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COMMENT

Defining the Limits of Free Exercise: The Religion Clause Defenses in *United States v. Moon*

*By Debra A. Silverman**

Introduction

On July 16, 1982, a jury convicted Reverend Sun Myung Moon, the founder and leader of the Unification Church, of filing false income tax returns.[1] Specifically, the jury determined that Moon failed to report interest that had accrued on Chase Manhattan Bank accounts held in his name and income recognized when a company run by Church members issued stock to Moon at no cost. The United States Court of Appeals for the Second Circuit affirmed that conviction fourteen months later[2] and on May 14, 1984, the United States Supreme Court denied Moon's petition for certiorari.[3]

The Second Circuit recognized that Moon's culpability depended upon his beneficial ownership of the bank accounts and the stock. Under the government's theory, Moon owned the assets in his capacity as an individual taxpayer. They were in his name, under his control, and had been used for his personal investments and expenditures. Moon argued, unsuccessfully, that the assets belonged to the tax exempt Unification Church.[4] He asserted that the assets had been given to him in name only by the followers of his religion, who intended that the assets be used for that religion. Moon maintained that he embodied the Unification Church, and merely held and administered the property for the Church's

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* A.B., 1982, Princeton University; member, third year class.

1. United States v. Moon, 718 F.2d 1210, 1216 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 2344 (1984).

The jury also convicted Moon and a senior member of the Unification Church of conspiracies to file false tax returns and to obstruct the tax investigation.

2. *Moon*, 718 F.2d at 1216.

3. Moon v. United States, 104 S. Ct. 2344 (1984).

4. *Moon*, 718 F.2d at 1217.

benefit.[5]

At first blush, this case appears to be a simple factual dispute—who owned the assets, Moon or the Unification Church?[6] After hearing the evidence presented by both sides, the jury decided that Moon owned the assets and therefore owed income taxes on the interest earned on the bank deposits and on the value of the stock. The jury convicted him of tax fraud for failing to report these assets.[7] Why then, if this case turned on a question of fact, did the defense attempt to obtain Supreme Court review? This Comment examines just one of the complex and sensitive issues that underlies *United States v. Moon*:[8] the defense's objections to the jury instructions based on the First Amendment guarantee of freedom of religion.[9] Part I discusses the defense's arguments. Part II re-

5. There was no dispute that if the Unification Church owned the assets, no income taxes would be owed to the government. As a bona fide religion, the Unification Church is tax exempt. Unification Church v. INS, 547 F. Supp. 623 (D.D.C. 1982). *See also* Holy Spirit Ass'n for the Unification of World Christianity v. Tax Comm'n, 55 N.Y.2d 512, 435 N.E.2d 662, 450 N.Y.S.2d 292 (1982) (granting the Unification Church tax exempt status under New York law).

6. Judge Oakes of the Second Circuit disagreed with this characterization in a dissent to the *Moon* opinion: "[T]his case did *not* involve a claim that an ordinary, lay taxpayer held certain assets in a private trust for the benefit of another. On the contrary, the taxpayer here was the founder and leader of a worldwide movement which, regardless of what the observer may think of its views or even its motives, is nevertheless on its face a religious one, the members of which regard the taxpayer [Moon] as the embodiment of their faith. Because Moon was the spiritual leader of the church, the issue whether he or the church beneficially owned funds in his name was not as crystal-clear as [it] might seem." 718 F.2d at 1242 (emphasis in original).

7. Moon was sentenced to an eighteen month prison term and fined $25,000 plus costs. *Id.* at 1216.

8. The appellate court opinion discussed the following issues: (1) whether denial of a bench trial constituted a denial of the First Amendment right to free speech and the Sixth Amendment right to a fair trial; (2) whether the evidence was sufficient for conviction; and (3) whether some jury instructions were erroneous. This Comment focuses on only one portion of the third category.

9. The primary issue before the trial court was whether the Chase Manhattan Bank accounts and the stock issued in Moon's name belonged to Moon. The trial judge instructed the jury to consider a variety of factors: "In determining whether in 1973, 1974 and 1975 the International Unification Church Movement existed and whether the Movement owned the funds in the Chase accounts and Tong Il stock or whether Reverend Moon owned them, you should consider all the evidence, including such factors whether the Movement had a specific organizational structure, written charter or constitution, the existence of other Unification Church corporate entities during the relevant time period, the fact that the accounts were maintained under Reverend Moon's name, the source of the funds, the intent of the parties who caused the stock and funds to be transferred to Reverend Moon's name, evidence of any agreements as to how the funds would be used, the manner in which the stock and funds were administered and whether there is any evidence Moon ever accounted to anyone for the use of the funds." 718 F.2d at 1244 n.3 (Oakes, J., dissenting). Moon argued that the jury should only consider church members' beliefs to determine ownership of the assets. *See infra* notes 11-14 and accompanying text.

views traditional First Amendment analysis. Finally, Part III analyzes the Second Circuit's opinion in detail.

I. Religion Clause Objections

The Supreme Court has said that religion clause problems must be decided on a case by case basis: "Each value judgment . . . must . . . turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so."[10] In his petition to the Supreme Court, Moon attacked the jury instructions on the ground that they violated his constitutional right to religious freedom.[11] By permitting the jury to consider a variety of factors to determine whether Moon or the Unification Church owned the assets, the instructions[12] interfered with the religious practices of the Unification Church.

According to the defense, church members believe that they contribute to their religious mission by transfering assets to Reverend Moon. Since the appellate court held that the jury could reject church beliefs about religious uses of church assets, the defense contended that the court violated the Free Exercise Clause. Moon's counsel, Laurence H. Tribe,[13] argued that the jury instructions constituted a "lay veto [power] of [a] religious decision," and an "anathema to the Religion Clauses."[14] Focusing on principles of church autonomy, the defense urged that the First Amendment prevents lay juries from second guessing the religious intent of donor church members.

In broad terms, *Moon* poses two questions: 1) who decides what activities constitute legitimate religious uses—the state or the particular church, and 2) does it violate traditional notions of free exercise protection to allow the state to decide? In answering this two part inquiry, Tribe urged that church autonomy and Reverend Moon's position as leader of the Unification Church required state deference to church decisions.[15] The Second Circuit rejected both arguments.[16]

A. Church Autonomy

The right to church autonomy under the Free Exercise Clause is the right of churches to decide how to run their own institutions. But the

10. Walz v. Tax Comm'n, 397 U.S. 664, 669 (1970).

11. *Moon*, 718 F.2d at 1226-28.

12. *See supra* note 9.

13. Professor Tribe, a renowned constitutional law scholar, headed Moon's defense. *Moon*, 718 F.2d at 1215.

14. Petition for Certiorari at 22, United States v. Moon, 718 F.2d 1210 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 2344 (1984).

15. *Moon*, 718 F.2d 1226-27.

16. *Id.* at 1227-28.

general rule of autonomy is not absolute.[17] The key issue in *Moon* was whether the autonomy principle forced the government to respect the Unification Church's decision to permit Moon to hold and to use the funds as he saw fit.

Relying on *Jones v. Wolf*,[18] the defense argued that the beneficial ownership issue was actually a question of religious autonomy: how should church authority and property be allocated? *Jones* prohibited civil courts from interpreting religious doctrine in resolving intra-church property disputes.[19] The defense argued that a corollary of this "neutral principles" approach prohibited lay juries from questioning allocation of property within a church. The Second Circuit, however, rejected this argument and determined that the "neutral principles" approach had no application to a case that pitted the government against an undivided church.[20]

Tribe ardently contested the appellate court's rejection of *Jones*.[21] Rather than limiting the "neutral principles" approach, Tribe advocated expanding its applicability:

> [R]espect for the decisions of churches and their members as to the allocation of property and authority within a religious community is not less but *more* essential where all those members share the same view of the matter and it is the government that would substitute its view for theirs.[22]

Since Moon and his followers believed that he held the assets for the benefit of the Church,[23] the jury could not challenge this intra-church property allocation. Nevertheless, the appellate court refused to expand the doctrine and found that the defense arguments overstated the scope of protections afforded by the religion clauses.[24]

B. The Messiah Defense

Bona fide religions owe no taxes on church assets or church related activities,[25] but the personal income of church leaders is taxable. Another key issue in *Moon* was whether Moon's position as "Messiah"[26] meant that he, like his church, was tax exempt.

17. Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 COLUM. L. REV. 1373, 1388 (1981).

18. 443 U.S. 595 (1979) (involving a dispute over church property ownership between factions of a local congregation).

19. *Id.* at 602.

20. *Moon*, 718 F.2d at 1228.

21. Petition for Certiorari at 17-18, United States v. Moon, 718 F.2d 1210 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 2344 (1984).

22. *Id.* at 18.

23. *Moon*, 718 F.2d at 1226.

24. *Id.*

25. *See supra* note 5.

26. *Moon*, 718 F.2d at 1227.

The defense argued that Moon's followers believed that he personified the Unification Church and was indistinguishable from it.[27] Because the trial court allowed the jury to treat Moon's property ownership "secularly"[28] the court violated Moon's First Amendment rights.

The appellate court summarily dismissed this "Messiah" defense: "The fact that Moon is the head of the Church does not mean that the Church itself is not a distinct and separate body;"[29] and rejected the argument that any use of the funds by Reverend Moon was for religious purposes.[30] The Second Circuit did not question the sincerity of Moon's or his followers' beliefs; rather, it simply found that Moon's use of the money fell outside the scope of First Amendment protection.

II. Traditional First Amendment Analysis

A. Background: The Religion Clauses

The First Amendment proclaims: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."[31] For over two hundred years, neither Congress nor the Supreme Court has offered a definition of "religion" or "church,"[32] even though the First Amendment mentions "religion," and protects practices that are embodied in or identified with churches.[33] Rather than attempt a definition, the scope of religious protection has turned on the inclusion or exclusion of specific claims.

Historically, the amendment breaks down into two components: (1) the Establishment Clause and (2) the Free Exercise Clause.[34] The Establishment Clause limits permissible governmental support for church conducted activities.[35] Its main objective, as construed by the Supreme Court in *Lemon v. Kurtzman*[36] "is to prevent . . . the intrusion of [either state or religious institutions] into the precincts of the other. . . . Judicial caveats against entanglement must recognize that the line of sep-

27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 1227-28.
31. U.S. CONST. amend. I.
32. D. KELLEY, WHY CHURCHES SHOULD NOT PAY TAXES 62 (1977).
33. It should be noted that not all church activity is sanctioned by the religion clauses. *Id.* at 42.
34. Although this breakdown is convenient for analytical purposes, an internal tension exists between the two clauses: "May a government remove burdens from, grant benefits to, or make accommodations for the free exercise of religion without simultaneously promoting the establishment of a religion?" Note, *Constitutional Law: The Religion Clauses—A Free Rein to Free Exercise?*, 11 STETSON L. REV. 386, 388 (1982). Despite this interrelationship, the Supreme Court has set forth distinct guidelines for each clause. *See infra* notes 37, 39-41 and accompanying text.
35. Note, *supra* note 34, at 389.
36. 403 U.S. 602 (1971).

aration, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship."[37] Undeniably, taxation and tax exemption implicate governmental intrusion or support of religion.[38]

The Free Exercise Clause limits permissible governmental interference with religious practices. Since *Cantwell v. Connecticut*,[39] courts commonly distinguish the freedom to believe, which is absolute, from the freedom to act, which is not absolute.[40] Although accurate, this distinction is not often relevant, because freedom to believe is rarely infringed in this country. Almost all reported cases involve freedom to act according to religious beliefs.[41]

One commentator has divided Free Exercise Clause protection into three kinds of rights: (1) the bare freedom to carry on religious activities: to pray, to construct churches, and to hold services; (2) the right of churches to conduct those activities autonomously: to select their own leaders, to define their own doctrines, to resolve their own disputes, and to run their institutions; and (3) the right of conscientious objection to government policy.[42] In each category courts have accepted some claims and rejected others.[43] Moon's objections to the constitutionality of the jury instructions fall within the second category of free exercise protection—the right to church autonomy.

B. Supreme Court Approaches to the Free Exercise Clause

The question of governmental interference with "religious freedom" has most often arisen in the context of challenges to state statutes. In the past, the Supreme Court has taken two different approaches to statutes that impose a burden on religious practices.[44]

In the 1961 case of *Braunfeld v. Brown*,[45] the Court upheld a statute mandating Sunday as a day of rest despite its impact on non-Christians. Orthodox Jews challenged the statute, alleging that it caused economic injury because their religion forced them to close their businesses on Saturdays as well. In rejecting plaintiffs' argument, the Court focused on

37. *Id.* at 614. The Court developed a three-part Establishment Clause test which accommodates the case by case nature of the inquiry. A statute may withstand an Establishment Clause challenge only if it has both a secular legislative purpose and a primary effect that neither advances nor inhibits religion. In addition, it must not foster excessive governmental entanglement with the religion. *Id.* at 612-13.

38. *See* Walz v. Tax Comm'n, 397 U.S. 664, 672-73 (1970) (upholding the tax exempt status of properties used solely for religious worship).

39. 310 U.S. 296 (1940).

40. *Id.* at 303-04.

41. *See infra* notes 45-58 and accompanying text.

42. Laycock, *supra* note 17, at 1388-89.

43. *Id.* at 1388.

44. Note, *supra* note 34, at 390-93.

45. 366 U.S. 599 (1961).

the legislation itself, rather than its impact on individuals. The opinion emphasized that: "to strike down, without the most critical scrutiny, legislation which imposes only *an indirect burden* on the exercise of religion . . . would radically restrict the operating latitude of the legislature."[46] Only two years later, however, the Court shifted its focus and held that a state could not deny unemployment benefits to a person who was fired because her religion forbade her to work on Saturday.[47] In *Sherbert v. Verner*, the Supreme Court focused on the individual's interest rather than the legislature's. While the *Braunfeld* Court examined whether the statute was valid, the *Sherbert* Court weighed the statute's burden on the individual against its benefits for the community.[48]

Although *Sherbert* did not overrule *Braunfeld*, the 1972 case of *Wisconsin v. Yoder*[49] indicated that the *Sherbert* balancing test enjoyed majority support. *Yoder* overturned convictions of Amish parents who kept their children from school despite a state statute that required them to attend until age sixteen. *Yoder* indicated, however, that courts should only except religious groups from legislation if their beliefs are both consistent and sincere.[50]

In *Thomas v. Review Board*,[51] the Supreme Court expanded the *Sherbert/Yoder* balancing approach to include more subtle burdens on the free exercise of religion. In both earlier cases, the Court addressed a central religious practice, and like *Sherbert*, *Thomas* involved the denial of unemployment benefits. Yet here, the state denied benefits because Thomas quit his job after he was shifted into work that his religion prevented him from performing. The statute disqualifying him from benefits made no religious practice illegal.[52] Nevertheless, the Court held that the denial of unemployment benefits imposed an indirect burden on his free exercise rights:

> Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion [citations omitted]. The determination of what is "religious" belief or practice is more often than not a difficult and delicate task. . . . However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice

46. *Id.* at 606 (emphasis added).

47. Sherbert v. Verner, 374 U.S. 398 (1963).

48. *Id.* at 402-06.

49. 406 U.S. 205 (1972).

50. *Id.* at 216. The Court emphasized the traditional Amish lifestyle: "We see that the record . . . abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living." *Id.*

51. 450 U.S. 707 (1981).

52. IND. CODE §§ 22-4-1-1 to 22-4-38-3 (Supp. 1978). "[U]nder Indiana law, a termination motivated by religion is not for 'good cause' objectively related to the work." *Thomas*, 450 U.S. at 713.

> in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others to merit First Amendment Protection.[53]

Thomas may be viewed as the highpoint of free exercise protection for indirect burdens on religious practices. One year later, the Supreme Court in *United States v. Lee*,[54] refused to expand this First Amendment protection to encompass the payment of taxes.

In *United States v. Lee*, the government's need to collect revenues justified a limitation on religious freedom.[55] Although the Court accepted that the Amish faith forbids both the payment and receipt of social security benefits, it held that the Free Exercise Clause did not exempt members of the Old Amish from paying social security taxes. The Court reached its conclusion by applying the *Thomas* balancing formula: "Not all burdens on religion are unconstitutional. . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest."[56] The *Lee* Court balanced the government's interest in maintaining an effective social security system against the Amish's bona fide beliefs, and exacted the tax despite their sincerity.[57] The Court concluded that "[b]ecause the broad public

53. *Thomas,* 450 U.S. at 713-14.

54. 455 U.S. 252 (1982).

55. *Id.* at 259-60. This governmental interest has been a formidable opponent to religion clause challenges in the past. In a series of cases, the tax court systematically denied tax exempt status to "religious" organizations when the church in question served the private purposes of the minister. *See* Unitary Mission Church of Long Island v. Commissioner, 74 T.C. 507 (1980); Southern Church of Universal Bhd. Assembled, Inc. v. Commissioner, 74 T.C. 1223 (1980); Southern Church of Transfiguring Spirit, Inc. v. Commissioner, 76 T.C. 1 (1981); Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980). These cases represent private tax avoidance schemes. But unlike the Unification Church, the organizations in question were not bona fide religions. *See supra* note 5.

56. *Thomas,* 455 U.S. at 257-58 [citations omitted].

57. *But cf.* United States v. Ballard, 322 U.S. 78 (1944). In *Ballard*, the Supreme Court upheld a criminal conviction of leaders of the "I am" movement. The Ballard family was prosecuted for using and conspiring to use the mails to defraud under 18 U.S.C. §§ 88 and 338. The Ballards claimed to have supernatural powers. Based on this claim, they attracted followers and appealed for contributions from the public by mail. The government charged that the Ballards "well knew" that their claims were false, and promulgated them only to defraud. Although the trial judge instructed the jury that they could not assess the truth or falsity of the Ballard's teachings or beliefs, but only their sincerity, the jury convicted them. The trial judge instructed the jury as follows: "The religious views espoused by [the Ballards] 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 trier[s] of fact undertake that task, they enter a forbidden domain." *Id.* at 87.

It appears that in *Moon*, the trial court obeyed *Ballard*'s warning, since it did not allow the jury to pass judgment on the validity of the Unification Church members' belief that Moon embodied the Church. It simply instructed the jury to determine whether Moon held the funds for the Church's benefit. The issue of sincerity now appears to be moot as a result of *Lee*. Although the Court recognized the sincerity of the Amish's belief, the belief could not

interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."[58]

The decision in *Lee* exemplifies the Court's recent use of the traditional balancing test to allow an infringement on religious freedom. Clearly, the Supreme Court considers the Internal Revenue Code as a limitation on even sincere religious beliefs.

III. The Second Circuit's Opinion

The appellate court began its analysis with a broad and abstract definition of religion: "the feelings, acts, and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine."[59] The court reasoned that the religion clauses protect an individual's right "to entertain such view[s] respecting his relations to what he considers the divine and the duties such relationship imposes as may be approved by that person's conscience . . . ."[60] But the appellate court highlighted limitations on religious freedom, and concluded that Moon's objections fell outside the scope of protection.

The Second Circuit set forth the basic principle that the First Amendment does not immunize against the commission of a crime:

> 'It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society [citations omitted]' '. . . however free the exercise of religion may be, it must be subordinate to the criminal laws of the country. . . .'[61]

The source of this basic tenet is the 1890 Supreme Court decision in *Davis v. Beason*.[62] In a later case, *Christian Echoes National Ministry, Inc. v. United States*,[63] the Tenth Circuit interpreted the *Davis* reasoning and concluded that courts may analyze church activities to determine whether those activities violate the Internal Revenue Code.[64]

The issue in *Christian Echoes* was whether a religious organization

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overcome the overriding governmental interest in supporting and maintaining the social security system.

58. *Thomas*, 455 U.S. at 260.

59. United States v. Moon, 718 F.2d 1210, 1227 (2d Cir. 1983) (quoting W. JAMES, THE VARITIES OF RELIGIOUS EXPERIENCE 31 (1910)).

60. *Id.*

61. *Moon*, 718 F.2d at 1227 (quoting Davis v. Beason, 133 U.S. 333, 342-43 (1890)).

62. 133 U.S. 333, 348 (1890) (upholding an Idaho statute prohibiting bigamy and polygamy).

63. 470 F.2d 849 (10th Cir. 1972), *cert. denied*, 414 U.S. 864 (1973).

64. *Id.* at 854.

was entitled to tax exempt status.[65] Although a substantial part of the organization's activities involved influencing legislation and participating in political campaigns,[66] the district court accorded the Christian Echoes Church tax exempt status. Because church members sincerely believed that their involvement in the political arena was religiously motivated, the trial court felt it lacked the power to determine whether these activities were religious or political.[67]

The appellate court stated that it knew of no legal authority that would support the district court's conclusion.[68] Rather, the Tenth Circuit determined that the First Amendment right of free exercise of religion permits restraints or limitations on church activites,[69] and found that the Internal Revenue Service imposed an appropriate limitation.

In *Moon*, the defense argued that *Christian Echoes* should not control. Instead, the defense urged that *Holy Spirit Association for the Unification of World Christianity v. Tax Commission*[70] was the proper authority. *Holy Spirit* considered whether certain property owned by the Unification Church was exempt from taxation under New York state law.[71] The New York Court of Appeals held that courts may not inquire into the content of church doctrines and teachings in determining whether a church is organized and conducted for exclusively religious purposes. It ruled that courts must accept a church's characterization of its own beliefs and activities as long as the characterizaton is made in good faith and is not a sham.[72] The New York Court of Appeals formulated the inquiry as follows: "When . . . particular purposes and activities of a religious organizaton are claimed to be other than religious, the civil authorities may engage in but two inquiries: Does the religious organization assert that the challenged purposes and activities are religious, and is that assertion bona fide?"[73] Because Moon asserted that the allocation of property within the Unification Church was controlled by religious precepts, pursuant to *Holy Spirit*, the court only needed to ask one

65. The Internal Revenue Code holds as conditions for religious exemption that "no part of the net earnings [of a religions organization]" may inure "to the benefit of any private shareholder or individual, no substantial part of the activities" may consist of "carrying on propaganda, or otherwise attempting, to influence legislation," or "participat[ing] in, or interven[ing], in any political campaign on behalf of any candidate for public office." 26 U.S.C. § 501(c)(3) (1967).

66. *Christian Echoes*, 470 F.2d at 853.

67. *Id.* at 856.

68. *Id.* The Tenth Circuit added: "Such conclusion is tantamount to the proposition that the First Amendment right of free exercise of religion . . . protects those exercising the right to do so unfettered." *Id.*

69. *Id.* at 856-57.

70. 55 N.Y.2d 512, 435 N.E.2d 662, 450 N.Y.S.2d 292 (1982).

71. *Id.* at 512, 435 N.E.2d at 662, 450 N.Y.S.2d at 292.

72. *Id.* at 519, 435 N.E.2d at 663-64, 450 N.Y.S.2d at 293-94.

73. *Id.* at 521, 435 N.E.2d at 665, 450 N.Y.S.2d at 295.

question: was Moon's claim that he held the assets for the benefit of the Church bona fide?

According to the defense, the answer would be an uncontestable yes. Unfortunately for Moon, the appellate court never addressed whether Moon's belief was bona fide. It dismissed *Holy Spirit* as inapposite, stating that it did not serve as precedent in a federal criminal tax prosecution.[74] This interpretation is reasonable because the *Holy Spirit* court distinguished *Christian Echoes* on the ground that the Internal Revenue Code section relied on by the Tenth Circuit in *Christian Echoes* differed from the New York statute it interpreted.[75]

In *Moon*, as in *Christian Echoes*, the court determined that the Internal Revenue Code limited Free Exercise Clause protection. The *Moon* court concluded that even if the jury were bound to accept church members' beliefs as sincere, the jury was nonetheless free to decide whether Moon as an individual beneficially owned the assets.[76]

The court also rejected the "Messiah" defense. Moon had argued that as the embodiment of the Unification Church, he was indistinguishable from it. Consequently, since the Church could owe no taxes on income derived from church related activities, by logical extension, neither could Moon.[77]

The Second Circuit, however, had no difficulty separating Moon's spiritual identity as the leader of his religion, from his legal identity as a taxpayer. While legally a church may hold property free from governmental interference, property held individually and used personally gives rise to taxable income.[78] "To allow otherwise would be to permit church leaders to stand above the law, a view we have previously rejected."[79] Earlier in the *Moon* decision, the court methodically examined the evidence and determined that Moon used the assets in a personal manner.[80] By looking at the substance of the property arrangement within the Uni-

74. *Moon*, 718 F.2d at 1227.

75. The Court of Appeals of New York stated: "We are not here concerned with whether the Legislature has authority, should it choose to do so, to deny exemption to an organization whose purpose is primarily religious but which as part of its religious program devotes a substantial portion of its activities to political objectives. It suffices for our present purposes to note that section 421 (subd 1 par[a]) includes no such provision." 55 N.Y.2d at 523, 435 N.E.2d at 665-66, 450 N.Y.S.2d at 296.

76. *Moon*, 718 F.2d at 1227.

77. *See supra* notes 26-29 and accompanying text.

78. *Moon*, 718 F.2d at 1228.

79. *Id.*

80. Moon purchased $80,000 worth of stock for himself with the funds from one of the Chase Manhattan Bank accounts. He also loaned a Unification Church organization (HSA-UWC) $175,000 of which only $70,000 was repaid to him. HSA-UWC deducted the balance as a personal contribution to Moon. For more detail and additional examples of Moon's usage of the property at issue, *see id.* at 1220-22.

fication Church rather than its form, the appellate court rejected defendant's Messiah argument.

The Second Circuit did not analyze Moon's religious objections in terms of traditional free exercise protection. It did not apply the *Sherbert/Yoder* balancing approach or discuss the validity of Moon's objections in light of *United States v. Lee*. Nevertheless, in effect, Moon's interest in free exercise protection of this church's autonomy was pitted against the federal government's compelling interest to collect revenues. Under *Lee*, the government's interest must prevail.[81] By focusing on some of the limitations on the Free Exercise Clause, the Second Circuit rejected Moon's arguments and implicitly determined that his belief regarding the use of church funds was not "rooted in religion."[82] This result is consistent with traditional free exercise protection.

IV. Conclusion

One scholar has proposed that: "When the state interferes with the autonomy of a church and particularly when it interferes with the allocation of authority and influence within a church, it interferes with the very process of forming the religion as it will exist in the future."[83] The Supreme Court has not yet passed on a claim where the government interfered with the autonomy of a church to such an extent as to affect the future structure of that religion, but it has recognized a right to church autonomy in a series of cases involving disputes over church property, church organization, and entitlement to ecclesiastical office.[84]

However, if one asks whether Moon's conviction for tax fraud will affect the Unification Church as a religion in the future, the answer seems

81. *Lee*, 455 U.S. 252 (1982).

82. *Thomas v. Review Board*, 450 U.S. 707, 713; *see also supra* note 53 and accompanying text.

83. Laycock, *supra* note 17 at 1388.

84. *See* Jones v. Wolf, 443 U.S. 595, 595 (1979).

In Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976), the Illinois Supreme Court had set aside a church diocese's decison to defrock one of its bishops. The Illinois court concluded that the defrockment was "arbitrary" because it did not comport with the church's constitution or penal code. In addition, the Illinois court determined that a reorganization of the diocese was invalid because it was done without approval of the mother church.

The United States Supreme Court reversed the Illinois court on the ground of church autonomy: "[T]he Illinois Supreme Court relied on purported 'neutral principles' for resolving property disputes which would 'not in any way entangle this court in the determination of theological or doctrinal matters.' Nevertheless the Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest eccesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid." *Id.* at 721 [citations omitted]. *See also* Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952) (religious freedom encompasses the "power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine").

to be an obvious "no." Although the church's financial structure might change, Moon's followers are still free to believe Moon personifies their religion. Moon and the Unification Church members may continue to regard Moon as the spiritual embodiment of their church; only when Moon acts as the financial embodiment of the church does he run afoul of the Internal Revenue Code and thus fall outside the scope of protection afforded by the Free Exercise Clause. Thus, the *Cantwell* balance is preserved.[85]

As noted earlier, Tribe would extend the autonomy accorded to intra-church disputes to include disputes between the government and a unified church.[86] By denying certiorari, the Supreme Court avoided expanding the *Jones* "neutral principles" approach. It also avoided applying the *Sherbert* balancing test, as refined by *Yoder* and *Thomas*,[87] to assess Moon's First Amendment challenge. The Supreme Court's elected silence suggests that the overriding governmental interest to collect revenue outweighs an individual church's right to allocate property however it chooses. As a general principle, "churches are being called upon to reveal more about their finances and to subject their property holdings, investments, and solicitation procedures to more stringent public scrutiny."[88] Many religious groups fear that by imposing this higher level of scrutiny, the government improperly impinges the free exercise of religion.[89]

It is questionable whether the drafters of the First Amendment intended the Free Exercise Clause to protect religious groups from Internal Revenue Service scrutiny. According to one scholar, the authors "were willing to take a calculated risk rather than give the government the responsibility of investigating, supervising, and—in consequence—sponsoring and controlling, the practitioners of religion."[90] Yet the First Amendment Framers never intended that the right to religious free exer-

85. *See supra* note 40 and accompanying text.

86. *See supra* notes 21-24 and accompanying text.

87. *See supra* notes 47-53 and accompanying text.

It is interesting to note that the balancing test developed in a series of cases involving established religions with long histories of practice in the United States–Seventh Day Adventists in *Sherbert*, Old Order Amish in *Yoder* and Jehovah's Witness in *Thomas*. Although the Unification Church has been recognized as a bona fide religion, *see supra* note 5, it has not been accepted as an established religion. *Cf.* United States v. Moon, 718 F.2d 1210, 1242 (2d Cir. 1983) (Oakes, J., dissenting) (urging that the Unification Church Movement is religious "regardless of what the observer may think of its views or even its motives").

88. Schwartz, *Limiting Religious Tax Exemptions: When Should the Church Render unto Caesar?*, 29 U. FLA. L. REV. 50, 51 (1976).

89. The following organizations submitted amicus briefs in support of Moon to the U.S. Court of Appeals: National Council of the Churches of Christ; American Baptist Churches; United Presbyterian Church; African Methodist Episcopal Church; Center for Law and Religious Freedom of the Christian Legal Society; Unitarian Universalist Association; National Black Catholic Clergy Caucus; American and New York Civil Liberties Unions.

90. KELLEY, *supra* note 32, at 39.

cise be absolute. Nor could they anticipate the present public policy governing the payment of personal income tax. Accordingly, the Second Circuit determined that Moon did not merit First Amendment protection, and by denying certiorari, the Supreme Court tacitly agreed.