

NOTES ON STATUTES

THE SCIENTOLOGY ACT, 1968

The organization and system of belief known as scientology appears to be one of those bodies of organized belief which make their major appeal to men and women who suffer from some personality defect making them unsure of themselves and unable to come to terms with the society they live in.¹ The proliferation of such bodies reflects on society's inability to provide the care and concern for these people necessary to integrate them with itself; unfortunately, society and its rulers seem little inclined to respond to this implied criticism by positive steps, but are more inclined to react against the excesses which occur from time to time when a group of social misfits begins to gather impetus and make its presence felt in society. In a number of places in the English-speaking world there have been reactions against scientology. In the United States, where its teachings first saw the light of day, the Food and Drug Administration began proceedings, towards the end of 1963, against the organization on the footing that unfounded and illegal claims were being made that the E-meter (an instrument fundamental to scientology techniques and a prime object of veneration) could be used to treat illnesses.² In the United Kingdom, the Government has withdrawn the recognition of the Hubbard College of Scientology at East Grinstead as an educational establishment for the purposes of admission of aliens to study,³ and, more recently, the so-called Chapel at East Grinstead has been

¹ It seems that the organization is likely to attract some who are even more deeply disturbed, and that this creates some at least of the problems it faces. The Report of the Board of Inquiry into Scientology, set up by the Victorian Government in 1963 (hereafter referred to as the ANDERSON REPORT) (Government Printer, Melbourne, 1965) says of the founder of scientology, L. Ron Hubbard: 'These qualities which are apparent in Hubbard's writings and on his tapes, and the whole disorder and fragmentation of thought which permeates all his pronouncements, constitute an imposing aggregate of symptoms which, in psychiatric circles, are strongly indicative of a condition of paranoid schizophrenia with delusions of grandeur . . .' (p. 47). Cf. the case of Miss Henslow, raised in the House of Commons on the adjournment, 6.3.1967 (1966-67) 742 PARLIAMENTARY DEBATES (COMMONS) 1216-8.

² ANDERSON REPORT, p. 97.

³ See reply of Mr K. Robinson, Minister of Health (U.K.) 25.7.1968, (1968-69) 769 PARLIAMENTARY DEBATES (COMMONS) 189-191.

refused registration under the Places of Worship Registration Act, 1855.⁴ In New Zealand the movement has been the subject of an investigation by Sir Guy Powles, the present Ombudsman, as a result of complaints concerning its practices, notably its alleged practice of 'processsing' children without the consent of their parents, and has been permitted to continue its activities only on terms that certain assurances as to its future conduct have been given by the so-called 'Guardian' of Scientology in New Zealand. In Victoria, following the Report of a Board of Inquiry into Scientology which sat between December 1963 and April 1965,⁵ the organization has been subjected to severe restrictions on its activities. These have been obliquely achieved by the Psychological Practices Act, 1965,⁶ which, on the premise that the practices of scientology may be equated with the practice of psychology and of hypnotism, imposed on all psychologists the requirement of registration under the Act with the Victorian Psychological Council and then, by section 28, forbade hypnotism without the consent of the Council, by section 29 forbade advertising of a type widely used by scientologists without the consent of the Minister of Health, unless the advertiser is a registered psychologist, by section 30 forbade the use of E-meter or other instrument with a similar purpose, unless by a registered psychologist, without the consent of the council, and by section 31 made it an offence to demand or receive a fee for the teaching, practice and application of 'scientology' (as defined) and to advertise or hold oneself out as a person willing to teach scientology. This oblique method of proceeding has found little or no favour with practitioners of psychology in Australia, a fact of which the Western Australian Government was no doubt well aware; so the Bill which it introduced employed no subtle devices but simply set out to proscribe every activity in which scientologists might wish to indulge, whether for payment or gratuitously, except individual belief in the system of thought and doctrine promulgated by the organization (so long as no

⁴ See *Reg v. Registrar-General, ex. p. Segerdahl* ('The Times', 15.11.1969, p. 11.) (an appeal from the initial refusal). The reason given for rejecting the appeal was that in the forms of 'service' exhibited to the Court there was no profession in the creed of any belief in God or any deity, and nothing in the service of a worshipful nature, as, for example, a statement of the object of the worship said to take place. The service might be better described as a service of instruction. A further consideration telling against its acceptance as a service of worship was the fact that members of the congregation were said to be free to worship according to their own religious beliefs, if they wished.

⁵ See Note 1, above.

⁶ No. 7355.

attempt is made to translate that belief into action), individual reading of the texts of scientology, if they can be obtained without the supplier committing an offence against the Act, and discussion of the doctrines of scientology between initiates—again so long as none of the persons concerned attempts to put those doctrines into practice. For all practical purposes, considering the nature of scientology and of its activities, therefore, the Scientology Act, 1968, places an almost complete ban upon the organization and its activities in Western Australia.

Since spokesmen for the Government in the course of the debates on the Bill which became the Scientology Act, 1968,⁷ hotly denied that the Bill proposed to ban scientology itself,⁸ it is perhaps desirable to document a little more fully the statements made above. Reduced to their baldest essentials, the doctrines of scientology appear to amount to an assertion that the majority of human beings are in a state of spiritual imperfection as a result of previous experiences, not only during their present post-natal life, but while *in utero* and even before this. This last is founded on the belief that the essential spiritual being (of which every human being is apparently but a temporary manifestation), known in scientology jargon as the 'thetan', has existed for countless millions of years and during the whole of that existence has been subjected to an enormous variety of harmful traumatic experiences. L. Ron Hubbard, the founder of scientology, claims to have discovered processes whereby human beings can be 'cleared' of the results of these experiences, thereby attaining a state of spiritual perfection, with all that this might imply. It is no exaggeration to say that the whole of scientology revolves round the application of these processes to those who by one means or another are brought within the ambit of scientology, and the use in these processes of the so-called 'E-meter', which is no more than an extreme-

⁷ No. 63 of 1968.

⁸ See, e.g., The Hon. G. C. MacKinnon, introducing the Bill in the Legislative Council (1968) 180 PARLIAMENTARY DEBATES (WESTERN AUSTRALIA) (hereafter referred to as 'HANSARD') at p. 1450 ('as far as has been humanly possible, the individual and his particular beliefs have been protected') and p. 1454 (where he uses the phrases 'to ban this organisation' and 'prohibit the organisation from operating in the State'); the exchange between the Hon. H. E. Graham and the Hon. Ross Hutchinson, (1968) 181 HANSARD 2059; the exchange between the Hon. H. E. Graham and Mr W. L. Grayden, id. 2616; Mr Grayden's assertion that 'Nothing could be further from the truth' than the statement that the Bill was one to ban scientology, id. 2610; the exchange between Mr W. R. McPharlin and several Labour members, id. 2635.

ly sensitive galvanometer which measures the varying resistance of the subject's body or skin to electric currents, and is claimed therefore to measure the strength of his emotional reaction to various of the processing techniques. Proscribe the use of these processes and of the E-meter, as the Act does in sections 3 and 4, and Scientology must either wither or be driven underground. Even if those who are already scientologists still find point in continuing to hold their beliefs, they are forbidden to transmit them to others—for the prohibition on the 'practice' of scientology contained in section 3 extends, according to the definition in section 2, to the teaching as well as the application of scientology. Moreover, since 'practice' includes also the carrying on of business in connexion with scientology, the sale and distribution of books and pamphlets dealing with scientology would appear to be an offence, and if any such books or pamphlets fall within the definition of 'any document . . . relating to the practice of scientology . . . by . . . a particular person' (and, it is submitted, many of the basic 'texts' of scientology could be so described)⁹ they are by virtue of section 2, 'scientological records' which, under section 5, must be delivered up to the Commissioner of Police, who may destroy or otherwise dispose of them as he thinks fit. In short, if the Act is rigorously applied, it is hard to see how scientology can survive in Western Australia, except perhaps in its current manifestation as a society for the reform of the current methods of treatment of mental illness^{10, 11}

⁹ A point made by the Hon. J. T. Tonkin, (1968) 181 HANSARD, 2643-2644; see also *id.* at 2663-2664.

¹⁰ The original title under which this society appeared before the public gaze, 'The Society for the Prevention of Psychiatric Atrocities' gives some indication of the lack of common sense which characterizes scientologists in their public relations—and is also further evidence of the point made in the ANDERSON REPORT, p. 132: 'The scientology viewpoint is that the medical profession is a great conspiracy, and that, especially in relation to mental health, "medical doctors and psychiatrists" are to be avoided.' Hubbard himself, the REPORT says, 'has an insensate hostility to psychiatrists and "medical doctors", psycho-analysts, psychologists, and those in other similar professions whose field of study and practice is the human mind. His writings about such professions are quite rabid at times.' (p. 43) In the light of this it is a strange thing that medical practitioners are occasionally to be found among the adherents of scientology.

¹¹ Only the other day, after the success of an appeal by the scientology organization against its conviction for an offence against the Act, the 'leader' in Western Australia announced that an application had been made for re-connection of the telephone service to the former premises of the organization under the title of 'The Church of the New Faith': 'The West Australian', 4.12.1969, p. 8.

Readers of this note may well wonder what are the evils against which Parliament—or the Liberal-Country Party majority in Parliament—has been so vigilant to protect the inhabitants of Western Australia. It is true that many elements of the teaching of scientology must appear to the average man or woman to be sheer nonsense, especially in the way in which they are presented in the literature of scientology. But the fact that a cult preaches nonsense cannot of itself be any reason for proscribing it. After all, to many of those who do not subscribe to them many of the teachings of the major religions of the world must likewise appear to be sheer nonsense.¹² Nevertheless, for many others the consolations of religion are undoubted; and likewise there was a good deal of evidence deployed in the course of the debates on the Bill which suggested that for a not inconsiderable number of its adherents the consolations of scientology were equally undoubted.¹³ Three major considerations, however, finally decided the issue in favour of restriction, in Victoria and Western Australia alike.¹⁴ First, the techniques of ‘processing’ employed on those adherents of the movement who wished to be brought to the scientologically-desirable state of ‘clear’ were said by psychologists and psychiatrists to be potentially harmful, especially to persons having already some tendency towards mental disturbance, and to constitute a danger to the mental health of persons likely to be attracted to the organization, and so to the mental health of the community at large. Implicit in this view is the suggestion that large numbers of people admitted to mental hospitals or clinics could be shown to have come to their unfortunate mental state after contact with scientology. Little solid evidence was brought before Parliament to support this. Much play was made by Government spokesmen of certain comments from a special meeting of the Mental Health Committee of the State Health Council of Western Australia, which, after a study of the Anderson Report (which asserts that scientology has been and is a ‘great danger to the mental health of the community’) recorded its view that ‘scientology is a medical moral and social danger’ and added for good measure that it was ‘a threat to family and home life’.¹⁵ But when

¹² Cf. the comment of the Hon. H. E. Graham (1968-69) 181 HANSARD 2069.

¹³ See, e.g., the letters and declarations quoted by the Hon. H. E. Graham in the course of his speech (id. 2051-4, 2064-8); also in the speech of Mr R. E. Bertram, (id. 2639-41).

¹⁴ These considerations are deployed in the ANDERSON REPORT (supra, note 1) on which the Western Australian Government relied heavily.

¹⁵ Quoted by the Hon. Ross Hutchinson (1968-69) 180 HANSARD 1707; a fuller version is in 181 HANSARD, 2100-1. The medical danger arises, of course,

pressed by the Hon. H. E. Graham, the Hon. Ross Hutchinson, though asserting that there were 'quite a number of persons in mental homes because of their association with scientology' was not prepared to say whether there were twenty, thirty, or fifty.¹⁶ On the following Wednesday in reply to a question on notice by Mr R. E. Bertram, the Hon. the Minister disclosed that 16 cases had been noted in Victoria and that departmental psychiatrists had advised him that 13 persons had 'recently' been seen;¹⁷ but the force of this latter answer was dispelled a week later when, in response to a further question, the Minister explained that the words 'recently seen' covered a period of five years, during which the total number of admissions and re-admissions to mental hospitals had totalled 11,329.¹⁸ One would not wish to cast doubts on the advice given by practitioners in the field of mental health as to the dangers to susceptible individuals of scientology 'processing', but the figures hardly suggest the existence of a 'clear and present danger'¹⁹ to the mental health of the community of sufficient

partly from the fact that in some cases scientology 'processing' aggravates existing mental ill-health, partly from the fact that persons in need of treatment may turn to scientology in preference to orthodox mental health services, and so, though not worsened, remain untreated. There is also the danger that persons attracted by scientology may believe its extravagant claims that the process of 'clearing' brings as a beneficial side-effect the curing of a variety of diseases, and fail to seek medical advice until it is too late. The 'moral' danger no doubt arises from the fact that, as attested by evidence before the Victorian Board of Inquiry, there is often an obsessive interest in sexual matters present in scientology 'processing'—see the ANDERSON REPORT, Chapter 25, p. 141, 'Moral Laxity'. The phrase 'threat to family and home life' refers obviously to the succeeding chapter of the REPORT, Chapter 26, 'Family Discord', which quotes instances of marital and familial disharmony caused by the fact that one spouse or member of a family is attracted by scientology and the other or others do not follow. But equally well-authenticated charges of creating such disharmony have from time to time been made against the Exclusive Brethren; yet no-one has suggested that they be banned, presumably because they are after all a Christian sect. Apropos of this, it is not unknown for religious belief to be associated with mental imbalance; but this has never been thought of as calling for the proscription of religion.

¹⁶ (1968-69) 181 HANSARD 2051.

¹⁷ *Id.* 2100.

¹⁸ *Id.* 2312.

¹⁹ The phrase comes from the judgment of Holmes J. in *Schenck v. U.S.* (1918) 249 U.S. 47, 52 'The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.' The words were used in relation to the abridgment of the freedom of speech guaranteed by the First Amendment to the Constitution of the United States; the principle seems apposite to the

magnitude to justify the kind of legislation passed. Moreover, it would be interesting to know whether the sheaf of letters laudatory of scientology, already referred to as read by members of the Opposition, does not indicate that for a considerable number of socially inadequate persons scientology provides a sufficient 'prop' to carry them through life without recourse to mental health services, and thus indirectly benefits the community as a whole.

A second consideration which appears to have weighed heavily in favour of the proscription was that the scientology organization was shown to have extracted from its novices (or 'pre-clears', in its own jargon) substantial sums of money for continued 'processing', on the pretext that a variety of benefits both temporal and spiritual were being obtained, and it was suspected that much of this money ultimately went to enrich the founder and high priest of scientology, L. Ron Hubbard.²⁰ The underlying assumption was that this was a fraud on the public which ought to be stopped. However, this objective in itself could have been met by the provision making it an offence to receive, directly or indirectly, any fee, reward or benefit on account of the practice of scientology,²¹ and this alone might well

legislation being discussed, even though we have no similar constitutional guarantees here.

²⁰ The ANDERSON REPORT disclosed that one individual paid the organization £3,065 in the seven years between 1957 and 1963; two others (husand and wife) £1,801 and £1,777 respectively in the four years from 1960 to 1963. But these figures are probably exceptional. Appendix 8 of the REPORT (a comparative statement of income and expenditure of the Hubbard Association of Scientologists (International) in Victoria for the three years ended 31st June 1961, 1962 and 1963) indicated that the income from 'processing' in each of the three years was, respectively, £26,837, £29,023, and £32,610 (omitting shillings and pence). Add to this 'training income' of £14,284, £17,267, and £9,342, and certain other sources (including £8,347 for the sale of life memberships in 1961-1962) and the gross income of the Melbourne centre in each of the years was £41,550, £55,098 and £44,502. Of this, over £4,000 in each year went to the world-wide organization—not, it would seem, a very large 'rake-off'. The figures for the Perth centre must have been considerably smaller—the only indicator available is that the 1961-62 financial records show that while the Melbourne branch was assessed for franchise fees (a percentage of the 'proportionate amount' of the gross income) of £2,069 the Perth branch was assessed for only £732 (ANDERSON REPORT, p. 33). Apart from office expenses, a large part of the money received in Melbourne was expended in local 'staff' salaries, which the REPORT describes (at p. 26) as 'moderate and, in very many instances, . . . less than the basic wage.'

²¹ This was the central provision of the Scientology Restriction Bill introduced into the Victorian Parliament in 1963 by the Hon. J. W. Galbally; see his explanation in (1963-64) 273 PARLIAMENTARY DEBATES (VICTORIA) 2027.

have caused the movement to wither away, if the law could have been enforced. But there was yet a third consideration, which probably provoked the greatest degree of direct hostility in the opponents of scientology: this was the almost paranoid reaction of scientologists, from L. Ron Hubbard down, to any form of criticism or opposition, a reaction which had wrought in the minds of some who had withdrawn from the movement and expressed their disillusionment with it a fear of persecution. Again, there was remarkably little evidence before Parliament of direct persecution. One letter, deployed at an early stage by the Hon. Mr Hutchinson in his second reading speech,²² suggested very strongly that the writer was mentally unbalanced and may well have been suffering from delusions of persecution (a point which members of the Opposition were quick to take)²³ and in any case contained nothing very specific; two other cases quoted later in the same speech were rather more specific,²⁴ and received corroboration from various scientological documents quoted by Government spokesmen. Indeed, in respect to this third matter the scientology organization proved its own worst enemy. One set of quotations dealt with the organization's attitude to its outside critics; a sample of this is to be found in the following passage from the writings of L. Ron Hubbard himself: 'We are slowly and carefully teaching the unholy a lesson. It is as follows: "We are not a law enforcement agency. But we will become interested in the crimes of people who seek to stop us. If you oppose scientology we promptly look up—and will find and expose—your crimes. If you leave us alone we will leave you alone".'²⁵ The other set dealt with its attitude to 'defectors'—persons who having left the movement threatened to expose its deficiencies. This may be summed up in the much-quoted definition of the treatment to be accorded to an 'enemy' (scientologically speaking): 'Suppressive person order. Fair game. May be deprived of property or injured by any means by any scientologist without any discipline of the scientologist. May be tricked, sued, or lied to or destroyed.'²⁶ It is rather difficult to believe that anyone could take this nonsense seriously; but in his second reading speech in the Legislative Council the Hon. the Minister for Health said of this latter 'threat': 'Sir, I

²² (1968) 180 HANSARD 1701-2.

²³ *Id.* See the interjection of Mr C. J. Jamieson, *id.* 1702.

²⁴ *Id.* 1703; see also the material quoted by the Hon. G. C. MacKinnon, *id.* 1454.

²⁵ Quoted by the Hon. G. C. MacKinnon, *id.* 1453.

²⁶ *Id.* 1454.

believe that this alone would be sufficient reason to ban this organization.²⁷ It is respectfully submitted that the above passages might justify legislation making it an offence for this or any other organization to publish or disseminate threats of this foolish variety, which in any case they may be unable to carry out, but hardly justifies the extremes of prohibition to which the Scientology Act, 1968, goes.²⁸

Associated with the near-paranoid threats of 'exposure' which the organization so freely bandies about, however, was the evidence before the Victorian Board of Inquiry that in the course of 'processing' records were taken of 'confessions' or pseudo-confessions of incidents in the past life of the 'pre-clear' being 'processed' which might in some cases have exposed him or her to criminal charges, and in many other cases might seriously affect his or her reputation with employers, workmates, or friends, if they should be disclosed. In the light of the threats referred to; the possibility of blackmail, in the looser sense of that word, appeared to be serious enough to warrant some action;²⁹ and accordingly both the Victorian legislation and the local legislation required the delivery up to the Commissioner of Police, for destruction or disposal, of all such records. It can be seen that if the organization had any pretension to be, as it claims, a body engaged in serious study of the human personality and its defects, the loss of

²⁷ *Ibid.*

²⁸ It does not appear to have occurred to anybody that conduct of this kind might have been prosecuted under section 338 of the Criminal Code: 'Any person who threatens to do any injury, or cause any detriment, of any kind to another with intent to prevent or hinder that other person from doing any act which he is lawfully entitled to do, or with intent to compel him to do any act which he is lawfully entitled to abstain from doing, is guilty of a misdemeanour . . . ;'

²⁹ The threat of exposure, referred to in the text above, was carried one stage further in at least two instances in the Eastern States. When the Rev. Dr Rumble, a well-known Roman Catholic broadcaster, publicly criticized scientology, a scientologist describing himself as 'Director of Government Relations' sent a letter to authorities of the Church which said 'Dr Rumble is now being investigated. Any facts brought to light of interest to security services will be given to them'. (Quoted by the Hon. D. G. Elliott, (1968-1969) 273 PARLIAMENTARY DEBATES (VICTORIA) 2158). Again, Dr Dickson, then secretary of the British Medical Association in Victoria, made a public statement on the subject of complaints he had received, in writing and in person, concerning the activities of scientology. One scientologist then wrote to the Victorian Commissioner of Police as follows: 'I wish to bring to your attention a statement made in TRUTH recently by one, Dr Dickson, of the British Medical Association concerning scientology . . . It is my opinion that Dr Dickson is using smoke-screen tactics to cover up his own irregularities. In view of this, I suggest you investigate the activities of Dr Dickson and his Association . . .' (Quoted *id.* 2128).

these records might be extremely handicapping; but it is a handicap the organization has brought upon itself by its extravagant and irrational behaviour. Nevertheless, it would have been possible to deal with the threatened evil, if the Government had been so minded, in a more discreetly restricted way, if indeed the provisions of section 338 of the Criminal Code, already referred to,³⁰ were not in themselves adequate.

To sum up, one cannot help questioning the wisdom of the legislature (or, to be more exact, of the Government majority therein) in adopting the Scientology Act, 1968. Even granting the follies of the organization and its members, and the evidence of individual harm attributable to its doctrines and practices, it is by no means clear that these presented so serious a threat to the community at large as to justify what is perilously close to the introduction of 'thought control', although in one rather narrow sector of human activity.³¹ All the evils apprehended, it is submitted, could have been provided against either by the application of already-existing legislative provisions or by much more narrowly-drawn legislation striking specifically at the evil of demanding money, in the form of fees for services, for activities which come close to quackery in the field of mental health; the analogy for provisions of this nature is readily to hand in the form of legislation for the prevention of quackery in the field of physical health.³² It may be argued that such narrow provisions are likely to be difficult to enforce,³³ and that, when one is dealing with persons such as the adherents of scientology, blunderbuss prohibitions

³⁰ See note 28, *supra*.

³¹ Nobody seems to know exactly how many of these misguided people there are. During the course of the debates the figure of 6,000 was mentioned by the Hon. H. E. Graham in the course of his speech (1968-69) 181 HANSARD 2056; more recently the 'leader' of the movement in Western Australia claimed 10,000, but implied that only about 250 of these were 'active'. ('The West Australian', 5.12.1969, p. 9). The ANDERSON REPORT at p. 21 referred to 'thousands of pre-clears' files' as exhibited to the Board; but in the light of the income figures already referred to (*supra*, note 20) and the fact that the fee for 25 hours processing was quoted as £105 cash, and fees for casual processing £4.14.6 downwards, (*id.* 25, quoting the November 1960 scales), and assuming that most individuals signed up for a minimum of 20 hours processing, the Melbourne centre cannot have 'put through' more than 750-800 a year, and the Perth centre must have been running at only about a third of this capacity.

³² See e.g. sections 19 and 20 of the Medical Act, 1894.

³³ In reply to a question by the Hon. H. E. Graham, the Minister representing the Minister of Health disclosed that one scientologist had been charged with and convicted of an offence under section 19 of the Medical Act, ten years previously: (1968) HANSARD 1698-9.

are the only weapons to use; but the recent success of the Association's appeal to the Supreme Court against a conviction by a magistrate, under section 3 of the new Act, suggests that the blunderbuss may not be the weapon its advocates think it is.³⁴ One cannot help fearing that despite the legislation the doctrines, and even the practices, of scientology will be around to trouble us for some time yet, though it may be that some small fraction of the income of L. Ron Hubbard will be cut off.

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³⁴ See the report in 'The West Australian', 4.12.1969, p. 1.