

BOOK REVIEWS

Faith or Fraud: Fortune-Telling, Spirituality, and the Law

JEREMY PATRICK

UBC Press, Vancouver, 2020, 270 pp (paperback £20.99),

ISBN: 978-0-7748-6333-9

When this book landed on my desk, I could not resist the temptation to review it. It seems that years of supervising undergraduate legal history projects on Helen Duncan—the Scottish medium who was the last person ever to be imprisoned under the Witchcraft Act 1735—have left their mark. So, too, have idle ponderings about law's attitude towards religion and the behaviour of judges when confronted with the necessity to engage with it. This book, which addresses both the history of laws against fortune-telling in different common law jurisdictions, and shifting legal understandings of religion and religious freedom, inevitably tickled my fancy. It constitutes both a legal history of bans on, and regulation of, fortune-telling and spiritual counselling, and a consideration of freedom of religion at the margins, interwoven with a treatment of our rather tangled and often inconsistent attitudes towards the occult.

The first five chapters of the volume are devoted to an introduction to fortune-telling, followed by studies of its legal suppression and regulation in four jurisdictions with a shared common law heritage—England, Canada, Australia and the United States. The first chapter explores the long and diverse history of fortune-telling, the different types of activities it encompasses, key terminology and definitions. It begins the articulation of society's rather contradictory attitudes towards fortune-telling and the occult, noting that this runs from the stern injunctions against it in Leviticus and Deuteronomy, to oft-repeated concerns about the perpetration of frauds against the gullible or vulnerable, to an attitude which is dismissive of its significance and takes a light-hearted approach to it as a form of popular entertainment. Whatever approach is taken, however, it is impossible to deny either the immense popularity of fortune-telling or its significance in the lives of many of those who participate in and practice it.

Having set the scene in this way, the next four chapters trace the legal treatment of fortune-telling in the four chosen jurisdictions. England, the jurisdiction whose legal regime is the starting point for the regimes of the other countries chosen, is examined first. Two strands of regulation or treatment are identified: the vagrancy laws, aimed at preventing fraud, idleness and annoyance to pedestrians, and witchcraft laws, concerned with preventing harm to the lives and souls of Christians. Key questions are set up here which echo across

the remaining pages of the book. Is it necessary for there to be an intention to deceive? Is a professed belief in fortune-telling evidence of an intention to deceive? Is there a defence available to those who sincerely believe in what they are doing? Is fortune-telling purely for the purposes of entertainment exempt from regulation? The approach in England, as elsewhere, has not been consistent.

The next jurisdiction to be considered is Canada, where witchcraft and fortune-telling were specifically included in the 1892 Criminal Code, and where a federal ban on fortune-telling has only recently been removed. Here, as in other jurisdictions, key questions have been whether fraud or intention to deceive is a necessary element of the offence, whether the taking of money automatically makes the behaviour fraudulent, whether the genuine believer is protected and whether there is such a thing as a genuine believer in this context. While in Canada the ban on fortune-telling was a federal matter, in Australia it has always been a state question. However, as Chapter 4 reveals, many of the questions and issues remain the same.

Chapter 5, which deals with US law, provides the most extensive treatment of the legal restriction and regulation of fortune-telling. This is justified on the basis that the US has a more extensive body of jurisprudence than the other jurisdictions, and that this jurisprudence is both 'deeper and more varied' and 'less coherent' (p 74) than that found elsewhere. The author divides the treatment of that jurisprudence into three overlapping eras. The first, which spans the 1800s to the 1940s, is the criminal law era in which judicial treatment was concerned predominantly with the components of the offences prohibiting fortune-telling. The second, extending from the late 1930s to the 1970s, was the state constitution era and was largely concerned with technical challenges to state and municipal bans. The third era was that of the federal constitution, running from the mid-1980s. It is here that issues of freedom of speech and freedom of religion come to the fore. It is noted that claims under freedom of speech have been rather more fruitful than those based on freedom of religion, and that, though the general trend has been towards decriminalisation—favouring regulation rather than prohibition—judges have typically been reluctant to see fortune-telling for a fee as a genuine and protected religious observance. In general, freedom of religion claims have foundered on the rocks of institutionalised and hierarchical understandings of religion, and on a judicial insistence that individuals should prove a religious obligation to act in the way in which they did. The discussion here sets the scene for the final chapters of the book.

Chapter 6 turns its attention to gathering together the themes to be drawn out of the jurisdiction-specific treatments set out in the preceding four chapters. It groups them under four headings: elements and judicial treatment of traditional offences; the effects and effectiveness of bans on fortune-telling; justifications

for the protection of fortune-telling and spiritual counselling; and justifications for bans of those activities. In respect of the first of these it notes that, wherever there have been legislative bans on fortune-telling, the *mens rea* of the offence has been vague and judges have been required to exercise their discretion. In general, they have either adopted an approach akin to strict liability or, in contrast, required some element of fraud, or recognised something like a defence of genuine belief. The approach taken has, unsurprisingly, depended upon perceptions of the harm caused by the activity, attitudes towards the credibility of individual mediums and broader policy considerations.

Turning his attention to the effect of bans on fortune-telling, the author notes that these have manifestly failed, that they have a problematic and significant impact on the lives and religious practice of those who engage with spiritualist acts, and that historically they have had troublingly racialised and gendered impacts. Further, Patrick argues, fortune-telling and spiritual counselling are valued by many within society as a source of personal support or comfort, as a source of spiritual connectedness and meaning, or as a form of entertainment. They should, as such, be protected, notwithstanding the religious opposition to fortune-telling, and the concerns about fraud, nuisance and public order, which have historically justified their prohibition.

In the final chapter Patrick moves to a consideration of the protection (or not) of spiritual counselling and fortune-telling under the right to freedom of religion. This takes the discussion away from the narrow focus on fortune-telling and links to the book's broader aim, which is to consider how judges should deal with the mass of people in modern society who describe themselves as being 'spiritual but not religious' – those, in other words, with sincerely held personal belief systems which are not traditional in character, but which are not purely secular. The author notes that the approach taken by judges has nowhere been satisfactory. They deal with three questions: is the belief sincerely held, is it religious in character and is the right claimed legitimately restricted by societal or governmental concerns? This is all well and good but how, precisely, are the courts to determine sincerity? Further, legal definitions of religion are notoriously difficult.

Patrick concludes that the law should protect those who are spiritual but not religious, but that legal definitions of, and approaches to, religion fail to do this because they are out of step with what the sociology of religion tells us about contemporary experiences of religion and faith. To this extent, traditional legal protections of the freedom of religion are a dead letter. The legal treatment of fortune-telling, and of spiritual counselling, is but one example of this. Courts have taken an overly hierarchical and institutional view of religion in considering their protection, and they have singularly failed to deal successfully with the protection of a spiritualist practice which is underpinned by essentially fluid notions of personal faith spanning a huge diversity of beliefs.

On one level it would be easy to dismiss this book as being of only rather niche interest—concerning itself with the legal regulation of a practice to which many of us would pay scant serious attention. It is, however, a thought-provoking read which could provide the catalyst for much further work. It provides a wonderful opportunity to confront our attitudes towards ‘New Age’ faith and to modern manifestations of faith which are intensely personal and individualised—taking different elements from a sort of buffet of faith options. It also helps us to see the legal challenges in this, and to consider why, and how, the law should respond, and the consequences of that response. All this is done in the context of tantalising glimpses of other topical issues around the transmission of legal ideas within the common law world.

CHARLOTTE SMITH
University of Reading
doi:10.1017/S0956618X21000454

Jesus and the Church: The Foundation of the Church in the New Testament and Modern Theology

PAUL AVIS

T&T Clark, London, 2020, Theological Foundations of the Christian Church 1, xiv + 235 pp, (paperback £28.99) ISBN: 978-0-5676-9749-3

This volume by Avis, eminent ecclesiolgist and long-term ecumenist, marks the start of a projected multi-volume series in a ‘quest for the true foundation of the Christian church’ (p x). Intended as an ecumenical, practical and missional theology contributing to the repentance and reform of the current Church, it is the fruit of more than three decades of reflection.

Future works promise discussion of revelation, ministry, sacraments, liturgy and authority. This volume deals with just two questions. First, did Jesus intend to found the Church and, if so, in what form? Second, how did New Testament writers and Western theologians in the last two centuries understand the relationship between Jesus and the Church? While exploring these questions, Avis makes bold pledges to extricate the gospel from a superseded eschatological world-view; promises to bridge the gaps between the historical Jesus and the Christ of faith, between Judaism and Christianity, and between institutional authority, tradition and academic critique; and to offer advice on how Christians should respond to the often-painful question of change and development within the Church. Most of these topics are indeed touched upon, some in detail. Though there is a recurrent attempt to avoid portraying the Church as superseding God’s covenant with Israel, the question of how Christianity should now relate to Judaism is not discussed.