³⁶ a federal circuit court case decided a year earlier.

In the *Ballard* case, the founder of the “I Am” movement was prosecuted for using the mails for fraudulently promoting his faith-healing powers. Guy Ballard told his followers that his ministry had been sanctioned by personal encounters with Jesus and Saint Germain. Followers were encouraged to send contributions to the movement, and many did. When many contributors, contrary to Ballard's promises, failed to experience physical healing, a San Francisco district attorney sought prosecution. The United States Supreme Court held that the trial court had ruled properly when it told the jury that it could inquire into the sincerity, but not the truth or falsity, of Ballard's religious beliefs. In his majority opinion, Justice William O. Douglas wrote:

Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . If one could be sent to jail because a jury in a hostile environment found one's teachings false, little indeed would be left of religious freedom. . . . The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain.³⁷

In *Ballard*, the distinction between sincerity and credibility became an important judicial criterion for assessing what kinds of religious activities are protected under the First Amendment. The credibility of one's beliefs were less important than the sincerity with which those beliefs were held. As repugnant as the religious practices of a particular religion might be to its nonadherents, the price of religious freedom, as Justice Robert H.

³³ See, for example, *People v. Deutsche Gemeinde*, 249 Ill. 132, 136, 94 N.E. 162, 164 (1911).

³⁴ *United States v. MacIntosh*, 283 U.S. 605, 633-34 (1931) (Holmes, J., dissenting).

³⁵ *United States v. Ballard*, 322 U.S. 78 (1944).

³⁶ *United States v. Kauten*, 133 F.2d 703 (2d Cir. 1943).

³⁷ *U.S. v. Ballard* at 86-87.

Jackson put it in his dissenting opinion, “is that we must put up with, and even pay for, a good deal of rubbish.”³⁸ *Ballard* attempted no concrete definition of religion, but the case made it clear that a broad spectrum of religious beliefs, at least those that did not violate the legitimate concerns of the state, might be protected under the First Amendment.

An even greater protection of a wide range of beliefs was granted by the Second, Circuit in *United States v. Kauten*. The case marked the beginning of a series of decisions in which the judicial interpretation of congressional statutes on conscription became the vehicle for addressing the legal definition of religion. *Kauten* dealt with a conscientious objector who was convicted under the 1940 Selective Service Act for refusing to submit to induction. He claimed exemption as a conscientious objector, defined by the act as any person “who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.”³⁹ *Kauten*, an atheist, was opposed to war, claiming that it solves none of the world's problems and that the draft was President Franklin D. Roosevelt's personal scheme to reduce unemployment. The court held that *Kauten*'s beliefs were strictly philosophical and political and fell outside the statute's requirement of “religious training and belief.” The court did, however, propose that something less than a belief in God might qualify as religion. Judge Augustus Hand offered this definition:

Religious belief arises from a sense of the inadequacy of reason as a means of relating the individual to his fellow-men and to this universe. . . . It is a belief finding expression in a conscience which categorically requires the believer to disregard elementary self-interest and to accept martyrdom in preference to transgressing its tenets. . . . [Conscientious objection] may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.⁴⁰

Whereas prior cases saw religion in theistic terms, *Kauten* saw religion in psychological terms—as belief that produced effects upon one's life that were similar to the effects produced by traditional religion. *Kauten* remains a landmark case because it was the first to offer a functional definition of religion.

This expanded understanding of religion was not immediately accepted. In *Berman v. United States*, decided in 1946, the Ninth Circuit dismissed Judge Hand's definition of religion in *Kauten* as mere dictum, and affirmed the conviction of a humanist pacifist because the “religious training and belief” required for exemption under the Selective Service Act could not, “without the concept of a deity . . . be said to be religion in the sense of that term as it is used in the statute.”⁴¹ Congress agreed with the *Berman* formulation and in the 1948 amendment to the Selective Service Act specifically defined “religious training and belief” to mean “an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but [excluding] essentially political, sociological, or philosophical views, or a merely

³⁸ *Ibid.* at 95.

³⁹ Selective Service Act Sec. 5(g), 54 Stat. 887 (1940).

⁴⁰ *Ibid.* at 708.

⁴¹ *Berman v. United States*, 156 F.2d 377, 381 (9th Cir. 1946), cert. denied, 329 U.S. 795 (1946).

personal moral code.”⁴²

This amended language was interpreted in 1965 by the U. S. Supreme Court in three cases decided under the style of *United States v. Seeger*.⁴³ All three of the defendants were conscientious objectors who had been convicted in federal district courts for refusal to submit to induction after Selective Service officials had rejected their claims for exemption. All three men had similar worldviews, and none had a traditional concept of God. Seeger, for example, said that he was uncertain of whether a Supreme Being existed, but that his “skepticism or disbelief in the existence of God” did “not necessarily mean lack of faith in anything whatsoever.” His, he stated, was a “belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.”⁴⁴

Writing for a unanimous Supreme Court, Justice Tom Clark wrote that Congress had not intended to restrict the exemption for conscientious objectors only to those who believe in a traditional God. The expression, “Supreme Being,” rather than “God,” had been employed by Congress “so as to embrace all religions” while excluding “essentially political, sociological, or philosophical views.” The test of belief required by the act, the Court held, is “whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption.”⁴⁵ The Court specifically found the beliefs of the three defendants to be “religious” within the meaning of the Selective Service Act.

Congress was not pleased by the Court's expansive interpretation of “religious training and belief.” Congress had obviously intended to limit conscientious objector status to those who held a traditional belief in God. The Court, however, rather than ruling that the statute was unconstitutional, grounded its decision in a rather loose reading of congressional intent. Reading between the lines, the Court's tactful approach may have been what led Congress to go along with the Court's ruling by removing the “Supreme Being” clause in the new Military Selective Service Act of 1967, although the new provision retained the restrictive phrase which ruled out inclusion of “essentially political, sociological, or philosophical views, or a merely personal moral code.”⁴⁶

Three years later, in *Welsh v. United States*,⁴⁷ the Supreme Court considered the case of a conscientious objector who had initially refused to label his objection as “religious” as required under the new Military Service Act. In his written objection, he struck out the word “religious” and wrote that his beliefs had been formed by reading in the fields of history and sociology. Although he had first claimed that his beliefs were nonreligious, he later wrote in a letter to his appeal board that his beliefs were “certainly

⁴² Selective Service Act of 1948, 62 Stat. 604, 613 (1948).

⁴³ *United States v. Seeger*, 380 U.S. 163 (1965).

⁴⁴ *Ibid.* at 166.

⁴⁵ *Ibid.*

⁴⁶ Military Selective Service Act of 1967, 81 Stat. 100, 104 (1967).

⁴⁷ *Welsh v. United States*, 398 U.S. 333 (1970).

religious in the ethical sense of the word.”⁴⁸ If anything, Welsh's beliefs were even more remotely religious than Seeger's. The Court was thus faced with considering whether the Act's requirement of “religious training and belief” would extend protection to a person motivated in his objection to the draft by profound moral conviction. The Court again enlarged the scope of the statute, and held: “If an individual deeply and sincerely holds beliefs which are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual ‘a place parallel to that filled by . . . God’ in traditional religious persons.”⁴⁹

As the diversity of religions benefiting from First Amendment protection has expanded, the ability of government to regulate religion on definitional grounds has correspondingly diminished. The judicial means by which this development has occurred has been the adoption of functional criteria, in replacement of substantive criteria, for defining religion. The substantive model generally delimits religion to the range of traditional theisms: Christianity, Judaism, Islam, Hinduism, and so on. The functional model, in contrast, allows for a greater range of religions, theistic as well as nontheistic. By defining religion according to its social function, the functional approach treats religion largely as synonymous with such terms as world view, belief system, moral order, ideology, and cosmology.⁵⁰ In *Seeger*, the Supreme Court spoke approvingly of the views of German-American theologian Paul Tillich, who located the essence of religion in the phrase, “ultimate concern.” The Court quoted from Tillich for the proposition that the phrase “ultimate concern” may be more definitive than the word “God” in the designation of religious belief: “And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take most seriously without reservation. Perhaps in order to do so, you must forget everything traditional that you have learned about God. . . .”⁵¹ The Court's interpretation of “ultimate concern” as referring to a belief which occupies “the same place in the life of an objector as an orthodox belief in God”⁵² was confirmed in *Welsh* where the Court held, Welsh's atheism notwithstanding, that “because his beliefs function as a religion in his life, such an individual is as much entitled to a religious conscientious objector exemption . . . as is someone who derives his conscientious opposition to war from traditional religious convictions.”⁵³

Seeger and *Welsh* thus served to establish the “parallel position” rule and the “ultimate concern” rule as the twin criteria to judge whether a belief is religious in nature. So long as an “ultimate concern” occupies in the possessor's life a place parallel to traditional ideas of God, and so long as the beliefs are not based on “policy, pragmatism,

⁴⁸ *Ibid.* at 341.

⁴⁹ *Ibid.* at 340.

⁵⁰ *Ibid.*, 58.

⁵¹ *U.S. v. Seeger* at 187.

⁵² *Ibid.* at 184.

⁵³ *Welsh v. United States* at 340. For an insightful discussion of the Court's reliance upon Tillich, see James McBride, “Paul Tillich and the Supreme Court: Tillich's ‘Ultimate Concern’ as a Standard in Judicial Interpretation,” *Journal of Church and State* 30 (Spring 1988): 245.

or expediency,” they are constitutionally religious. Under this content-neutral, functional approach, few of the “new” religions are deprived of religious status.⁵⁴ The courts have had little difficulty, for example, in concluding that the Unification Church is a religion.⁵⁵ The Church of Scientology, as we have already noted, has been held by the courts to be a religious organization.⁵⁶ Likewise, the religious nature of the International Society for Krishna Consciousness has been firmly established in the courts.⁵⁷ Indeed, the *Seeger-Welsh* framework has created an environment making it possible for a wide array of nontraditional or “new” religions to receive protection under the First Amendment.

B. Application of Court Definitional Guidelines to Scientology

Some Scientologists hold a traditional view of God that would easily fit the *Davis* scheme (emphasizing one’s relations to his Creator and the obligations that follow). In fact, some Scientologists claim to still be Lutherans, Methodists, or adherents of some traditional religion, although not actively so. Most Scientologists, however, will describe themselves as “Scientologists” rather than adherents of some other religion, and they do not subscribe to the traditional view of a personal God. Does this nontraditional belief qualify as “religion” within the *Seeger* and *Welsh* guidelines?

The Reverend Dean Kelley, former head of the Religious Liberty council of the Churches of Christ, USA, wrote in 1980 an unpublished paper which detailed his impressions of twenty-one Scientologists whom he personally interviewed. He had this to say about the nature of most of their beliefs:

Many reported that they had been dissatisfied with previous religions because their questions had not been answered satisfactorily. They had often been told what to believe but had not directly experienced the answers to their questions, and so remained “seekers” until they came into Scientology, where they were not given answers or told what to believe, but were enabled to discover answers through their won experience, which apparently satisfied their need. They referred repeatedly to the “Eighth Dynamic,” less often to “God” or a “Supreme Being”—to whom one is said to relate in the “Eighth Dynamic”—but made clear that Scientology does not provide a definition of God or specific content for the “Eighth Dynamic,” leaving that to the individual to discover.⁵⁸

⁵⁴ William C. Shepard, *To Secure the Blessings of Liberty: American Constitutional Law and the New Religious Movements* (Chico, Calif.: Scholars Press, 1985), 20.

⁵⁵ See *Unification Church v. I.N.S.*, 547 F.Supp. 623 (982), and *In the Matter of the Holy Spirit Association for the Unification of World Christianity v. The Tax Commission of the City of New York*, 435 N.E. 2d 662 (1982).

⁵⁶ See *Founding Church of Scientology of Washington, D.C. v. United States*, 409 F.2d 1146 (1969). The Church of Scientology has had many challenges to its tax-exempt status for federal income tax purposes, but those challenges are generally not to its “religious” character, but usually to its failure to satisfy the I.R.C. Section 501(c)(3) requirement that income not inure to the benefit of private individuals. See, for example, *Founding Church of Scientology v. United States*, 412 F.2d 1197 (1969), and *Church of Scientology of California v. Commission of Internal Revenue*, 823 F.1d 1310 (9th Cir. 1987).

⁵⁷ See *International Society for Krishna Consciousness, Inc. v. Barber*, 650 F.2d 430 (1981).

⁵⁸ Dean M. Kelley, “Is the Church of Scientology a ‘Religion?’”, unpublished paper written in 1980 in possession of author, 6-7, which can be accessed at <http://www.humanrights.germany.org/experts/eng/kelly01.pdf>.

I personally have had many conversations with Scientologists who have related to me the character of their beliefs. In every case, they clearly believe in a “spiritual” world, and hold that every human is in fact a “spiritual being.” Thus they believe in an unobservable supernatural world that is just as real as the observable natural world. In fact, they seem to collapse the two into one, as if there was no distinction. Scientologists’ belief that they are “spiritual beings” is alone a significant departure from nonreligious worldviews. It is a belief characterized by most religions but by virtually no philosophy that is nonreligious. They are not as comfortable, as Kelley found, in discussing “God,” but they uniformly believe in the realm of the supernatural, and that we derive our creation as humans from this supernatural world and will remain in it indefinitely through successive reincarnations of our “spirit.” Consequently, they deal with death in a way that is similar to Christian Science belief, denying the importance of the physical body or “earthly casing.” In all of this, belief in “God” or a “Supreme Being” is not essential, although there is a place for it, unlike other organizations characterized by courts as “religions,” such as Ethical Culture, Secular Humanism,⁵⁹ and Fellowship of Humanity.⁶⁰ In these respects, Scientologists’ beliefs seem to occupy, at the very least, per the *Seeger* standard, “a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption [for conscientious objectors to war].” Their view of reality obviously provides, per theologian Paul Tillich’s standard for being religious, and as sanctioned by the U.S. Supreme Court in *Welsh*, “ultimate meaning.”⁶¹

I have also been impressed with Scientologists’ commitment to live ethical lives. Many Scientologists “stray,” but in this respect they are no different from those of other religions who also lapse from time to time. Scientologists are committed to a number of practices that are deemed important moral practices by other religions. For example, it is important, according to official teachings of Scientology, to remain committed sexually to one’s marital partner, to live drug-free lives, to abstain from theft and dishonesty, to live by the “golden rule” of “doing unto others as one would have done unto them,” and to live “spiritually” rather than becoming unduly obsessed by “material” pursuits. In fact, one of the main purposes of the “auditing” process is to increase one’s ability to live ethically. Undergoing “auditing,” which is done regularly, is the equivalent for many Scientologists to “confession.” Scientologists believe that regular auditing keeps them on the path to virtuous and moral living. All of this, again, points in the direction of Scientology meeting the “parallel position” and “ultimate concern” requirements of *Seeger* and *Welsh*.

C. IRS Criteria for Qualifying as a “Religion”

In the United States, the IRS is bound by court decisions, but it has its own criteria for determining when an organization qualifies as a “religion.” These criteria come in the form of a thirteen-point set of guidelines; the criteria have never risen to the

⁵⁹ *Torcaso v. Watkins*, 367 U.S. 488 (1961) at 495.

⁶⁰ *Washington Ethical Society v. District of Columbia*, 247 F.2nd 127 (1957).

⁶¹ For an insightful discussion of the Court’s reliance upon Tillich, see James McBride, “Paul Tillich and the Supreme Court: Tillich’s ‘Ultimate Concern’ as a Standard in Judicial Interpretation,” *Journal of Church and State* 30 (Spring 1988):245.

status of an official IRS regulation, but they are widely used by IRS agents charged with the responsibility of ascertaining the “religious” character of organizations.⁶² The criteria, with appropriate commentary as applied to Scientology, are:⁶³

1. *A Distinctive Legal Existence.* The Church of Scientology is legally incorporated in California and many other states across the United States and in many foreign countries. It is interesting to note that some prestigious religious groups in the United States, such as the United Methodist Church and the Episcopal Church, are not formally incorporated, yet their legitimacy is not questioned by the IRS.

2 *A Recognized Creed and Form of Worship.* Shortly after the Church of Scientology was incorporated in California in 1954, L. Ron Hubbard wrote a creed for the church, which shortly thereafter was officially adopted:

We of the Church believe:

That all men of whatever race, color or creed were created with equal rights;
That all men have inalienable rights to their own religious practices and their performance;

That all men have inalienable rights to their own lives;

That all men have inalienable rights to their sanity;

That all men have inalienable rights to their own defense;

That all men have inalienable rights to conceive, choose, assist or support their own organizations, churches and governments;

That all men have inalienable rights to think freely, to talk freely, to write freely their own opinions and to counter or utter or write upon the opinions of others;

That all men have inalienable rights to the creation of their own kind;

That the souls of men have the rights of men;

That the study of the mind and the healing of mentally caused ills should not be alienated from religion or condoned in nonreligious fields;

And that no agency less than God has the power to suspend or set aside these rights, overtly or covertly.

And we of the Church believe:

That man is basically good;

That he is seeking to survive;

That his survival depends upon himself and upon his fellows and his attainment of brotherhood with the universe.

And we of the Church believe that the laws of God forbid man:

To destroy his own kind;

To destroy the sanity of another;

To destroy or enslave another’s soul;

To destroy or reduce the survival of one’s companions or one’s group.

And we of the Church believe that the spirit can be saved and that the spirit alone may save or heal the body.⁶⁴

⁶² Bruce Hopkins, *The Law of Tax-Exempt Organizations*, 7th ed. (Hoboken, New Jersey: John Wiley and Sons, 2003), 134.

⁶³ The commentary offered on these criteria are a combination of Dean Kelley’s (as set forth in his unpublished paper referenced in footnote 58) and my own.

3. *A Definite and Distinct Ecclesiastical of Government.* Scientology has an elaborate and sophisticated organizational structure, but whether it is “ecclesiastical” depends on whether it is “religious.” For purposes of the IRS criteria, the two terms are essentially synonymous.

4. *A Formal Code of Doctrine and Discipline.* Short of the Roman Catholic code of canon law, there has seldom been a body of “doctrine and discipline” as voluminous as the official directives and manuals of Scientology. The Church of Scientology is legendary for the number of books, manuals, pamphlets, and other materials it publishes, the majority of which is for the training and instruction of members. Whether it is “doctrine and discipline” in the sense intended by the IRS turns again on whether the content is “religious,” but I would contend that it is definitely religious in character.

5. *A Distinct Religious History.* This criterion is also circular. Scientology has a fairly “distinct” history covering its development since inception in the early 1950s, but whether this constitutes a “religious” history depends on whether it is a “religion.”

6. *A Membership Not Associated with any Other Church or Denomination.* This trait of exclusivity is characteristic of most Western religions in recent times, but not of the “mystery” religions of Rome, c. 200 B.C.-200 A.D.; one could be a devotee of Mithra, of Isis and Osiris, and of Dionysius all at the same time. Neither is mutual exclusivity characteristic of some Eastern religions. Scientology does not claim to be the “one and only” mode of belief, as most modern Western faiths do, but in actuality it seems to preempt the believer's attention to other systems of religious belief, and to satisfy or assuage the religious needs and interests of its adherents. As mentioned earlier, some Scientologists claim to be Christians, but this attachment seems symbolic since their attention to Christian doctrine appears lacking if not replaced almost entirely by the tenets of Scientology. Scientology is not a religion one would describe as syncretistic, although Scientologists often make the claim that it is compatible with all religions.

7. *A Complete Organization of Ordained Ministers Ministering to Their Congregations and Selected After Completing Prescribed Courses of Study.* If there is anything Scientology abounds in, it is “ordained ministers” who have completed “prescribed courses of study.” Its ratio of “staff” or full-time practitioners to “laity” or part-time practitioners is unusually high, with a “mission” having several staff, a “church” dozens, and a major center like Los Angeles or Clearwater, hundreds. The core of Scientology is “prescribed courses of study,” including a “minister's course” required of all who seek to qualify as auditors. The highest order of clergy within Scientology is the Sea Organization, whose members comprise approximately one-third of Scientology staff. Sea Org members pledge a “billion year” commitment to Scientology, work for modest stipends, and are assigned full-time work in furtherance of Scientology.⁶⁵ For members

⁶⁴ The Creed of the Church of Scientology; see http://www.scientology.org/p_jpg/wis/wiseng/33/33-cree.htm.

⁶⁵ For a scholarly look at the Sea Organization, see J. Gordon Melton, “A Contemporary Ordered Religious Community: The Sea Organization,” in *New Religious Movements and Religious Liberty in America*, eds. Derek H. Davis and Barry Hankins (Waco, Texas: J.M. Dawson Institute of Church-State Studies, 2002).

who commit serious violations of their obligations as faithful Scientologists, they can undergo a special rehabilitative program called the Rehabilitation Project Force (RPF), and can be reinstated after successfully meeting all program requirements. The phrase “ministering to their congregations” is more difficult to apply, since there is not the one-to-one relationship between a minister and a congregation in Scientology that there is in most Protestant denominations. The pattern is more like a Roman Catholic parish, with several priests and nuns ministering collectively to hundreds or thousands of parishioners. It should be noted that several acknowledged religions, such as old-line Quakers and the Church of Christ, Scientist, do not have “ministers” at all, and several do not require “prescribed courses of study” for their preachers, yet their status before the IRS is not in jeopardy.

8. *A Literature of Its Own.* Some religions do not have this attribute. Scientology does. It has enough “literature of its own” to supply them all twice over if it is “religious” literature. The church is now nearing completion of the publication of all of L. Ron Hubbard’s voluminous writings, which number more than 100,000.

9. *Established Places of Worship.* There are many established Scientology facilities or installations through the world. They are not “places of worship” as conventionally understood. Whether they are nevertheless places of religious practice depends upon whether Scientology is a religion. Scientology does have its own Sunday services, although they do not build “churches” for such services, as is traditional with Christianity, Judaism, Islam and some other religions. Services are usually dedicated to ethical teachings and learning more about Scientology, especially about L. Ron Hubbard’s writings.

10. *Regular Congregations.* Scientology has centers which are frequented by members, mainly to engage in instructional courses and counseling. It does not have many collective assemblages to which all or most of the constituents are expected to come for corporate activities. Those who enroll for courses in Scientology sign a form which describes the applicant as “a Church of Scientology International Member,” and records are kept of all such applicants/enrollees/members, most of whom progress over longer or shorter periods of time through the seemingly inexhaustible levels of auditing and training called “the Bridge,” the higher levels of which can be attained only at Los Angeles and a few other centers, and the highest only at Clearwater, Florida, the Western Hemisphere headquarters of the church. Whether these centers are the equivalent of conventional congregations depends again on whether Scientology is a religion.

11. *Regular Religious Services.* As indicated earlier, Scientology has fairly regular Sunday services. Scientologists have related to me that attendance is not mandatory and that Sunday was chosen as the “day of meeting” to blend in with the Christian practice, prominent in North and South America, of attending church on Sunday. Scientologists who attend, however, do so out of a desire to deepen their faith commitments, and not as a promotional effort to rein in former Christians who would be comfortable with the traditional Christian practice of meeting on Sundays. But of course many new religions borrow from older ones to gain “protective coloration.” The Baptists and Quakers eventually attained recognition as religions without resorting to the conventional religious symbols of their time and without benefit of clergy, but they endured severe persecution

in the process. New religions ought not to have to mimic the trappings of older ones in order to survive and be accepted on their own terms. Though they are not characterized as “worship,” Sunday meetings might qualify as “regular religious services,” assuming Scientology is a religion, which I contend it is.

12. *Sunday Schools for the Religious Instruction of the Young.* The evidence on this point is sparse and conflicting. Some informants say Scientology has no such schools for “the religious instruction of the young,” but some Scientology centers apparently have such schools specifically for training of children. There are some religions which address themselves exclusively to adults and thus do not have such schools. The criterion is also circular, since whether the instruction given in such schools (if they exist) is “religious instruction” depends on the prior question whether Scientology is a religion.

13. *Schools for the Preparation of Its Ministers.* Scientology is itself one vast and infinitely gradated “school for the preparation of its ministers,” if the functionaries so produced are conceded to be “ministers,” which turns on whether they minister a religion. Sea Organization members undergo intensive training as clergy. The Sea Org was so named, in fact, because its members, beginning in 1967, underwent basic training aboard ships, a practice which is still followed but not rigorously.

Most of the foregoing evidences are not conclusive, but rest on the question of what is a “religion?” Even if Scientology does not meet the substantive definitions of religion used by courts in early American jurisprudence, it clearly meets the functional definitions embraced by more recent courts. The Internal Revenue Service's criteria are not only circular but highly conventional. As one commentator, Sharon Worthing Vaino, has written of them:

These criteria tend to require an organization to be a developed denomination according to the pattern reflected in the most accepted mainline churches. They do not recognize the substantial departure from this structure among a number of religious organizations which have long been recognized as American churches ... Christ and his band of disciples certainly did not meet these criteria ... It is perhaps never wise to define a religion based on its developed state, since its early state is not only most fluid, but usually its most delicate and important. It is precisely then, in this larval stage, that a particular religion needs to have the benefit of religious protections.⁶⁶

Vaino’s comment suggests, in effect, that courts need to be willing to move beyond older substantive definitions of religion to more modern functional ones. Even though the IRS guidelines are written in line with older substantive criteria in mind, Scientology nevertheless satisfies most of the IRS guidelines. Scientology would definitely meet the court-crafted functional definitions of religion described earlier.

Conclusion

Scientology is a controversial new religion. I have sought to show in this chapter that according to court-sanctioned guidelines and IRS criteria in the United States,

⁶⁶ Sharon Worthing, “‘Religion’ and ‘Religious Institutions’ Under the First Amendment,” 7 *Pepperdine Law Review* (1980): 344-45.

Scientology *is* a religion, if not according to substantive definitions used by the American courts, at least by functional definitions. Scientology provides its adherents with purpose and the ultimate meaning of life, which is the essence of religion. Not all Scientologists remain Scientologists, but neither do adherents of other religions always remain within the fold. One mark of recent international declarations and treaties is the inclusion of the fundamental human right to “change one’s religion,” and this right applies to Scientology no less than to any other religion.⁶⁷ Scientology nevertheless has a remarkable track record of retaining its members, with only a small percentage defecting.

While courts cannot avoid the responsibility of determining which groups qualify as “religions,” they should nevertheless resist the temptation to “define” religion. As I have argued elsewhere, at least with regard to the issue in the United States,

The task of distinguishing religion from nonreligion has proven to be a difficult one for American courts. The operative word of the religion clauses—religion—was left undefined by the framers. This omission, however, did not result from oversight. To define the term would have placed a permanent imprimatur upon only those forms of faith and belief that conformed to their definition. The framers instead chose to leave the term undefined, thereby protecting a diversity of beliefs, not merely the traditional ones, from undue advancement or prohibition of expression by government. This guarantee of freedom of religion, the centerpiece of American liberties, has served to protect all religions, old and new, against governmental preference, intrusion, and harassment.⁶⁸

As reported by Italian religion expert Massimo Introvigne, the Supreme Court of Italy adhered to this notion in its 1997 decision on Scientology. It is better, according to the Court, “not to limit with a definition, always by its very nature restrictive, the broader field of religious liberty.”⁶⁹

Scientology’s acceptance as a legally sanctioned religion in its birthplace, the United States, has laid the foundation for its acceptance in other nations. Because it now has a life of more than fifty years, it is time that all nations acknowledge the religious character of Scientology and permit it to use its creative and economic resources to advancing its beliefs rather than having to spend them on defending itself against a torrent of lawsuits that challenge its credibility. When this happens, Scientology will no longer be a “new” and persecuted religion, but will have found its rightful place within the ever-broadening landscape of world religions that make positive contributions to the progress and development of human civilization.

Derek H. Davis (B.A., M.A., J.D., Baylor University; Ph.D., University of Texas at Dallas) is director of the J.M. Dawson Institute of Church-State Studies and professor of political science, Baylor University, and editor of the award-winning *Journal of Church and State*. He is the author of *Original Intent: Chief Justice Rehnquist & the Course of American Church-State Relations* (Prometheus, 1991), *Religion and the Continental Congress, 1774-1789: Contributions to Original Intent* (Oxford, 2000), and editor or coeditor of thirteen additional books, including the *Legal Deskbook for Administrators of Independent Colleges and Universities* and *The Role of*

⁶⁷ See, for example, Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which became effective September 3, 1953.

⁶⁸ Davis, “The Courts and the Constitutional Meaning of ‘Religion’: A History and Critique,” 90.

⁶⁹ Introvigne, Testimony.

Religion in the Making of Public Policy. He serves numerous organizations given to the protection of religious freedom in American and international contexts.