

**Rainbow**  
*by Catharine Savage Brosman*

We're sitting with the tourists in the Wyndham bar on the eleventh floor, above the Mississippi, right across from Algiers Point, with bridges on one hand, and St. Bernard down river. *We're* not tourists, no, thank heaven—merely here, admiring our cityscape on this late afternoon in summer, watching twilight hesitate (uncertain at this solstice date of whether

to approach, delaying its arrival for an hour or so). All day there's been a sense of rain, with brooding in the air, a growling now and then but no explosion, when suddenly the storm decides to occupy Algiers and moves in quickly, cannoning full-force behind a screen of light artillery. Minerva wears a helmet of dark steel to visit us, as she looms up, her lance

in hand, as though to roar across the bridges; Mars meantime comes riding on black clouds, while Jove hurls down his thunderbolts, the lightning playing in a modernist ballet, the cannonades as cacophonous as the music of Stravinsky. Imagine it's a theater, the curtain raised, the play begun, its outcome yet at issue (just a shower, after all? or twenty inches

in the streets? or a divine catastrophe?). Instruction follows from this spectacle: our vision is transformed by half-obscurity; the drinks become a bit crepuscular, the river dull; we too are different, changed a moment by our senses. Wait: what's that ahead? A tendency toward light . . . a possibility of blue . . . a slender peel of yellow like that lemon in your cocktail! Even eyes

have taken on a brighter hue, and sunshine radiates around the stage. The denouement is happy, blessed by Iris, who divides her shafts of light to show us what we're made of: remnants of a cosmic comedy, a watery covenant embracing earth and sky, a prism of being divining breaches in the darkness to collect the world's intelligence and turn it into dazzling idea.

## As Cold as Charity

Did anybody notice when Catholic Christianity ceased to be a religion in the United States? Not when it stopped being a popular or even a permissible religion, but when it became simply a nonreligion? I ask this because a recent court decision in California threatens to launch a legal revolution, in a way that would be dazzlingly ingenious if it were not so sinister. After years of tinkering selectively with the First Amendment to favor certain religious ideas and views while undermining others, one important court has now taken the imaginative step of simply removing whole spiritual traditions from the definition of *religion*.

The case in question has its roots in the late 1990's, when the California legislature demanded that health-insurance plans include coverage for contraception. Realizing the obvious moral and religious conflicts that might arise, the law—the Women's Contraceptive Equity Act (WCEA)—provided conscientious exemption for groups with a principled objection to contraceptives. The term “religious employer” was defined quite freely, the main criterion being that the group in question had as its main purpose “the inculcation of religious values” and that it principally employed and served people who shared those religious tenets.

The intention of the law was anything but mysterious, and nobody thought that any great Church-state issues were involved. Very shortly, however, the seemingly ironclad language of the WCEA's religious exemption came under attack, when employees of the Catholic Charities of Sacramento claimed the right to contraceptive coverage. At first sight, the claim appears outrageous. Clearly, Catholic Charities is an arm of the Catholic Church, which evidently has something to do with “the inculcation of religious values,” and those values reject contraception. Nevertheless, the lower courts held against the Catholic cause, and, in early 2004, those decisions were upheld by the majority of the California Supreme Court. (The case, *Catholic Charities of Sacramento, Inc., v. The Superior Court of Sacramento County*, can be explored in detail at [clsnet.org/clrfPages/amicus/charitiesvStateCalif.php](http://clsnet.org/clrfPages/amicus/charitiesvStateCalif.php).)

While the specific decision seems unreasonable or onerous, the underlying grounds are terrifying. The state supreme court ruled that, though the Catholic Church *as a church* might be religious, this qualification does not extend to its worldly manifestations—such as Catholic Charities. The notion of “religious values” does not comprehend such blatantly secular pursuits as “counseling, mental health and immigration services, low income housing, and supportive social services to the poor and vulnerable.” These tasks evidently have nothing to do with religion, though I think that a few obstinate exegetes insist that they have found passages in the Scriptures that *might* conceivably provide some kind of religious coloring to these acts—something about clothing the naked, feeding the hungry, and helping the stranger—but I'm sure that these themes only surface in a few odd biblical translations. No reputable religious authority would ever suggest that these critical functions should fall to anyone other than the secular state and its accredited social-service agencies.

Now, these were not the only grounds for the decision. The court also felt that Catholic Charities had failed abysmally in its duty to exercise wide-ranging bigotry in its daily operations. After all, if it had insisted on employing only people who accepted its warped views, and, still more, if it had demanded a religious test before offering social services, then the agency would have been clear under the law. It did not, however, and so it lost the claim to exemption. Unaccountably, Catholic Charities also failed to exploit and oppress its employees. Though the law allows employers to refuse all prescription-drug coverage to employees, this particular charitable organization insisted on referring to some strange and nonlegal concept called the “moral obligation” of the employer “at all times to consider the well-being of its employees.” This moral imperative required that employees be treated decently, even at the risk of running up against the wise laws of California. At every point, Catholic Charities of Sacramento behaved reprehensibly, by its consistent refusal to exercise religious discrimination and its willful application of



a social conscience. One can have little sympathy for such hardened offenders.

But to return to the issue of religion and religious exemption: What the legislature of California did—and in such a way that it was subsequently upheld by the state supreme court—was to offer a staggeringly narrow definition of religion, one that is strikingly at variance with standard usage and with much legal precedent. Religion in this sense is only taken as “inculcating values,” that is, as preaching or evangelizing, to the exclusion of all other associated activities. If that definition is widely adopted—and the California courts are influential—that heralds a dramatic curtailing of religious exemptions and exceptions not just in employment law but in all financial and tax matters, not to mention clergy-privilege cases. Yes, the First Amendment safeguards freedom of religion—but organizations the judges do not like or approve of are not religious, so they cannot claim protection.

If that accusation of extreme subjectivity sounds unfair, recall how *religion* is defined when the matter at hand is one closer to judicial sympathies. In 1965, the U.S. Supreme Court broadened the definition of religion for purposes of draft exemption to groups lacking any orthodox belief or structure provided they held “a sincere and meaningful belief occupying in the life of its possessor a place parallel to that filled by the God of those admittedly qualified for the exemption” (*United States v. Seeger*). Religion, in short, was whatever you wanted it to be. But when judges confront a religious system they despise, such as Roman Catholicism, then totally different standards apply. To quote that legendary jurist, Mr. Justice Humpty Dumpty, “When I use a word, it means just what I choose it to mean—neither more nor less.”