Zeitschrift: Schweizerische Zeitschrift für Soziologie = Revue suisse de sociologie = Swiss journal of sociology

Herausgeber: Schweizerische Gesellschaft für Soziologie

Band: 24 (1998)

Heft: 1

Artikel: The sociologist of religion as expert witness

Autor: Wilson, Bryan

DOI: https://doi.org/10.5169/seals-814256

THE SOCIOLOGIST OF RELIGION AS EXPERT WITNESS

Bryan Wilson
All Souls College, Oxford

One of the consequences of the diversification of religions in contemporary society, has been the diffusion of ignorant and erroneous information about many new religions, and indeed, about many older sects. Apart from the sensationalist interests of the media, this incidence of misinformation is enhanced by the veiled competition that prevails among religions in pluralist contexts and, even more emphatically, by the exclusivist claims which have traditionally characterized Christianity, and which in some measure persist, tacitly if not overtly, among present-day Christian denominations.

This circumstance acquires enhanced importance not merely because of the concerns of some governments regarding minority religions, but also because of the increase of civil litigation in which the beliefs, practices, and organization of these various bodies are directly at issue. The actual beliefs of particular religious bodies constitute only part of what from time to time may become matters of public concern or sources of dispute between members of such movements, and information about the social implications of belief, and the social practice of each set of believers, may also be needed when political, legal, domestic or educational problems arise. When the sensitivity of this information, and its diversity, and often its subtlety, are taken into account, it will be evident that even scholarly expertise in this area is likely to be a relatively scarce commodity.

The courts, both in cases reflecting a public interest (such as whether a particular movement qualifies for charitable status; or whether it may legitimately advertise on television) or purely civil issues (such as disputes in which a disaffected parent claims that the religious beliefs of a spouse impair that partner's parental competence) need expert information about the sect in question. In consequence, there has been an increase in cases in which expert witnesses with scholarly credentials have been required to testify before the courts, particularly in countries inheriting strong elements of the Anglo-Saxon legal system. It is with respect to those countries that I address my remarks, most specifically to England.

In time past, when religious issues were disputed before the law in England, the courts were able to take the opinions of scholars who were recognized as experts because they were themselves church officials charged with

responsibility for the beliefs, practice, and social comportment of the members of their own church. Historically, of course, the legal agencies of the state and those of the established church in England were often closely related, and the remnants of that association are still recognizable and in some measure operative. Even today, that church has a qualified legal representative in each diocese, and he is charged with ensuring that local practice (in the matter particularly of church furnishings, vestments, and imagery) conform to what the law requires. Furthermore, the Church of England itself retains a quasi-legal apparatus, and, where there are infringements of the Church's moral demands, which, however, fall short of actual criminal malefactions that are indictable before secular courts (for example, in the matter of adultery), the Church may convene courts to discipline clergymen who transgress. All such judicial processes are conducted within the confines of the canon law and theological principles of the state religion, and are ultimately sustained by the convergence of the historical relationship of church and state as expressed in the law of the land. Those involved in such processes have readily been recognized as competent authorities, and in that sense as experts, with an expertise derived directly from their explicit commitment to the orthodox theology of the Church. Theology, like the law itself, is a normative discipline, and the principles of justice espoused in such ecclesiastical courts were an expression of a divine command morality concerning which those conducting legal and ecclesiastical disputes could claim to be accredited experts. Unlike those scholars called upon to expound the beliefs, precepts, practices, and social organization of minority religions (who were hardly ever members of those minorities) the officials acting in the ecclesiastical courts were not mere outsiders summoned to give testimony about a religious faith which they had studied but to which they did not belong: rather, they were authoritative agents who themselves sustained those practices and prescripts as part of their own commitment as believers and as religious functionaries.

Given contemporary pluralism, however, it is clear that an increasing incidence of religious disputes that concern the secular law are likely to be matters not so much to do with order and discipline within the established religious body, but with the social consequences in practice of the operation of minority faiths, the beliefs of which diverge from the old orthodoxy, and which sometimes challenge the assumed traditional moral order. In such matters, where dissenting and non-conforming movements are involved, the orthodox theologian is not only unqualified, but his very commitment to one particular denomination must engender doubts concerning his eligibility for the role of expert witness. He would, of necessity come to the court case with a certain *parti-pris*, and his evidence would reflect – or would be suspected of reflecting – principles drawn from his own religious tradition, and hence might be regarded

as potentially prejudicial to issues affecting other, alien or competing, religions. Indeed, in instances where the minority religion claimed to be "Christian", the orthodox theologian might have difficulty in treating it other than as a heresy, and such an approach would, in contemporary England, be unacceptable to the courts, and no doubt to informed public opinion. (It seems likely that it was precisely the difficulty of avoiding categorizing the Unification Church as a heresy which, in the early 1980s, induced the government to abandon its projected legal action to oblige the Charity Commissioners to remove that church from the list of registered charities.) Given that modern legal systems in pluralist societies are generally committed to the idea that all religions are equal before the law (a principle which, paradoxically, is often invoked by the courts in England, despite the existence of a church "by law established") the theologian *qua* theologian ceases to be an acceptable expert for legal purposes.

Since theologians may well be regarded as inadmissible as experts on religions other than their own, and since historians – even historians of religion – are generally unconcerned with contemporary developments in the social organization and activities of religious groups, the experts most likely to be called to give evidence are either comparative religionists or those social scientists who have devoted their research to contemporary minority religious bodies. Because comparative religionists have generally concerned themselves with texts, scriptures, beliefs, iconography, liturgy, and the like, and not usually with the social consequences of religious commitment, it is to the social scientists that modern courts have increasingly turned for authoritative testimony in respect of these bodies. Depending on the questions at issue, that recourse has been either to sociologists or psychologists. In the event, the very nature of psychological procedures has very often limited the access which scholars in this field can obtain to the workings of minority groups. Such groups are likely to be suspicious of any sort of investigation of their principles and practices, but most especially of investigations from psychologists whose very premiss for enquiry is the assumption that sectarians are in some measure psychologically abnormal. In general, this has often restricted research into minority or new religions by psychologists of religion to the study of ex-members of sects and minority movements. Not only does this dependence entail an ignorance of the collective aspects of sectarian life, but there is also good reason to doubt the reliability and impartiality of the testimony of ex-members of any movement. Apostates are notoriously suspect in that they generally seek to justify their earlier religious allegiance and their defection from it, and often do so by vilifying the movement which they have abandoned. Many apostates' accounts constitute "atrocity stories" of vulnerability, deception, exploitation, and coercion. Their testimony needs to be treated with circumspection, and at they very least by balancing evidence from active,

practising members of the same movement. It is just such balancing evidence which, because of sectarian suspicion of their procedures and their motives, is generally denied to the psychologist of religion. Sociologists, however, have fared better, and it is they who, from internal sources, and by historical analysis and comparative method have accumulated expertise on sects and new religious movements, which includes, as well as evidence of their appeal to converts and the circumstances in which conversions occur, an understanding of the cultural and structural aspects of such movements.

Religious minorities constitute what might at first sight appear to be a relatively insignificant topic within the sociology of religion, yet these voluntary movements indicate the range and persistence of demands for reassurance, solace, excitement, and meaning that are spontaneously expressed within the general public of contemporary society. They may attract only small proportions of the population, but they are a phenomenon of increasing diversity and durability. Their operation, in a measure quite disproportionate to their size, provokes public comment and media attention, and in most western countries has given rise to litigation, sometimes over protracted periods, and not infrequently raising issues of legal principle of a fundamental nature. Minority religious movements tend to embrace beliefs and practices that diverge, sometimes radically, from the mores of the general public and this induces tensions between them and the wider society and its agencies. Apart from actual instances of dispute, there is also a long-sustained historical suspicion of religious dissidents – more evident in Catholic countries in Europe than in those with the more tolerant Protestant cultural tradition (thus in France, Spain, Italy and Orthodox Greece, rather than in Britain, the Netherlands, and Scandinavia). But in all countries, both specific issues of tension – over matters such as education, military service, compulsory health provisions, and the conversion of young people against the wishes of their families – and the general prevalence of intolerant suspicion of deviant minorities, have given rise to legal confrontations.

It is as an expert principally in the affairs of the minority movement concerned that the sociologist of religion is called into court as an expert witness, or is commissioned to provide a report on sects for governments seeking accurate information on the basis of which to adopt an appropriate stance relative to such movements. In the legal process, an expert may be called by the court itself, or, as in the adversarial tradition of law in England, experts may be called by one, or other, or both parties to a dispute. It is remarkable that in such cases the court is sometimes disposed to regard as suspect the direct evidence of the principals of the sect itself with respect to its practices and rules of social comportment, but requires the external expert to affirm what

these are. Were mainline religions involved in legal controversy, it would be highly unlikely for a the court to seek the testimony of outsiders with respect to the operation of the organization and its members. This very fact indicates that the courts are in some measure implicitly prejudiced against minority religions, and doubt the integrity of their representatives. At the same time, the fact that increasingly sectarians have so readily had recourse to impartial scholars, is a tacit recognition on the part of the officials of those movements that they need a reputable expert who can command the respect of the court, and who becomes virtually an advocate for them.

In some respects, the expert sociologist acts as an interpreter, often translating for the court the language, activities, and justifications employed by the sect into terms which the court itself can understand. The two institutional contexts – the sectarian assembly and the law court – are characterized by quite different modes of discourse, and the terms in which the members of a sect justify the positions they take may well be incomprehensible to the court, just as they might be subject to theological disputation in a wider religious milieu. Thus the sectarian might find it impossible to convince the court of the warranty of his position by citing texts from the Bible (or other sacred Scriptures) and need a third party to explain the particular exegesis to which the sect subscribes. The English law court, after all, is – despite vestigial religious trappings (oaths on the Bible; religious services for the judiciary at the commencement of seasonal court sessions) – in effect a highly secularized institution which has no time for the appeal to higher, transcendent principles of morality such as those which the sect invokes.

In interpreting and mediating, the expert called by the sect virtually takes on a role which is corrective of the predispositions of the court itself, and perhaps of the entire legal system of which it is an agency. Yet, the expert has to be trusted by the sect as a reliable interpreter of its position. It may be that the sect members themselves find his interpretation alien and, in the case of strict sects, regard the expert as compromising their own standards and principles. They would like to be judged on the terms that they themselves accept, and only most reluctantly acknowledge that the expert is making a case for them which, although it might win for them the legal action in which they are engaged, none the less does so by recourse to language and concepts which are unacceptable to them. Thus, when the theology of the Exclusive Brethren was summarily described by an expert witness as Calvinist – a comparison which the court could understand – the representatives of that movement were far from happy with this presentation of their position. A court became alarmed on learning from the Exclusive Brethren themselves that their practice in treating a wayward brother was to have him "shut up", and had to have it explained to

them that this term implied nothing more punitive than that that brother would not be permitted to address the assembly of brethren until he had repented his sin. When Scientology is referred to as a gnostic movement, its votaries may experience a not dissimilar discomfiture. When Scientology or Christian Science is designated – in terms that the sociologist employs in a spirit of complete impartiality and ethical neutrality – as "manipulationist", the resonance of that expression may provoke resistance. Such translation of first-order positions into categories comprehended by exponents of academic disciplines (whether sociology or law) is, however, inevitable if the distinctive position adopted by a minority movement is to be treated adequately within the framework established by the institutions of the wider society, when the sect is brought into contact with the operation of such agencies – law courts, universities, schools, the military, or hospitals.

The problem of mutual misunderstanding between the court and the sect is not confined to matters of language, however. It may affect the meaning attributed to various teachings promoted by the sect. Drawing on biblical imagery and prophecy, a sect may deploy terms derogatory of other religions – thus, extreme fundamentalist sects may characterize the Roman Catholic Church as the scarlet woman, the mother of harlots. They may predict an early overturn of the present political dispensation, and appear to support, if not to encourage some sort of revolution. Jehovah's Witnesses have in particular been victim of the willingness of courts to credit their inflammatory biblical language and the urgency with which they expound apocalyptic prophecy as an actual political canvas, as an agenda for action. At different times, in central Africa, particularly in the territories now designated as Zambia and Malawi, and most recently in Latvia and Singapore, a direct political interpretation of biblical prophetic language has brought the Watchtower organization of Jehovah's Witnesses into direct, and in some instances brutal, conflict with the law. In such circumstances, the role of the expert is to explain the practical import of the movement's teachings and to provide a gloss which makes plain that no matter what the literal teaching may be, the sect is not an active revolutionary organization stock-piling weapons and bent on insurrection against the existing order of society.

Or again, a misunderstanding which an expert witness may resolve, occurs when a court mistakenly assumes that all religious bodies conform to certain general principles of organization such as typify not only mainstream churches, but various other types of voluntary and perhaps indeed state institutions. There may be a presumption that every religious movement has a clear and internally recognized system of authority. Courts like to treat with responsible agents of the organizations which are parties to litigation. But not all sects

acknowledge a formal system of leadership and authority. When a court demands that responsible persons "in authority" handle the case before them, they may be nonplussed to find a flat denial that any such authority figure exists. The sect may see itself as a self-selected band of equal brethren, disavowing all earthly authority, and, at least formally, rejecting ordinary conceptions of hierarchy and leadership. Thus, in Britain, during the First World War, and in some measure during the Second, the courts had difficulty in treating with conscientious objectors to military service who were Christadelphians – a sect which disavows all formal leadership, and which only slowly and pragmatically evolved an entirely informal system of representation on behalf of its young male members summoned to undertake military service. How such sects – and the Quakers and the Exclusive Brethren are other groups in a not dissimilar position – actually order their affairs and engage in decision-making and policy-making procedures, is something which the expert witness, more adequately than sect members themselves, can make apparent to the court.

Although the expert witness acts as an interpreter of one mode of discourse to the agents of an institution committed to a quite different pattern of order and communication, and although, when summoned by the sect, he is engaged to make one party intelligible to the other, and so occupies a role not dissimilar from that of an advocate, none the less he is under oath to present his information impartially. The theory by which expert testimony is acknowledged, is one which assumes such impartiality. The expert is regarded as a witness who might be called by either party to the dispute or by the court itself. The incidence of experts being summoned for each side of an action, testifying in some measure in contradiction of each other, although not uncommon where rival medical and psychiatric evidence is called for, is perhaps relatively rare in issues pertaining to religious sects. One may observe that in the United States, where experts have been called for both sides in a dispute, it has been the psychological aspects of conversion which have been most centrally at issue. The rarity, in England and in Europe, of instances in which both parties present expert testimony may be a consequence of the fact that expertise relative to particular sects is itself a scarce commodity: (one notes that courts in Europe have had occasion to call in American scholars as expert witnesses on sects which are of American provenance). A more substantial explanation of this circumstance, however, may arise from the fact that sociologists who have undertaken research into minority movements may have acquired, in the process of research, and to the benefit of that research, a certain sympathy for the sect in question which is in itself intrinsically of value in understanding that movement. Thus, the willingness to testify for the *contra* party may be muted: being expert in this field may strongly predicate an element of *Verstehen* which predisposes the scholar towards an overall sympathy for the movement

with which he has become closely acquainted. This orientation is reinforced by the further consideration that it appears theoretically likely, and empirically observable, that sociologists in this field tend to be committed to a positive evaluation of tolerance. Knowing the sectarians they study, they sympathize with their demand for freedom of expression, for freedom both to pursue their own way of life and to commit themselves to doctrines and practice that are of their own choosing. Obviously, there are limits to such sentiments of toleration, specifically where the criminal law is being breached by the activities of a sect. One supposes that no such sympathy would have been evoked among sociologists who had studied Aum Shinrikyo, the Solar Temple, or the Heaven's Gate movement, *had they been apprised of the secret teachings of the leaders of these movements.*[1] Short of sects embracing such manifestly anti-social tendencies, however, the general proposition remains, that in the nature of sociological enquiry, disinterested sympathetic detachment is likely to be the posture adopted by the investigating sociologist, as an expression of a generalized commitment to religious toleration.

In the nature of the case, the sociologist engaged as an expert witness has acquired his expertise by virtue of his sustained association with the sect in question. Normally, it has involved not only documentary study, but active association, and even participation with the members and leaders of that group. He (or she) will have become well acquainted with some sectarians, joined in their social and religious functions, attended conferences, and perhaps even have given talks to groups of devotees (obviously as a neutral and detached outsider). His association with the sect is the basis on which his expertise has been accumulated, and must count, as long as it has been undertaken in an impartial spirit, as part of his credentials, and not as an evidence of bias. Analogously, the sociologist who studies industrial relations does not become a tool either of management or unions, nor the medical doctor become infected by disease because he spends his time with the sick. The sociologist of sects does not become a sectarian, even though his association may normally be expected to engender a certain empathic understanding which alone renders him capable of interpreting the perspectives and purposes of the sect for a wider general public and, incidentally, for a court of law or the agents of government.

In his forensic role, the expert, on the basis of his association with the sect, and whether he is called by one or other side of the case, is expected to give

1 Three Japanese scholars of religion, Shimada Hiromi, Ikeda Akira and Nakazawa Shin'ichi were favourably impressed by Aum Shinrikyo in the year before the sarin attack on the Tokyo underground according to Manabu Watanabe, "Reactions to the Aum Affair: The Rise of the 'Anti-Cult' Movement in Japan", *Nanzan Bulletin,* 21, (Spring, 1997), pp. 32–48.

impartial and neutral testimony. Theoretically, he should be available to a call from either side, and the presumption must be that whichever side summons him, his testimony will be the same. On the other hand, and this is particularly apposite in England and other countries with a strongly adversarial legal system, the side which summons the expert clearly does so in the expectation that his evidence will be of value to the cause it is pursuing. The expert witness, then, is a classic case of a role in which role conflicts are implicit: the demand for his objectivity and neutrality is set against the fact that the party which engages him to testify expect that his evidence will enhance their case. In so far as what he has to say is a matter of informing the court about the actual practices and beliefs of the sect, role conflicts may not arise, but facts may be presented in different ways, and the interpretative role of the expert may then become crucial to the weight of the evidence that he gives and the way it is assessed.

Given this general situation, it is imperative that the expert witness maintain a professional stance. Whilst his human sympathies may be of importance in facilitating his research, what he has to tell a court must transcend the emotional responses which may develop in his scholarly investigations and which may be instrumental in the attainment of a fuller understanding of the sect he is studying. He must be conscious at all times of the requirements of the law and its assumptions about the duties and rights of citizens. Above all he must not act out of pure sympathy for his sectarian clients. In preparing and presenting an affidavit for the court, or in testifying orally, he must do so not only according to the standards of objective truth as he perceives it, but must do so as a professional whose position in relation to his clients is analogous to that of the lawyer who pleads their case. He must not act out of charity, and thus it becomes appropriate that he should specify a fee, which in itself identifies him not as a mere sympathetic "friend" in court, but as an independent agent who maintains an appropriate distance from the sect (or, when summoned by the other side, from its opponent). In some countries, the offer of a fee to a witness might in itself contravene the law, but such a provision fails to acknowledge the manifest difference between calling a witness who is a general expert concerning matters of principle, and the witness who is merely acquainted with specific concrete aspects of the particular case. In England, where the court or the government calls an expert witness, a clear scale of charges governs their engagement. In the English legal system, it is not considered that payment for expertise in any sense would impugn the integrity of the professional academic. Beyond these considerations, in his more general comportment relative to the sect, the scholar must establish for himself a line between what he does as a professional expert, and what he might do as a private individual scholar. He might participate in sect meetings, in seminars or conferences that they hold, since these are both aspects of his object of study and occasions for

furtherance of his knowledge of the movement, but he should not allow himself to be regarded as at the beck and call of any movement with which he is acquainted, as an amateur "advocate general" for it.

Not the least difficult aspect of the interpretation of the role is the line that needs to be drawn between the expert as the purveyor of objective and impartial comment and that of the supporter of religious toleration. The expert may find himself called upon by the authorities of a religious movement to endorse petitions, occasions of protest, or even campaigns launched to redress specific grievances. Given the professional demands on an expert witness, it is clear that he (or she) cannot indiscriminately lend his name to such utterances and activities. His value to the sect is quite likely to be misunderstood by the sectarians themselves, since they are probably incapable of appreciating that the disinterested character of his stance is of primary importance. In their own interests they are likely to want to marshal support from every quarter, failing to realize that by drawing into their political or propaganda activities those whom they have called, or might yet like to call, as "experts", would put at risk the reputation of these scholars as disinterested parties. Obviously, decisions concerning involvement in such campaigns fall to the expert himself, but he must realize that his credibility as an expert depends on his maintaining an appropriate distance from the sect about which he may be called by courts, charity commissioners, or government agencies, to testify.

The adoption of this stance is all the more important, since the emergence of so many new sects, and the consequent increase in the volume of litigation, media attention, and the institution in many countries of government commissions of enquiry, raises the question of just who is competent to provide expert advice. Whilst the courts and other authorities generally acknowledge the authenticity of, say, medical expertise in cases where this is relevant, sociology in general (and not only the sociology of religion) has still to gain recognition as a profession of similar standing. By their comportment as detached, impartial observers, and by their discrimination in selecting the issues and procedures which they can and cannot endorse, sociologists of religion may establish for the whole profession of sociology an enhanced status as a scholarly discipline.

At a time when religious pluralism is markedly increasing, when sects of diverse provenance multiply in western societies, and when sectarian practices are likely to challenge increasingly the concepts of behavioural orthodoxy which constitute the law, tensions between, on the one hand, religious groups and, on the other, the state and the public at large, appear likely to increase. In such conditions, the call for expert sociological knowledge concerning sects will probably grow. It is of importance to the discipline that that knowledge should be well authenticated and responsibly provided by scholars working in

the field, and not by journalists, by untrained self-selected vigilantes, or by politicians whose motives may have more to do with seeking popularity, than with the real merits of the case. Today, there is clear evidence that various European governments are pursuing policies of restraint against various sectarian bodies, or are beginning to monitor the activities of minority religions. It may be said that not infrequently, these policies are promoted by an element of panic and ignorance. The prospect is that sociologists alone will be able to advise from a position of first-hand knowledge of these movements, whether by invitation from governments for information, or by serving as experts in courts of law. Given this prospect, it is important that those likely to be enrolled as expert witnesses consider the implications of the role. In this regard, an interim report published by the legal establishment in England, recommends that professional bodies should draw up a list of approved expert assessors, with a view to their being appointed by the court rather than by the parties to the dispute.[2] Whilst the report is apparently concerned primarily with medical evidence, if the procedures it recommends are adopted, then sociologists of religion, perhaps through organizations like the International Society for the Sociology of Religion, should consider the compilation of such a list, and the distribution to those listed of the various recommendations concerning the appointment of expert witnesses and the responsibilities involved in the performance of the role.

Author's address:
Bryan Wilson
12 Victoria Road
UK-Oxford OX315P

2 *Access to Justice,* Interim Report by the Rt. Hon Lord Woolf, 1997.