
Editorial

Conflict Between Rights and Duties: Collateral Attacks

Proceedings in the American federal courts have illustrated the conflict between rights and duties. The law, in the USA as in the UK, recognises the right to express a point of view. But it also recognises a duty to respect the rights of others.

The US Supreme Court has given up valuable time to consider an appeal by bishops of the Roman Catholic Church against a contempt order made by a federal district court. The bishops had refused to obey a *subpoena* to produce private documents relating to the Church's anti-abortion activities. The documents were to be used in support of a claim by a pro-abortion group that the Church was engaged in activities of a political nature and that therefore it was no longer entitled to the exemption from federal tax granted to charitable and religious bodies.

In other words, a collateral attack has been made on the right of the Church to have and express anti-abortion views, and whatever our views on the subject might be, we must ask whether the already overburdened courts should be

asked to settle such a question. The pro-abortion group is asking the federal courts to tell the Secretary of the Treasury that the privilege of tax-exemption should be withdrawn from an organisation that expresses an opposite point of view. But the merits of that demand are not what the Court is considering. It is considering a narrow technical point and the proceedings illustrate one unhappy aspect of the legal system. That is the ease with which substantive questions can be subordinated to procedural issues.

The Supreme Court is reviewing the decision of the lower courts that a witness lacks standing to challenge the jurisdiction of the court over the subject matter of the case. The challenge in this case is based on Article III of the Constitution which gives federal courts jurisdictions over 'cases and controversies'. The argument here is that there is no 'case or controversy'. One counter-argument is that a witness cannot disrupt court proceedings by refusing to answer questions or to produce documents on the ground that the court lacks jurisdiction. Jurisdiction, or lack of it, is a matter for separate consideration.

Counsel for the bishops did refer to the

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underlying issue. He told the Supreme Court: "You can substitute any issue for the abortion issue". Anybody could challenge any government decision whether or not any unequal or unfair treatment could be alleged. He was asking where it would all end. But the issue before the Court was limited to jurisdiction.

By the time this editorial appears in print the Supreme Court will no doubt have given its decision. The bishops will know then whether they have been in contempt of court, but we shall be left with a doubt. Should we agree with the use of the courts for collateral attacks of this nature? Are tax-exemptions a proper means of persuasion?