

Faith or Fraud

Fortune-Telling, Spirituality,
and the Law

JEREMY PATRICK



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Introduction

In 1926, the world's most famous escape artist, Harry Houdini, testified before a congressional committee.¹ The committee was considering a bill to prohibit fortune-telling in the District of Columbia, and Houdini was a staunch supporter of the idea.² A professional skeptic and crusader against what he considered fraud, Houdini and his team of investigators had spent decades uncovering “fake” psychics and mediums. Houdini was careful to begin his testimony with a promise that he was not attacking religion *per se*.³ Nonetheless, at the height of Spiritualism's popularity in America,⁴ his statement continued with the startling words: “But this thing they call ‘spiritualism,’ wherein a medium intercommunicates with the dead, is a fraud from start to finish. There are only two kinds of mediums, those who are mental degenerates and who ought to be under observation, and those who are deliberate cheats and frauds.”⁵

The hearings turned into a circus that lasted four days. At one point, Houdini threw a piece of paper on the table before the congressmen, promising ten thousand dollars to any self-described clairvoyants in the audience who could tell him what it contained.⁶ One of Houdini's investigators testified that, through her undercover work, she learned that several US senators were regularly consulting astrologists and that male Spiritualists frequently conducted seances in dark rooms so they

could sexually assault their female clients.⁷ Another alleged an international conspiracy of mediums who traded their victims' secrets with each other in order to prop up their pretence of supernatural powers.⁸ Arguments about whether the Bible condemned fortune-telling broke out between the bill's supporters and several Spiritualist ministers.⁹ Houdini proclaimed that a medium in the audience had just stolen ten dollars from him, leading to a shouting match in which he was forced to admit that by "stole" he meant she had accepted the money from one of his undercover investigators to do a psychic reading.¹⁰ The same medium said that, since she had once demonstrated her powers in front of (one-time president of the United States) Warren Harding and he had believed her, there was proof that she was no fraud (Houdini replied that Harding had been duped).¹¹ Whether the medallions of Catholic saints were blessed before or after being sold somehow became an issue.¹² On the last day of testimony, a witness argued that the bill was an attempt to tear down Spiritualism, and he went on to compare Houdini and the bill's sponsor to Judas because all three were Jewish and all three had betrayed Christ.¹³

The ostensible issue at the hearings was whether a bill to prohibit fortune-telling in Washington, DC, should become law. But the real issue was a centuries-old one: Is fortune-telling a genuine attempt by sincere believers in the spirit world to foretell the future or is it a cynical scam perpetrated by con artists to take advantage of gullible people? In other words, was it faith or was it fraud?

Fast-forward nearly a century. In November 2012, a Toronto woman named Maria Roesta became involved in what a local newspaper called a "bizarre story."¹⁴ Roesta had been suffering from severe headaches for several months and became desperate after her family doctor could not explain why.¹⁵ When she saw an advertisement for a healer in a Spanish-language weekly, she decided to follow up.¹⁶ After an initial consultation, Roesta was told by the self-described healer – a man named Gustavo Valencia Gomez – that she was suffering from a curse.¹⁷ Several sessions of occult rituals to break the curse followed, some of which involved worms, strange concoctions, and purported spell casting.¹⁸ When Roesta brought pictures of her sons to a ritual, Gomez cracked eggs over them, and the eggs were filled with blood, which, according to him, was a

sure sign that the boys were cursed and would soon die until drastic spiritual action was taken to protect them.¹⁹ Gomez could not work for free, however. After fifty dollars for the initial consultation, the sums he requested from Roesta escalated dramatically until she had given him over fourteen thousand dollars in total.²⁰ Finally, family members noticed the drain on her bank accounts and intervened.²¹ Gomez was charged under a Canadian *Criminal Code* provision that bans the use of witchcraft or fortune-telling for “fraudulent” purposes.²² After making full restitution to Roesta and others who had paid him for his services, the charges against Gomez were dropped.²³ In the end, it turned out that Roesta’s headaches had been caused all along by a simple, easily avoidable allergy.²⁴

Perhaps the most interesting thing about this story is what did not happen. What if Gomez had claimed, as a defence to the criminal charges, that he was not acting “fraudulently” and that he did, in fact, sincerely believe in the efficacy of the occult rituals that he was performing? Given the liberal democratic concern for freedom of religion, could such a claim have overcome the natural skepticism of the legal system to prevent what may seem to many to be a transparent attempt to swindle gullible people?

One more example will illustrate this fascinating issue. In February 2013, the Fourth Circuit of the Federal Court of Appeals in the United States decided a case brought by a self-described “spiritual counsellor” who operated under the name “Psychic Sophie.”²⁵ Psychic Sophie’s spiritual counselling enterprise, which operated from a storefront, ran afoul of a county ordinance that applied to “fortune tellers,” who were defined as “any person or establishment engaged in the occupation of occult sciences, including a fortune teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes or claims or pretends to disclose mental faculties of individuals for any form of compensation.”²⁶ The ordinance required people who offered such services for money to obtain a business permit, undergo a background check from the local chief of police, pay a licence fee of three hundred dollars, and operate only in an area zoned for general business.²⁷ Psychic Sophie did not have the foresight to realize that her failure to obtain the required permit would result in

an invoice from the county for the licence fee that included interest and a late penalty.²⁸ Rather than pay, she instituted proceedings seeking a declaration that the ordinance could not constitutionally apply to her.²⁹ She asserted various constitutional theories, but the most interesting one for our purposes was that her spiritual counselling was protected by the First Amendment's guarantee of free exercise of religion.³⁰

The eclectic nature of Psychic Sophie's beliefs would prove fatal to her claim; she stated: "I am very spiritual in nature, yet I do not follow particular religions or practices, and 'organized' anything's [*sic*] are not for me. I pretty much go with my inner flow, and that seems to work best."³¹ She stated that she found spiritual inspiration in everything from New Age philosophy, to quantum physics, to the teachings of Jesus.³² The court, however, examined relevant United States Supreme Court precedent and concluded that Psychic Sophie's beliefs "more closely resemble personal and philosophical choices consistent with a way of life, not deep religious convictions shared by an organized group deserving of constitutional solicitude."³³ Her effort to avoid application of the ordinance was denied.³⁴

The stories of Houdini's battle against the Spiritualists, Maria Roesta's "curse breaker," and Psychic Sophie's battle against a county licensing law are just three examples from the long history of the legal regulation of fortune-telling and related practices. Going back as far as sixteenth-century England in the West, fortune-telling was prohibited (in part) due to the fear of fraud. These English laws later served as inspiration for similar laws in that country's far-flung colonies, including the United States, Canada, and Australia. Even today, laws criminalizing or regulating fortune-telling remain common in parts of these jurisdictions. Often overlooked and sometimes forgotten, these laws have teeth and, from time to time, rear up to bite the unwary.

At first glance, the legal issue of fortune-telling may seem obscure or trivial, but it actually points toward the important emerging dilemma of what might be called "freedom of religion at the margins." The archetypal religious freedom claimant is a deeply serious, long-standing member of a religious organization who is faced with an agonizing decision: to follow the dictates of God or the laws of man. When judges and legal scholars think of religious freedom, they may think of such iconic issues

as Jehovah's Witnesses refusing blood transfusions despite the risk of death,³⁵ the Amish gaining an exemption for their children from compulsory school attendance,³⁶ or Jewish prison inmates demanding kosher meals.³⁷ With the sanctity of conscience given great weight, courts in major Western liberal democracies have developed expectations that those claiming protection in this context must be sincere in their beliefs, that those beliefs must be recognizably religious, and that, nonetheless, important government objectives may still trump these beliefs.

These judicial expectations, in turn, are then reflected in the types of questions claimants are asked and the types of evidence they are expected to provide. Of course, if the idealized religious claimant has certain identifiable characteristics, it is also easy to imagine the opposite: litigants who will never succeed on a freedom of religion claim because their beliefs in the relevant context have no religious connection whatsoever. The courts have always made it clear that freedom of *religious* exercise is guaranteed and is not a general freedom to take any actions that may be motivated by purely secular philosophies, political views, and so forth. To go down the latter path would lead to anarchy, according to the Supreme Court of the United States, because "the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests."³⁸

Between traditional religious beliefs and clearly secular ones, however, there are those that are much harder to label because they seem to contain elements of both. This may seem to be a trite observation since, in any process of legal classification, there will be difficult cases. However, there is strong evidence pointing to the fact that such difficult cases are going to become increasingly common since the nature of religion and of religious belief itself are changing in the West. Although institutional religion continues on, there has been a dramatic increase in the past twenty years in the number of people who describe themselves as "spiritual but not religious" (SBNR).³⁹ The common trait among so-called SBNRs is that they take an individualistic approach to religion: picking and choosing particular beliefs from a wide variety of religious traditions and then adding in, on an à la carte basis, notions from what may be derided by many as folklore, pseudoscience, the New Age smorgasbord,

or personal intuition.⁴⁰ Legal scholar Rebecca French calls this “grocery cart religion”⁴¹ and summarizes it well: “A grocery cart religious practice has only the rituals and ethical boundaries that the practitioner explicitly agrees to take on. Instead of following a revealed canon, the individual fits the interesting parts of different religions together into a structured personal spiritual practice.”⁴²

Thus, SBNRs lack many of the criteria associated with traditional religious freedom claimants. They may not belong to an organization, follow an authority figure, or have easily accessible or easily articulated beliefs. They may change their beliefs frequently, apply them in practice intermittently, or even describe those beliefs as constituting something other than religion. Christopher Partridge calls this trend one of the most significant developments in Western religion over the past fifty years, noting that

there is in the West ... a move away from traditional forms of belief, which have developed within religious institutions, towards forms of belief that focus on the self, on nature or simply on “life” ... There is a move away from a “religion” that focuses on things that are considered to be external to the self (God, the Bible, the church) to “spirituality” – that which focuses on “the self” and is personal and interior.⁴³

The rise of this “new spirituality” presents challenges for the traditional application of religious freedom principles in liberal democracies.⁴⁴ This book argues that, although such beliefs are easily dismissed as “dilettantism” or “half-baked,” judges tasked with adjudicating religious freedom claims should approach these beliefs with as much compassion, respect, and deference as is given to more traditional forms of religion. If our understanding of religious freedom remains static while religion itself continues to evolve, one of the fundamental rights of liberal constitutionalism may gradually become hollow for future generations of believers.

This book has two goals. The primary goal is to present a thorough and detailed history of the laws against fortune-telling in England, Canada, Australia, and the United States. The jurisdictions chosen share a Western

common law heritage, have a history of prohibitions on fortune-telling, and (with the exception of England) maintain express constitutional guarantees of freedom of religion.⁴⁵ Each jurisdiction is covered in a separate chapter,⁴⁶ but a perhaps surprising amount of convergence can be found when the judicial treatment of fortune-telling in each one is examined. By comparing the four jurisdictions, we can clearly see the influence of English law on the other three, how all four jurisdictions have faced difficulty articulating the scope of their respective statutes, and how problems in one jurisdiction were likely seen in the others as well (and were often resolved in a similar manner). On the other hand, we can also see exceptions to this general trend, such as how American statutes gradually evolved to protect formal religious denominations from the scope of fortune-telling bans. [Chapter 6](#) follows the jurisdiction-specific chapters, providing an analysis and discussion of these commonalities and differences. There are, quite literally, millions of individuals across the West who believe and take part in fortune-telling and related activities. Understanding the legal implications of fortune-telling is no trifling matter; it may be the difference between being a successful business owner or finding oneself in jail for fraud.

A secondary goal of this book is to use these laws as an opportunity to discuss the impact of SBNRs on the future of the juridical understanding of religious freedom. By using “spiritual counselling” as a proxy for an array of individualistic, idiosyncratic beliefs, the boundaries of religious freedom can be tested. Mary Douglas once wrote: “All margins are dangerous. If they are pulled this way or that, the shape of fundamental experience is altered. Any structure of ideas is vulnerable at its margins.”⁴⁷ Stand-alone, individual, internal systems of spiritual belief complicate the common understanding of religion as a shared, organized, and formal set of beliefs. The future scope of this “structure of ideas” that we call religious freedom is important, uncertain, and fascinating.

A systematic examination of these issues is important because so little scholarship about them exists. One can find an occasional journal article on one jurisdiction’s fortune-telling laws, but it is likely to be narrow in scope or outdated. Similarly, although several recent books have identified the rise of the “religious nones” or SBNR in a sociological sense, there is very little published on the challenges this phenomenon presents for

religious freedom. In lieu of a traditional stand-alone literature review, I have integrated all relevant secondary sources into and around my discussion of the most relevant primary source: the case law. For example, Edna Aphek and Yishai Tobin's valuable work, *The Semiotics of Fortune-Telling*,⁴⁸ is discussed extensively in the next chapter, while the views of Mark Movsesian on the Psychic Sophie case⁴⁹ are canvassed in [Chapter 7](#). The purpose of this approach is to keep the text clear, concise, and readable while still making use of the best the secondary literature has to offer. Readers are also encouraged to consult [Appendix 2: Further Reading](#), for more on the most crucial secondary sources on each topic covered in this book.

In what follows, the structure has been chosen to facilitate the two goals of providing a comprehensive history of fortune-telling laws and broaching how freedom of religion principles apply to SBNRs. [Chapter 1](#) serves as a concise introduction to fortune-telling, summarizing its history, methods, and modern prevalence. [Chapters 2 to 5](#) provide a full legal history of the regulation of fortune-telling in England, Canada, Australia, and the United States, respectively. These chapters have been designed to stand alone and to serve readers interested in only one of these jurisdictions, though readers who brave all four will find an enriching overlap of judicially identified problems and solutions. [Chapter 6](#) synthesizes, analyzes, and offers conclusions about all of the material in the previous chapters. It attempts to answer the “big” questions in this area: is there any social value to fortune-telling; is fortune-telling inherently fraudulent; should it be banned or restricted; and, if so, according to what legal standards and principles? [Chapter 7](#) discusses fortune-telling and spiritual counselling in the context of freedom of religion. By synthesizing the three tests for a freedom of religion claim used (formally or informally) by the courts in the four countries examined in this book, conclusions can be drawn about whether the practices are protected. The form of analysis used here is especially valuable, as it can be extended to speculate about the scope of the right's application to the SBNR as a whole. Readers who are interested less in the social and doctrinal intricacies of fortune-telling and more in the application of religious freedom principles to SBNRs may wish to skim the freedom of religion subsection of American cases

in [Chapter 5](#) and then move directly to [Chapter 7](#). The Conclusion reiterates the major findings of the book.

A final note before we begin; although I have kept authorial intrusion to a minimum, it is sometimes valuable in a work such as this for the writer to be quite candid about how their individual academic perspective has shaped the final outcome. This is a work of legal scholarship by an academic enmeshed in the norms of that discipline. The copious (and sometimes lengthy) footnotes, for example, may be unorthodox and perhaps irritating to some readers, but, for the lawyer, judge, and legal scholar, they are essential for demonstrating the authority that supports one's propositions. I have endeavoured to read widely for this project and to incorporate a plethora of scholarship from related fields such as history, sociology, religious studies, and more, but, in the end, my training is in law, and I acknowledge in advance the strengths and limitations that this perspective presents. My goal for this book is to present a careful, objective, well-researched analysis of a largely unstudied area of law. Formally speaking, this work uses a traditional doctrinal legal research methodology in the jurisdiction-specific chapters⁵⁰ and a mixture of doctrinal and comparative legal research methodology in [Chapters 6](#) and [7](#).⁵¹ If I have done my job right, you will not find bold pronouncements, wild generalizations, or unsupported conclusions. I would rather this book present an accurate history and informative context for later consideration of the issues that it raises than try to "solve" them in an ultimately unpersuasive manner.

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