

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Individual Rights/Religion

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

Edna and Donald Ballard claimed to have paranormal abilities. Their "I Am" movement solicited funds by proclaiming, among other things, that "by reason of supernatural attainments," the Ballards had "the power to heal persons of ailments and diseases and to make well persons afflicted with any diseases, injuries, or ailments." The United States claimed these assertions constituted mail fraud "by means of false and fraudulent representations, pretenses and promises." The federal district judge at trial informed the jury that whether the Ballard's claims were "true or not is not the concern of this Court," that the only issue was "[d]id these defendants honestly and in good faith believe those things." The jury convicted the Ballards. The Court of Appeals for the Ninth Circuit reversed the trial verdict on the ground that the judge should have instructed the jury that whether the Ballards spoke truly was an issue in the case and that the Ballards should have been allowed to present evidence that their assertions were true. The Ballards appealed to the Supreme Court of the United States, claiming that having a jury determine whether their beliefs were true violated the First Amendment.

The Supreme Court by a 5-4 vote declared that the Ballards were unconstitutionally convicted. Justice Douglas's majority opinion maintained that juries may not consider the truth or falsity of religious claims. Ballard raises two questions. First, should persons be required to prove their religious convictions are true? Second, should persons be required to prove that their religious convictions are honestly held? Was Justice Jackson right when he suggests that juries are likely to find that what appear to be strange religious beliefs are not honestly held? How did Justice Douglas and Stone respond to that claim? Note that Jackson's dissent may be more attractive in the case of mail fraud than when other free exercise claims are on the table. The Ballards' victims could presumably decide for themselves whether the Ballards had paranormal abilities. Must the state also presume good faith when persons are asking for exemptions from general laws? Should a professor always assume that a student is telling the truth when they claim religious reasons for missing class?

JUSTICE DOUGLAS delivered the opinion of the Court.

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... [W]e do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. 'The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.' ... The First Amendment has a dual aspect. It not only 'forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' *Cantwell v. State of Connecticut* (1940). ... 'Thus the Amendment embraces two concepts, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be.' Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *West Virginia State Board of Education v. Barnette* (1943). ... It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. 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. Many take their gospel from the New Testament. But it would hardly be supposed that they

could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. 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. . .

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The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

CHIEF JUSTICE STONE, dissenting.

I am not prepared to say that the constitutional guaranty of freedom of religion affords immunity from criminal prosecution for the fraudulent procurement of money by false statements as to one's religious experiences, . . . more than it renders polygamy or libel immune from criminal prosecution. . . . I cannot say that freedom of thought and worship includes freedom to procure money by making knowingly false statements about one's religious experiences. To go no further, if it were shown that a defendant in this case had asserted as a part of the alleged fraudulent scheme, that he had physically shaken hands with St. Germain in San Francisco on a day named, or that, as the indictment here alleges, by the exertion of his spiritual power he 'had in fact cured . . . hundreds of persons afflicted with diseases and ailments', I should not doubt that it would be open to the Government to submit to the jury proof that he had never been in San Francisco and that no such cures had ever been effected. In any event I see no occasion for making any pronouncement on this subject in the present case.

The indictment charges respondents' use of the mails to defraud and a conspiracy to commit that offense by false statements of their religious experiences which had not in fact occurred. But it also charged that the representations were 'falsely and fraudulently' made, that respondents 'well knew' that these representations were untrue, and that they were made by respondents with the intent to cheat and defraud those to whom they were made. With the assent of the prosecution and the defense the trial judge withdrew from the consideration of the jury the question whether the alleged religious experiences had in fact occurred, but submitted to the jury the single issue whether petitioners honestly believed that they had occurred, with the instruction that if the jury did not so find, then it should return a verdict of guilty. On this issue the jury, on ample evidence that respondents were without belief in the statements which they had made to their victims, found a verdict of guilty. The state of one's mind is a fact as capable of fraudulent misrepresentation as is one's physical condition or the state of his bodily health. . . .

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JUSTICE ROBERTS and JUSTICE FRANKFURTER join in this opinion.

JUSTICE JACKSON, dissenting.

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The Ballard family claimed miraculous communication with the spirit world and supernatural power to heal the sick. They were brought to trial for mail fraud on an indictment which charged that their representations were false and that they 'well knew' they were false. The trial judge, obviously

troubled, ruled that the court could not try whether the statements were untrue, but could inquire whether the defendants knew them to be untrue; and, if so, they could be convicted.

I find it difficult to reconcile this conclusion with our traditional religious freedoms.

In the first place, as a matter of either practice or philosophy I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience. Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen. How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.

In the second place, any inquiry into intellectual honesty in religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. . . . If religious liberty includes, as it must, the right to communicate such experiences to others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him.

And then I do not know what degree of skepticism or disbelief in a religious representation amounts to actionable fraud. . . . Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credulity than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.

There appear to be persons—let us hope not many—who find refreshment and courage in the teachings of the 'I Am' cult. If the members of the sect get comfort from the celestial guidance of their 'Saint Germain,' however doubtful it seems to me, it is hard to say that they do not get what they pay for. Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is wide variety in American religious taste. The Ballards are not alone in catering to it with a pretty dubious product.

Prosecutions of this character easily could degenerate into religious persecution. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt.