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RELIGIOUS CHARITIES IN THE AMERICAN LAW

BY CARL ZOLLMANN*

The recognition of religious as distinguished from eleemosynary and educational charities in this country of religious liberty is attended with little difficulty. Both eleemosynary and educational charities are being more and more taken over by the state and are thus assimilated to charities conducted by the state itself. The situation is entirely different in regard to religious purposes. In this important field the development is in the opposite direction. Religious activities have been in America divorced from state control by constitutional provision, statutory enactments, court decision, and the general course of our history. The separation of state and church which has resulted is one of the chief outstanding characteristics of our institutions. While therefore religious purposes are universally recognized in America as charitable, they stand by themselves distinct from the other

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great charities, since the state cannot lawfully conduct them itself.

Very little light is thrown on religious charities by the statute of Elizabeth. Though most of the charities of the middle ages were of a religious character the reference to them in the statute is surprisingly scanty. “No kind of charitable trusts finds less support in the words of the St. of 43 Eliz. than the large class of pious and religious uses, to which the statute contains no more distinct reference than in the words ‘repairs of churches.’” It has been said that this omission was intentional, in order to avoid confiscation in case the reformation went backward. Whatever the reason may be it cannot admit of any doubt that “pious and religious uses are clearly not within the strict words of the statute, and can only be brought within its purview by the largest extension of its spirit.”

Such extension, however, has been made and religious uses recognized from the earliest period of our history.

The reason why religious gifts are recognized as public charities is not far to seek. “Surely in a Christian country like ours, it is not against public policy, or the spirit of our laws, for a man to donate to trustees, a lot of ground, to be held and appropriated by them and their successors, in perpetuity, for the use and benefit of a religious denomination as a place of worship.” Philanthropy and benevolence are incident to most, if not all, religions in the world, and as naturally accompany the practice of the Christian Religion as pure thoughts and pure deeds flow from pure hearts.

Every Christian Church has therefore been said to be a “hospital for souls,” while religion itself has been said to be but part and parcel of charity for the purposes of jurisprudence. The more truly religious therefore a person is the more desirable will he be as a citizen. Religion is the surest basis on which to rest the superstructure of social order though not every religious creed in its

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4 1887 Washburn College v. O'Hara, 75 Kan., 700, 703; 90 Pac. 234.
6 1905 Rice v. Tweatt, 74 Ark. 545, 549, 550; 86 S. W. 432.
10 1912 Strothers v. Barrow, 246 Mo. 241, 252; 151 S. W. 960.
11 1912 Strothers v. Barrow, 246 Mo. 241, 249; 151 S. W. 960.
practical results is equally beneficial to man.\textsuperscript{11} Says the Ohio court: "The uplifting of men, women and children to the standard of life taught in the Scriptures is indeed a work of charity, the greatest of the Christian graces."\textsuperscript{12} Since piety is thus universally recognized as a valuable constituent in the character of our citizens "the general law must foster and encourage what tends to promote it. In legal estimation, it must be viewed, as what is not only estimable in itself, but as an appurtenance to the characters of individual citizens, of great value to society, for its tendency to promote the general weal of the whole community."\textsuperscript{13} The spiritual interest of a certain population is clearly a charitable purpose.

The high value of religion to the state is not the only reason why pious uses are recognized. Religious societies not being supported by the state are dependent on the contributions of individuals. The law therefor must consider such contributions as in a peculiar degree charitable.\textsuperscript{14} Religious uses are also strictly analogous to other charitable trusts in the important particular of indefiniteness of beneficiaries. The individuals who attend the services of any particular church are not limited to its members, but are an indefinite and varying number of persons benefited by having their minds and hearts brought under the influence of religion.\textsuperscript{15}

What is a religious purpose within the meaning of this chapter is not easily determined. There are in this country not only a multitude of Christian denominations but also beliefs such as the Jewish and Mohammedan which are clearly beyond the pale of the Christian Church. There can be no question but that the maintenance of religious services in accordance with the views of any Christian denomination in America is a public charitable purpose.\textsuperscript{16} Such large denominations as the Roman Catholic,\textsuperscript{17}

\begin{footnotes}
\item[13] Ibid.
\item[15] 1898 \textit{Appeal of Mack}, 71 Conn. 122, 135; 41 Atl. 242.
\end{footnotes}
the Presbyterian, the Baptist, the Methodist, and the Christian, churches and the society of Quakers, have thus been recognized. The same is true of smaller bodies such as communistic societies, the cause of "fire baptized holiness work," a "Christ Doctrine Revealed and Astronomical Science Association," Mormonism, Christian Science, and the Salvation Army. The latter has therefore been designated as a unique, picturesque and successful departure from older methods of dealing with the depressed, debased and criminal elements of society and as an important and efficient agent of uplift and betterment. A devise for the promotion and extension of Christian Science will therefore not be held void because that religion includes a system of faith-cure for disease and is in a measure a business carried on for profit. While the question of the charitable nature of Jewish Synagogues and Mohammedan Mosques has not come up for consideration it will not admit of any doubt that the "Catholic or Protestant, the Jew or Mohammedan, may here associate for the purpose of enjoying their particular religious tenets, build churches, monasteries, synagogues or mosques, and are equally entitled to the protection

1884 Andrews v. Andrews, 110 Ill. 223, 231; 1913 Succession of Villa, 132 La. 714, 722; 61 So. 765; 1853 Williams v. First Presbyterian Society, 1 Ohio St. 478, 590.
1905 Wood v. Fourth Baptist Church, 26 R. I. 594; 61 Atl. 279.
1834 Gass v. Willhite, 32 Ky. (2 Dana) 170; 26 Am. Dec. 466.
1913 In re Budd, 166 Cal. 286, 291; 135 Pac. 1131.
of the law. Such protection has accordingly been accorded in a recent Nevada case to a Chinese Joss House.

It is a fact though a matter of regret to many that religious life here as well as elsewhere runs largely in denominational molds. A man or a woman is ordinarily a Methodist, Baptist, Presbyterian, or Lutheran first and Protestant only in the second place. While it has been held that a gift to aid all the religious societies of a certain city creates a valid charity, and that since all churches have at bottom the same purpose—the cure of souls—the transfer of church property from one denomination to another is not an abandonment of a charitable use, while it is true that where property by a charitable foundation is devoted to the holding and teaching of prescribed opinions which in the course of time have completely passed away as a living force a premium is placed on possession without belief and a corrupting instead of a beneficent instrument is created, the great weight of authority points in the opposite direction. The reason is to be found in the extreme difficulty experienced in attempting to uphold charities to religious uses which cover more than one denomination. Such gifts are very, very vague. There are many kinds of religions and religious people are generally very particular about the kind. What is religion to one is superstition to another. If all the various religions are included the testator's intention is impossible of execution and if only a few are covered it is unascertainable. A religious charity like other charities must be to some definite purpose. A gift "in which no part of the Christian world has any property legal or equitable; which no one has a right to manage or preserve, and in which the court would, perhaps, be daily called on to regulate the uses of the buildings, which the various sects would endeavor to concentrate, each one in itself" is not sufficiently specific to be enforced. A direction to invest the gift "in building convenient places of worship, free for the use of all Christians who acknowledge the divinity of Christ, and the necessity of a spiritual regeneration," is therefore void.

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24 1894 Phillips v. Harrow, 93 Iowa 92, 103; 61 N. W. 434.
25 1912 Strothers v. Barrow, 246 Mo. 241, 252; 151 S. W. 960.
26 1907 Hadley v. Forsee, 203 Mo. 418, 428; 101 S. W. 59.
27 1881 Simpson v. Welcome, 72 Me. 496, 499; 39 Am. Rep. 349.
30 Ibid.
Since gifts to be valid must be made to some particular denominational use the fact that they are so made is no objection to them. In fact such gifts have almost universally been made "with a particular view to some associated body of Christians."\(^{40}\) The fact that all religions are tolerated in this country certainly does not invalidate a gift\(^{41}\) to support the ministry of a particular denomination.\(^{42}\) Where therefore a building has been built as a Presbyterian Church the trust is breached by a transfer of it to a Methodist Congregation.\(^{43}\) A Lutheran School built by the contributions of Lutherans and others cannot, over the protest of the Lutherans, be taken over by the latter.\(^{44}\)

It is unlikely that a person will give property to any other church than his own. A denominational purpose may therefore be implied from the denominational connections of the donor.\(^{46}\) While evidence of the religious opinions of the founder is inadmissible to vary the terms of the written declaration of trust\(^{46}\) courts will not "interfere with the application which a trustee has made of a fund given to a religious use, upon the ground that the donor intended to limit the application of the fund to the support of different theological opinions, unless the intention to exclude the opinions to the support of which the fund has been applied, has been plainly expressed by the donor."\(^{47}\)

It has been seen that the only charity of a religious character mentioned in the statute of Elizabeth is the "repair of churches." It follows irrefutably that "a gift for the repair of a church, in the modern sense of that word, as a place for public worship, open to everybody and established for the promotion of religion and morality among all people, whether regularly connected with its ecclesiastical organization or not, is a charity."\(^{48}\) Such charities, however, are not limited to the repair of existing churches but extend to the erection of new places of worship which purpose is within the spirit of the statute.\(^{49}\) The support and propagation of religion including as it does gifts for the erection, maintenance and repair of church edifices are therefore

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\(^{40}\) Baker v. Fales, 16 Mass. 488, 506.

\(^{41}\) In re Hinkley, 58 Cal. 457, 512.

\(^{42}\) 1902 Eliot's Appeal, 74 Conn. 586, 604; 51 Atl. 558.

\(^{43}\) 1857 Ludham v. Higbee, 11 N. J. Eq. (3 Stockt.) 342.

\(^{44}\) 1884 Busby v. Mitchell, 23 S. C. 472.

\(^{45}\) 1875 Schmidt v. Hess, 60 Mo. 591.


\(^{48}\) 1912 Chase v. Dickey, 212 Mass. 555, 566; 99 N. E. 410.

charitable purposes. As a practical proposition the repair of old churches and the erection of new churches are not kept apart in the minds of the donors and are indiscriminately treated by the courts as valid charities. The same holds good in regard to ministers’ homes or parsonages, but is not confined to them. Clergymen must be supported as well as housed. Such support is one of the greatest financial burdens born by the various denominations. Gifts whether they are made generally for the support of religious services or specially for the support of the ministering clergymen or for the support of a course of sermons to be preached annually in a certain chapel, therefore create valid charities. So do gifts for the support of a bishop where such a dignity is essential in the opinion of the church to its organiz-


tion for the support and maintenance of the wornout preachers of a certain denomination and for the building of a convent at a certain place. Such a trust established in 1817 to be paid to "the minister of the Congregational persuasion" regularly ordained and stately preaching in a certain society is not breached though the minister to whom such payment is made is a Unitarian.

Church purposes are not merely religious in the strict sense of the word but also educational. If a church is not to pass out of existence it must educate its younger generation so that when the older generation has passed away there will be a body of men and women to take its place. The purpose has been accomplished in this country through Parochial and Sunday Schools which in consequence are both recognized as charities. Despite the prejudice which exists in certain quarters a Parochial School will be considered as germane to the purposes of a church corporation. Such a school has been held to be clearly within the statute of Elizabeth and to be an unquestionable charity. It follows that such an institution whether it is a day school or a Sunday School is an institution combining religious with educational features to which a charitable gift may well be made. Such gifts may be limited to the promotion and advancement of the educational interests of a certain designated church to its Sabbath School library to the purchase of Sunday School Books and to the purpose of rewarding pupils of the school for special merit. Where, however, the purpose is merely to make

56 1829 Bishop's Fund v. Eagle Bank, 7 Conn. 476, 478.
57 1900 Hood v. Dorer, 107 Wis. 149, 153; 82 N. W. 546.
58 1881 Hughes v. Daly, 49 Conn. 34.
60 1894 Hanson v. Little Sisters of the Poor, 79 Md. 434, 438; 32 Atl. 1052; 32 L. R. A. 293.
67 1895 In re Bartlett, 163 Mass. 509, 517; 40 N. E. 899.
While there are some small denominations which manage without a trained ministry it is generally admitted in this day of specialization that a clergy educated for its particular task is desirable if not essential. The response to such a need from the well to do, however, is insufficient to meet the needs of the situation. In consequence it becomes necessary to educate young men of little or no means for this purpose. If the financial difficulties in the way are to be overcome charity must intervene to enable such young men to finish the prescribed course and prepare themselves for their mission. This accordingly is being done in probably all denominations of any consequence. There can be no question but that such assistance constitutes a valid charity whether it is viewed from its religious or educational side. It has accordingly been upheld by the courts where it had taken the form of a donation in trust.

Religious purposes are not confined within the narrow boundaries of individual congregations or within the wider limits of conferences, synods, dioceses, yearly meetings and other similar church bodies. They literally encircle the globe. The words of Christ "Go ye therefore and teach all nations" are as imperative to-day as they were in the days of the apostles. Missions are therefore recognized as charities for the purpose of civilizing, christianizing, and educating the less fortunate inhabitants of this and foreign countries, and are indisputably within the realm of public charities. "The propagation of the Christian religion whether among our own citizens or the people of any other nation, is an object of the highest concern, and cannot be opposed to any general rule of law, or principle of public policy." Since the

1878 Goodell v. Union Ass'n of Children's Home, 29 N. J. Eq. (2 Stew.) 32, 35.

courts will aid and enforce a gift to maintain a single church building they will also enforce a gift for the further extension of the influence of the Christian Religion among the whole human race in this and foreign countries." "There is no quarter of the globe, at home or abroad, which has not been penetrated by mission workers sent by Christian Churches to propagate the Gospel and ameliorate human suffering. These emissaries form a body of workers which reaches an indefinite public. A gift to them or to support their efforts is therefore, in the strictest sense, within the definition of a public charity."

The instruments through which this work is carried on are many and varied. There are missionary societies large and small, boards of missions, church extension funds, Bible and Tract Societies and the like. All these bodies are merely means to an end and are charitable in their very nature. Gifts to the board of missions or to the missionary committee of a certain church, to its home and foreign mission, to its missionary society, to its church extension fund or missionary cause, to its African or Japanese Mission or for the purpose of more effectually promoting and extending the religion of Christian Science, have therefore been upheld as religious charities.

Such gifts, however, need not be general but may be confined to some of the many needs of these missionary enterprises. Schools both elementary and advanced are among the most potent

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7 1802 Bruere v. Cook, 63 N. J. Eq. 624, 627; 52 Atl. 1001.
7 1816 Cummings v. Dent, Mo. 189 S. W. 1161.
7 1848 Lewis v. Lusk, 35 Miss. 401, 421; 1902 Bruere v. Cook, 63 N. J. Eq. 624, 629; 52 Atl. 1001.
7 1913 Hitchcock v. Board of Home Missions, 259 Ill. 288, 102 N. E. 741, Reversing 175, Ill. App. 87; 1851 Dickson v. Montgomery, 31 Tenn. (1 Swan.) 348, 369.
7 1890 Sprowl v. Blankenbaker, Ky. 127 S. W. 496.
7 1915 Rust v. Evenson, 161 Wis. 627; 155 N. W. 145; 1912 Greer v. Synod Southern Presbyterian Church, 150 Ky. 155; 150 S. W. 16.
7 1858 Appeal of Domestic and Foreign Missionary Society, 30 Pa. (6 Casey) 425, 433.
instruments at the command of missionaries. Elementary schools bring the religious message direct to subjects of the mission and prepare the future native teachers and preachers for more advanced courses. Gifts confined to such an educational purpose are therefore charitable without a question. The same holds good in regard to homes created to care for returned, needy and worthy missionaries worn out by their labors and unfavorable climatic conditions. Unless some such provision were made the difficulty of obtaining missionaries might be increased to a prohibitive degree. Nor should the importance of Bible and Tract Societies be overlooked. They are of the utmost importance in the prosecution of all missionary work and in fact furnish the very foundation for it and are therefore properly classed as charitable.

Opportunities for missionary work are very close at hand. Every city of any size furnishes a great field for it. "No city is so crowded with houses of worship that in the opinion of the adherents of some sect or denomination there is not a call for more." A gift to the mission of a certain church or for a mission chapel or for the support of a city missionary are therefore valid charitable gifts. "No uses can be more distinctively religious than the establishment of a mission church." A church therefore has the power to devote its unappropriated resources to the aid of other domestic and foreign churches, missions or other religious purposes.

The doctrine of superstitious uses evolved in England during the time of the reformation and aimed particularly against Catholics.

88 1910 Boardman v. Hitchcock, supra. 1908 In re Peabody's Estate, 154 Cal. 173; 97 Pac. 184.
90 1902 Eliot's Appeal, 74 Conn. 586, 603; 51 Atl. 558.
91 1915 Rust v. Evenson, 161 Wis. 627; 155 N. W. 113; 1878 De Camp v. Dobbins, 31 N. J. Eq. (4 Stew.) 671; affirming 39 N. J. Eq. 36, 53.
94 1902 Eliot's Appeal, 74 Conn. 586, 603; 51 Atl. 558.
95 1912 Chase v. Dickey, 312 Mass. 555, 562; 89 N. E. 410.
96 This doctrine had its inception in the statute of 23 Henry the Eighth, Chapter 10. See 2 Am. Dec. in Eq. 21.
though applicable also to Jews and dissenters rests on the fact that there was a state religion recognized and established whose purposes were deemed to be pious while the purposes of all other religions were deemed to be superstitious. This distinction has been applied with such stringency that a gift for the propagation of the doctrines of the Church of England in Scotland has been treated by an English chancellor as superstitious because the Presbyterian Church was settled in Scotland by act of Parliament. It was this distinction and the persecutions incident to it which induced the pilgrim fathers to come to America. "That religious in tolerance which infused itself through parliamentary enactments and judicial sentences, and which procured the law to anathematize differing creeds as 'superstition' or 'heresy' according as Catholic or Protestant gained governmental ascendancy, was, more than anything else, what our ancestors fled from." In consequence the doctrine of superstitious uses has therefore never had any foothold on this side of the Atlantic. "The disabilities of the English law upon the rights of conscience and freedom of worship, though imposed in many instances, did not become established as a part of our legal polity. The fierce struggle between ancient bigotry and growing liberality, though renewed and continued here, was not a struggle between an established order and a revolutionary and protesting force. It was a struggle to prevent, and not to uproot, a legally authorized ecclesiastical system."

What is thus historically true has become doubly certain by the course which events have taken in the United States. Both the Federal and State Constitutions contain provisions amply guarantying religious liberty and their spirit has been breathed into the state and federal statutes and is reflected in the judgments and opinions handed down by the various American courts. It has thus become the settled policy of all American legislation to allow all denominations "an equal right to exercise 'religious profession and worship,' and to support and maintain its ministers, teachers and institutions, in accordance with its own practice, rules and discipline." No discrimination can legally be made

97 1692 Attorney-General v. Guise, 3 Vern. 266.
100 1896 Christ Church v. Trustees of Donations and Bequests, 67 Conn. 554; 35 Atl. 552.
between different forms of worship. Courts as such have nothing to do with creeds or their orthodoxy. All denominations stand before them on the same footing and must be treated alike. Superstitious uses being opposed to the spirit of our institutions to "the spirit of religious toleration which has always prevailed in this country" are therefore not possible in America and can never gain a foothold so long as the courts cannot decide that any particular religion is the true religion. An attempt to make a distinction between pious and superstitious uses would be productive of a strange anomaly. Under a constitution which extends the same protection to every religion and to every form and sect of religion, which establishes none and gives no preference to any, there is no possible standard by which the validity of a use as pious can be determined; there are no possible means by which judges can be enabled to discriminate, between such uses as tend to promote the best interests of society by spreading the knowledge and inculcating the practice of true religion, and those which can have no other effect than to foster the growth of pernicious errors, to give a dangerous permanence to the reveries of a wild fanaticism, or encourage and perpetuate the observances of a corrupt and degrading superstition. The recognition which religion has obtained from common consent and legislative enactments as a valuable part of the institutions of America must prevent the courts from saying that any religious use is superstitious. It is neither for the legislature or the judiciary to say what is a pious and what is a superstitious use. To do so would be flying in the very face of the Great American doctrine of religious liberty.

The entire distinction between pious and superstitious uses has thus completely broken down in America. The consequence is that

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103 1883 In re Hagenmeyer, 12 Abb. N. C. 432; 2 Dem. Sur. 87, 90 (N. Y.); 1886 Appeal of Seibert, Pa.; 6 Atl. 105.
105 1832 Methodist Church v. Remmington, 1 Watts 219, 285; 36 Am. Dec. 61 (Pa.); 1910 In re Kavanaugh, 143 Wis. 90, 96; 126 N. W. 672.
107 1850 Andrew v. New York Bible and Prayer Book Society, Supra.
108 1844 Green v. Allen, 24 Tenn. (5 Humph.) 170, 188.
the ground over which religious trusts spread has been very much extended embracing every creed of religion and every institution calculated to promote it.  

No religion is either established or merely tolerated but all are protected. Hence the Protestant may devote his property to the spreading of the Bible, the Catholic to the endowment of monasteries, the Chinaman to the building of Joss Houses, the Jew to the publication of the Talmud and the Mohammedan to the relief of pilgrims to Mecca.  

No fear is felt that superstition will envelop and destroy the nation. Even if it were entertained it is recognized that statutes cannot successfully cope with the situation. An established religion outside of those born into its mold can result only in producing either martyrs or hypocrites. It is not the policy of the state to produce either. Reliance is therefore placed on public opinion rather than on statutes or constitutional provisions as a "protection against superstition."  

It remains to illustrate what has just been said by a prominent example. Subsequent to the reformation and prior to the toleration statutes trusts for masses were relentlessly hounded down in England as superstitious uses. By parity of reasoning they have been upheld in America and if declared void the decision has been put on different grounds. It is a general principle of American law that gifts for the observance of any ceremonial, the efficiency of which is recognized by the donors' church, will not be regarded as superstitious. The validity of a gift to masses certainly is "to be tested by the same principles that would be applied to a devise in aid of the religious observances of any other denomination."  

Before this test can be intelligently applied it is necessary to clearly understand what is meant by a mass. A mass has been said to be an act of public worship in celebration of the Eucharist a public and external form of worship constituting a visible action, a use not merely for the benefit of disembodied spirits  

11907 In re Lennon, 152 Cal. 327, 330; 92 Pac. 870; 1883 In re Hagemeyer, 12 Abb. N. C. 432; 2 Dem. Sur. 87 (N. Y.).  
11912 Ackerman v. Fichter, 179 Ind. 392, 402; 101 N. E. 493; 46 L. R. A. (N. S.) 221.  

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but also for the benefit of the living members of the church as well a public service by which according to the Catholic belief the priest who celebrates it helps the living and obtains rest for the dead, a ceremonial celebrated in open church where all who choose may be present and participate, a solemn and impressive ritual religious in its form and teaching from which many draw spiritual solace, guidance and instruction, a means of providing for the support of the clergy and of the church generally, a religious use which can be contracted for by a living person.

The religious doctrine on which this ceremonial is founded clearly does not conflict with or impair the rights and obligations of the state. Hence the right to devote property to its support is as sacred as conscience itself. Those who believe in the efficacy of prayer for the dead are entitled to the same respect and protection in their religious observances as those of any other denomination. Gifts for masses have therefore been upheld as religious observances whether they were made in terms to a priest, to a hospital, to a college, or to any other trustee, and though the donor intended to obtain some special benefit for himself. The fact that certain acts are believed to be vicariously helpful to souls in purgatory does not alter or

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118 1902 Coleman v. O'Leary, Supra.


120 1898 Hoeffer v. Clogan, Supra.

121 1912 Ackerman v. Fichter, Supra.


123 1898 Kerrigan v. Tabb, N. J.; 39 Atl. 701, 703.

124 1912 Ackerman v. Fichter, 179 Ind. 392, 404; 101 N. E. 493; 46 L. R. A. (N. S.) 221.


transform their actual character or nature or deprive them of their essential qualities of unselfishness and unpaid kindness and assistance to the poor and needy.\textsuperscript{131}

It is a deplorable fact that the states of Virginia, West Virginia, Maryland, New York, Michigan, Wisconsin, Minnesota and Mississippi have strayed or broken away from the English charity doctrine and that only New York, Michigan and Wisconsin have substantially returned to it. It has therefore been held in Minnesota\textsuperscript{3} and in Wisconsin, before that state had re-established the English charity doctrine,\textsuperscript{133} that gifts for masses are void on account of the indefiniteness of their beneficiaries. It is instructive to note that the Wisconsin case has been overruled after the Badger state had returned to the English charity doctrine.\textsuperscript{134} The same development has taken place in New York.\textsuperscript{135} In states, however, which still adhere to their peculiar doctrine, trusts for masses are cast down on the ground above stated. It has also been held in Missouri that a bequest for masses is for the financial benefit of the priest who says them and is void under a constitutional provision which forbids any bequest to “any minister.”\textsuperscript{136}

It must not be supposed that gifts for masses have uniformly been held to be void in the states mentioned in the preceding paragraph. The abolition of the English charity doctrine has not curbed the desire of the courts to uphold such gifts. Such a gift has been upheld in a New York case as an adjunct or concomitant of burial. Says the court: One testator may direct his whole estate expended in the pomp of a funeral pageant, a second in a monument to commemorate his name, a third in religious services for the benefit of his soul. It is a matter of taste and of religious faith.\textsuperscript{137} In the same state a gift to a priest for masses has been held not to be within the state mortmain statute.\textsuperscript{138} In other cases such a gift has been treated as merely creating a valid private

\textsuperscript{131} 1916 \textit{Helpers of the Holy Souls v. Law}, 267 Mo. 667; 166 S. W. 726.
\textsuperscript{132} 1903 \textit{Shanahan v. Kelly}, 88 Minn. 200; 92 N. W. 948.
\textsuperscript{134} 1910 \textit{In re Kavanaugh}, 143 Wis. 90, 98; 126 N. W. 672.
\textsuperscript{136} 1878 \textit{Schmucker v. Reel}, 61 Mo. 592, 602.
\textsuperscript{138} 1898 \textit{In re Zimmerman, Supra}.
trust. In a California case the court to save the gift from the mortmain statute has held that it lacks perpetuity and every other element of a charitable use, is not for the benefit of the public or a part of it, and is a bequest for the benefit of the testator only.

In Kansas a gift to a priest for masses has been upheld as a direct gift to the priest with advisory, persuasive, precatory words attached which merely enjoin on the donee’s conscience only, the duty of performing the sacred services named. A gift to the president of a college to be distributed equally among the clergy of said college for the purpose of having masses offered up for the repose of the soul of the donor has been upheld as a gift to the clergymen themselves.

A few additional holdings may well be referred to at this place. A request that services be held yearly at a church contemplated to be erected on testator’s farm for his soul has been held not to invalidate the devise of such farm. A bequest to be expended in masses for the testator’s soul has been construed as directing that the expenditure be made within a reasonable time. Under a bequest of $1,000.00 to be turned over by the executor to the pastor at a certain place for masses the court has ordered the whole sum to be turned over to such pastor. Property given to the successors of a priest for masses for his soul will not be turned over to an interloper not recognized by the church.

To sum up: While charities of a religious character are referred to in the statute of Elizabeth only under the words “repair of churches” they have been universally recognized both in England and America and have been held to cover in addition the erection of new churches, the general support of church work and the propagation of church faiths by educational and missionary endeavors. Their recognition as public charities, however, is attended with no little difficulties in the United States since state control of religion is forbidden by both the state and the federal constitutions while eleemosynary and educational charities are

140 1900 In re Lennon, 152 Cal. 307, 330; 92 Pac. 870.
141 1898 Harrison v. Brophy, 59 Kan. 1; 51 Pac. 883; 40 L. R. A. 721.
145 1886 Appeal of Seibert, Pa.; 6 Atl. 105.
146 1798 Browers v. Fromm, Add. 362 (Pa.).
more and more being taken over by the state, which fact is but a legitimate postulate of their public character. Despite this difficulty gifts to all the various denominations for the purposes of aiding them in their work have been universally upheld as valid charities resulting in an abandonment of the distinction between pious and superstitious uses which was once so prevalent in England. It follows that gifts for masses are valid charities in America.