Mohonk Trust v. Board of Assessors

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COMMENT

MOHONK TRUST v. BOARD OF ASSESSORS


There is a growing awareness in society that continuing efforts are necessary to preserve some land in its natural state for the public’s use and enjoyment by protecting it from the encroachment of industrial and residential development. In New York, both the state constitution and the Environmental Conservation Law reflect a desire to further the conservation of forest and wildlife. The use of private land for conservation purposes protects natural resources the state does not have the funds to maintain. The costs to private parties become prohibitive, however, if the land is subject to local property taxes. At the same time, local governmental fi-

1. N.Y. CONST. art. 14, § 3(1). This section provides in part:
   Forest and wildlife conservation are hereby declared to be policies of the state. For the purpose of carrying out such policies the legislature may appropriate moneys for the acquisition by the state of land, outside of the Adirondack and Catskill parks as now fixed by law, for the practice of forest or wild life conservation.
2. N.Y. ENVIR. CONSERV. LAW § 1-0101 (McKinney 1973). Section 1 of this provision provides:
   The quality of our environment is fundamental to our concern for the quality of life. It is hereby declared to be the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall social and economic well being.
   Id. § 1-0101(1). In addition, a recent amendment provides that “the policies, statutes, regulations, and ordinances of the state . . . should be interpreted and administered in accordance with [these] policies.” Id. § 8-0103(6) (McKinney Supp. 1979-1980).
   3. When large areas of privately owned wilderness lands are taxed at market value, the land is often sold for development. Providing tax exemptions for conservation land forestalls development and serves to further state environmental policy. See generally Currier, Exploring the Role of Taxation in the Land Use Planning Process, 51 IND. L.J. 27 (1975); Henry, Preferential Property Tax Treatment of Farmland and Open Space Under Michigan Law, 8 U. MICH. J.L. REF. 428 (1975).
Finances are based almost exclusively on property taxes. The proliferation of tax exemptions has removed more than thirty percent of the assessed value of real property in the state from the tax rolls. The removal of real property from the tax rolls not only serves to erode the municipal tax base but also shifts the tax burden to privately owned nonexempt property.

This conflict between these two well-established societal goals was recently brought into focus by the New York Court of Appeals decision in Mohonk Trust v. Board of Assessors, where the issue was whether conservation land qualified for exemption from real property taxation. Although the result of this case was to exempt the Trust land, it is unclear if the exemption for conservation land is constitutionally insulated or subject to legislative abrogation because the court did not address the constitutional implications of its holding. By failing to resolve the nature of the exemption the court lost an opportunity to clarify the legislature's power to redefine certain tax-exempt categories. Instead the court's opinion is internally inconsistent and, therefore, of little guidance to future legislative or judicial decisionmakers. Maximum flexibility is needed to meet society's changing needs, and this would have been assured if the court had retained the power to construe these provisions in the judiciary.

4. See Joint Legis. Comm. to Study and Investigate Real Prop. Tax Exemptions, Final Report, N.Y. Legis. Doc. No. 15 (1970) [hereinafter cited as N.Y. Legis. Doc. No. 15]. In its report, the committee observed that the current exemption problem has attained acute proportions. It was estimated that in 1967 more than 30% of the assessed value of all real property in the State was exempt from taxation for various reasons. Id. at 25. Nonprofit organizations accounted for roughly 17.6% of all exempt real property listed on assessment rolls in 1967. Id. at 33. Of this, 10% has constitutional protection as religious, educational, or charitable. This report suggested "that a failure to reorder exemption priorities will only result in a continued and increasingly severe erosion of the tax bases of municipal corporations." Id. at 35. But see Ginsberg, Realty Tax Exemptions—Policy or Politics?, N.Y.L.J., Dec. 1, 1976 at 1, col. 1. Statistics on the proliferation of tax-exempt property are misleading because 80% of tax-exempt property in New York State is owned by public entities. This includes federal, state, local, and public authorities. There would be no advantage in permitting local governments to tax property that they owned, and the doctrine of sovereign immunity prevents taxation of federal property. See, e.g., McCulloch v. Maryland, 17 U.S. (4 Wheat.) 159 (1819).

5. See N.Y. Legis. Doc. No. 15, supra note 4, at 34. The committee recommended amending the real property tax law "to make the exemption of nonprofit organizations other than religious, charitable, educational, cemetery and hospital organizations optional with municipal corporations." Id. at 40.


TAX EXEMPTIONS FOR REAL PROPERTY

New York law currently grants exemptions from real property taxation pursuant to three specific provisions. First, the New York State Constitution provides a mandatory exemption for land used exclusively for religious, educational, or charitable purposes. Second, section 421(1)(a) of the Real Property Tax Law affords a mandatory exemption for the three purposes exempted by the constitution and for cemetery, hospital, and mental and moral improvement purposes. Third, section 421(1)(b) provides for discretionary exemptions, wherein certain uses are exempt as long as the local government does not exercise its option to tax the land in this category.

To assess the purposes of these provisions it is necessary to examine their historical development. The predecessor to section

7. N.Y. CONST. art. 16, § 1. This section provides in part:

Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

8. N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972). This section provides:

Real property owned by a corporation or association organized or conducted exclusively for religious, charitable, hospital, educational, moral or mental improvement of men, women or children or cemetery purposes, or for two or more such purposes and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association as hereinafter provided shall be exempt from taxation as provided in this section.

Although this section is referred to as § 421 throughout this Comment, it legally remains § 420. It was renumbered § 421 in 1971, 1971 N.Y. Laws, ch. 417, § 5. However, the effective date of this amendment has been postponed annually by the legislature. E.g., 1979 N.Y. Laws, ch. 44, § 2. Commentators and courts refer to the provision as § 421.

9. N.Y. REAL PROP. TAX LAW § 421(1)(b) (McKinney 1972). This section provides:

Real property owned by a corporation or association ... which is organized or conducted exclusively for bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, bar association, medical society, library, patriotic or historical purposes, for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association, or by another such corporation or association as hereinafter provided, shall be exempt from taxation; provided, however, that such property shall be taxable by any municipal corporation within which it was located if the governing board or such municipal corporation, after public hearing, adopts a local law, ordinance or resolution so providing.
421(1)(a) of the Real Property Tax Law was enacted in 1893. This provision provided exemptions for organizations whose lands were used exclusively for the moral and mental improvement of mankind, or for religious, charitable, missionary, hospital, educational, patriotic, historical, or cemetery purposes. In 1938 a portion of this section was incorporated in article 16, section 1 of the New York State Constitution. Land used "exclusively for religious, educational or charitable purposes as defined by law" became exempt under the constitution as well as under the statute. Thus land used for these purposes became constitutionally insulated from taxation. In interpreting this provision, "exclusively" has been construed to mean primarily or principally. Thus, if land is used for some nonexempt purposes that are merely incidental to the primary purpose, the exemption is not defeated. The use of land primarily for any or all of these three stated purposes is exempt from taxation, and such exemption cannot be altered or repealed.

From 1938 to 1971, New York's real property tax exemptions were contained only in section 421(1) of the Real Property Tax Law and in article 16 of the constitution. In 1971 the legislature altered

10. 1893 N.Y. Laws, ch. 498 (current version at N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972)).
11. Id. § 1 (current version at N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972)).
12. N.Y. CONST. art. 16, § 1. For the text of this provision, see note 7 supra.
13. The constitution provides exemptions for the three stated purposes "as defined by law." N.Y. CONST. art. 16, § 1. Thus far the legislature has not attempted to define these terms. The Mohonk decision exhibits the confusion surrounding the question of who is to give definition to these categories. See text accompanying notes 79-99 infra.
16. N.Y. CONST. art. 16, § 1. For the text of this provision, see note 7 supra. This provision was explained in Riverdale Country School, Inc. v. City of New York, 13 A.D.2d 103, 213 N.Y.S.2d 543 (1st Dep't 1961), where the court stated that the object of article 16 was to preserve the "right to exemption against possible adverse legislation." Id. at 105, 213 N.Y.S.2d at 546. Riverdale concerned an action by a school to recover real estate taxes for the years 1925 through 1937. The plaintiff sought to avoid the statute of limitations by relying on the constitutional provision forbidding changes in the tax exemption of educational institutions. The court stated that "the constitutional provision [N.Y. CONST. art. 16, § 1] ... is of no assistance to plaintiff as its object is to preserve the right to exemption against possible adverse legislation and has no relationship to the situation here presented." Id.
the statutory scheme and created a discretionary exemption category.\textsuperscript{17} This occurred in response to a growing concern for the rapidly eroding local tax base\textsuperscript{18} and the concomitant proliferation of real property tax exemptions.\textsuperscript{19} Some exemptions that had previously been mandatory under 421(1) were incorporated into 421(1)(b)\textsuperscript{20} and could now be taxed at the discretion of local governments. This discretionary category included land used for bible, tract, benevolent, missionary, infirmary, public playground, scientific, literary, bar association, medical society, library, patriotic, or historical purposes. Significantly, the amended statute also granted local governments the option to tax land used for “moral and mental improvement” purposes.\textsuperscript{21} Subsequently, property owned by the Boy Scouts, Girl Scouts, YMCA, YWCA, and similar organizations was placed into this category and thus made taxable by local governments.\textsuperscript{22} This result triggered public opposition,\textsuperscript{23} and in 1972 the legislature amended section 421 and removed the “mental and moral improvement” use from the optional provisions of section 421(1)(b) to the mandatory provisions of 421(1)(a).\textsuperscript{24}

Many of the categories removed to section 421(1)(b) had been characterized by the courts as distinct from the constitutionally protected religious, charitable, and educational use categories, and there was thus no constitutional bar to their removal.\textsuperscript{25} For exam-

\textsuperscript{17.} 1971 N.Y. Laws, ch. 414, § 2 (current version at N.Y. REAL PROP. TAX LAW § 421(1)(b) (McKinney 1972)).

\textsuperscript{18.} Ginsberg, supra note 4, at 1, col. 1.

\textsuperscript{19.} See N.Y. LEGIS. DOC. No. 15, supra note 4, at 24-25.

\textsuperscript{20.} 1971 N.Y. Laws, ch. 414, § 2 (current version at N.Y. REAL PROP. TAX LAW § 421(1)(b) (McKinney 1972)) (§ 421(1) renumbered § 421(1)(a)).

\textsuperscript{21.} Id. (current version at N.Y. REAL PROP. TAX LAW § 421(1)(b) (McKinney 1972)).

\textsuperscript{22.} See Young Womens Christian Ass’n v. Wagner, 96 Misc. 2d 361, 365, 409 N.Y.S.2d 167, 170 (Sup. Ct. 1978); Opinion No. 17 (1975), 5 Opinions of Counsel, New York State Board of Equalization and Assessment; Opinion No. 10 (1971), 1 Opinions of Counsel, New York State Board of Equalization and Assessment.

\textsuperscript{23.} See Ginsberg, supra note 4, at 1, col. 1.

\textsuperscript{24.} 1972 N.Y. Laws, ch. 529.

\textsuperscript{25.} The constitutionality of § 421(1)(b) was upheld in Association of the Bar v. Lewisohn, 34 N.Y.2d 143, 313 N.E.2d 30, 356 N.Y.S.2d 555 (1974) (association of professionals held not to be organized primarily for charitable or educational purposes since designed to advance interests of its members, thus legislature free to change tax-exempt status of association). See American Bible Soc’y v. Lewisohn, 48 A.D.2d 308, 369 N.Y.S.2d 725 (1st Dep’t 1975) (society not affiliated with any denomination whose primary purpose was distribution of bibles not eligible for tax exemption available to associations organized exclusively for religious purposes). The court explains that the “classifications contained in [§ 421(1)(b)] are not new and their dis-
ple, case law has distinguished religious corporations from missionary societies, libraries from educational institutions, and historical from educational purposes. American Bible Society v. Lewisohn held that the printing, publication, and circulation of bibles and religious writings does not qualify as religious use under section 421(1)(a). Similarly, in Association of the Bar v. Lewisohn a distinction was drawn between organizations conducted primarily for scientific purposes and those conducted for educational or charitable purposes. It was held that the former are not entitled to a mandatory exemption.

While there was no constitutional bar to removal of the above-mentioned purposes, there may be a constitutional bar to removal of conservation lands held by nonprofit organizations and dedicated to the general public use. There are decisions that indicate this use is charitable in nature. Although the word "charitable" is not defined in the constitution or in general statutory terms, case law sets important precedent and helps define charitable use.

As a threshold criterion a charitable organization must be nonprofit and must operate for the public benefit. The more difficult issue is determining what is charitable in nature. Case law has
tinct characteristics have been recognized in prior tax legislation... as well as by the cases... "Id. at 314, 369 N.Y.S.2d at 732 (citations omitted). Public playgrounds are exempt only at local option pursuant to 421(1)(b). However, it could be argued that this is charitable use of the land and warrants a mandatory exemption. This has not been tested in the courts.

27. See In re Frances, 189 N.Y. 554, 82 N.E. 1126 (1907).
28. See In re De Peyster, 210 N.Y. 216, 104 N.E. 714 (1914).
29. 48 A.D.2d 308, 369 N.Y.S.2d 725 (1st Dep't 1975).
30. Id. at 314, 369 N.Y.S.2d at 729.
32. Id. at 154, 313 N.E.2d at 36, 356 N.Y.S.2d at 563.
33. See People ex rel. Untermyer v. McGregor, 295 N.Y. 237, 66 N.E.2d 292 (1946); In re Estate of De Forest, 147 Misc. 82, 263 N.Y.S. 135 (Sur. Ct. 1933); text accompanying notes 41-46 infra.
34. See American Bible Soc'y v. Lewisohn, 48 A.D.2d 308, 369 N.Y.S.2d 725 (1st Dep't 1975). After stating that "the legislature was required to continue exemptions for 'religious, educational or charitable purposes as defined by law,'" the court then discussed the role that prior case law has played in defining these terms. Id. at 314, 369 N.Y.S.2d at 732.
35. N.Y. REAL PROP. TAX LAW § 421(1)(d) (McKinney 1972).
36. See In re Will of MacDowell, 217 N.Y. 454, 112 N.E. 177 (1916). "If the purpose to be attained is personal, private or selfish, it is not a charitable trust. When the purpose accomplished is that of public usefulness unstained by personal, private or selfish considerations, its charitable character insures its validity." Id. at 460, 112 N.E. at 178.
developed a flexible definition of charitable. In *In re Estate of Rockefeller* the court stated that "‘a charitable use . . . may be applied to almost any thing that tends to promote the well-doing and well-being of social man.’" Similarly, legal scholars have suggested that it would be unwise to bind the courts with a rigid formula. The courts "should have latitude to include new purposes as society develops and public opinion changes and to exclude objectives which have become obsolete or unsuited to prevailing conditions."

There is case law that indicates that the use of land for conservation purposes is considered a charitable use. In *People ex rel. Untermyer v. McGregor* the preservation of parklike grounds devoted to the exhibition of flowering plants was held to be charitable in nature. In *Untermyer* the testator bequeathed his estate to the public to be used as a park. When the state renounced the gift, the executors of the estate formed a nonprofit organization to actualize the testator's intent and then sought an exemption for the land. The New York Court of Appeals held that the public use and enjoyment of parklike grounds "for physical activity and relaxation [and for] aesthetic pleasure and inspiration" was charitable in nature and thus exempt under the statute. In *In re Estate of De Forest* a trust had been created to preserve certain forests, lakes, and mountains in the Adirondacks. Since the trustees derived a private profit, exemption was denied. However, in dicta the court stated that where a trust is created "for the general purpose of preserving forests or the scenic beauty of lands . . . and the prop-

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37. 177 A.D. 786, 165 N.Y.S. 154 (1st Dep't 1917).
38. *Id.* at 791, 165 N.Y.S. at 157-58 (citations omitted) (nursing home held to be charitable use). This case predates article 16 of the New York constitution, which insulated charitable use from legislative abrogation. One may question whether in light of § 421(1)(b) and the recent concern over the erosion of the tax base this broad definition would be used today. However, the *Rockefeller* definition was recently employed in *Church Home of the Protestant Episcopal Church v. Wagner*, 58 A.D.2d 972, 397 N.Y.S.2d 478 (4th Dep't 1977), where a nonprofit nursing home was granted a property tax exemption.
40. G. Bogan, supra note 39, § 369, at 65.
42. *Id.* at 241-42, 66 N.E.2d at 294.
43. *Id.* at 243, 66 N.E.2d at 295.
44. *Id.* at 244, 66 N.E.2d at 295.
45. 147 Misc. 82, 263 N.Y.S. 135 (Sur. Ct. 1933).
erty is dedicated to the general public use, it is undoubtedly valid as a charitable trust.”

In contrast, other cases have found that where land is used as a wildlife sanctuary, this exemption stems from a “moral and mental improvement” use. Thus, the definitional distinction between “charitable” and “mental and moral improvement” is cloudy. However, the legal distinction is significant since only land used for a charitable purpose is constitutionally protected.

THE MOHONK CASE

Procedural Setting

The Mohonk Trust was created in 1963 by an agreement between the donor, Mabel Smiley, and the six named trustees. The Trust lands consist of five thousand acres of undeveloped wilderness land, 1801 acres of which are located in the town of Gardiner. Most of this land was sold to the Trust by members of the Smiley family at considerably less than market value. The Trust is managed by a board of trustees, composed in part by members of the Smiley family, which meets several times a year. The Trust is supported by outside contributions and fees charged to the public for use of the lands. This income is used to maintain the Trust land and to carry on related activity. The Trust employs an administrator, several rangers, a part-time research assistant, and a part-time maintenance worker.

The primary purposes of the Trust are: “to devote and apply the [Trust] property . . . and the income to be derived therefrom exclusively for charitable, religious, scientific, literary, or educational purposes . . . provided, however, that no part of this Trust fund shall inure to the benefit of any private shareholder or indi-

46. Id. at 85, 263 N.Y.S. at 139.
47. See Wildlife Preserves, Inc. v. Scopelliti, 66 Misc. 2d 611, 321 N.Y.S.2d 1004 (Sup. Ct. 1971) (property acquired for maintenance of wildlife and to provide opportunity to study flora and fauna held statutorily exempt as used for “educational,” “scientific,” and “mental and moral improvement” purposes) (although corporate charter stated it was organized for charitable, educational, and scientific purposes, held not to constitute charitable use); North Manursing Wildlife Sanctuary, Inc. v. City of Rye, 52 Misc. 2d 96, 274 N.Y.S.2d 915 (Sup. Ct. 1966), rev’d on other grounds, 28 A.D.2d 891, 282 N.Y.S.2d 18 (2d Dep’t 1967) (where land was used as sanctuary for feeding, breeding, and nesting of wild birds and the public instructed about conservation, land held statutorily exempt as devoted to “the moral and mental improvement of man”).
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vidual.'” Some of the stated secondary purposes are contributing to the public welfare, advancing the scientific and cultural arts, reviving fundamental values so as to emphasize a humanitarian concern for life, and protecting the integration of spiritual values with physical needs and mental activities.

The Trust land is maintained in its natural state of undeveloped wilderness. As described by the court, “[t]he land is heavily wooded with hardwood and evergreens and contains a variety of geological formations. It includes some of the most beautiful land in New York State.” There is a system of trails through the wilderness area for which informational services are provided. The public uses the land for rock climbing, backpacking, camping, and birdwatching. Many schools and universities regularly schedule field trips to Mohonk as a supplement to their curricula. Scientific studies have been conducted on the Trust land.

The Trust lands located in Gardiner were taxed at a nominal rate until 1974, when for the first time the town began to tax the property at its full market value. The Trust initiated two proceedings challenging assessments for the years 1974 through 1976. Since there was clearly no religious, cemetery, or hospital use, the exemption for the Trust land would have to derive from its “chari-

49. Id. at 479, 392 N.E.2d at 877, 418 N.Y.S.2d at 764 (quoting trust agreement).
50. Id. (quoting trust agreement).
51. Id. at 480, 392 N.E.2d at 877, 418 N.Y.S.2d at 764.
52. Id. at 481, 392 N.E.2d at 878, 418 N.Y.S.2d at 765. Members of the public pay a nominal fee for use of the facilities, and the Trust has an agreement with Lake Mohonk, an adjacent resort and hotel owned by the Smiley family, that allows the hotel to pay an annual fee so that the hotel guests have the Trust lands available for their enjoyment. For a trust to be charitable in nature it must be a nonprofit organization. In Mohonk the court reasoned that the adjacent resort and hotel owned by the Smiley family afforded them only a peripheral benefit and did not defeat the charitable nature of the trust. Id. at 485, 392 N.E.2d at 881, 418 N.Y.S.2d at 768. For a recent description of the Mohonk area from a traveler’s perspective, see Grimes, A Resort Program Built Around Nature, N.Y. Times, June 15, 1980, § 10 (Travel) at 1, col. 2.
53. Although the court states that prior to 1974 the Trust lands were listed as exempt, id. at 481, 392 N.E.2d at 878, 418 N.Y.S.2d at 765, counsel for Mohonk explained that the land was taxed at a nominal rate until 1974. Interview with William R. Ginsberg, Counsel to Petitioner-Appellant, Mohonk Trust v. Board of Assessors, 47 N.Y.2d 476, 392 N.E.2d 876, 418 N.Y.S.2d 763 (1979) (Mar. 24, 1980).
table” or “educational” purposes, as provided for in both article 16 and section 421(1)(a), or from its “moral or mental improvement” purposes, as exempt only by the statute.

Mohonk was denied tax-exempt status in these two proceedings. Initially, in the Supreme Court, Ulster County, Justice Pennock found that the land was used primarily for recreation and conservation purposes. Employing a strict construction of the word “exclusively,” the court held that since recreation and conservation purposes were not listed specifically in section 421(1)(a), they were not exempt. In a second proceeding in the same court, Justice Casey held that a trust is not an organization or association within the meaning of section 421, and thus land owned by a trust could never be entitled to an exemption. In a consolidated appeal of the two decisions, the appellate division affirmed both judgments. The dissenting opinion reasoned that Mohonk was an “association” and that the conservation and environmental purposes were within the section 421(1)(a) exemption “upon the basis of the Untermyer case.”

The Court of Appeals reversed, and in the opening paragraph of its opinion stated the issue as whether the use of real property

55. N.Y. CONST. art. 16, § 1. For the text of this provision, see note 7 supra.

56. N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972). For the text of this provision, see note 8 supra.

57. Id. § 421(1)(b). For the text of this provision, see note 9 supra. Until recently, an organization was considered exempt only if an examination of the documents by which it was created showed that it was organized solely for an exempt purpose, and it in fact pursued that purpose. Today, exemption is not dependent upon the language of the document alone; “an organization may be entitled to an exemption if it is either ‘organized or conducted’ primarily for an exempt purpose or purposes.” 47 N.Y.2d at 484, 392 N.E.2d at 880, 418 N.Y.S.2d at 767 (emphasis in original).


60. Mohonk Trust v. Board of Assessors, No. 75-162, slip op. at 6.

61. Mohonk Trust v. Board of Assessors, No. 77-75 (Sup. Ct., Ulster County, Oct. 27, 1977), aff’d mem., 64 A.D.2d 789, 408 N.Y.S.2d 787 (3d Dep’t 1978), rev’d, 47 N.Y.2d 476, 392 N.E.2d 876, 418 N.Y.S.2d 763 (1979). The Court of Appeals reversed the lower court’s holding on this point. See 47 N.Y.2d at 483, 392 N.E.2d at 879, 418 N.Y.S.2d at 766. This Comment does not discuss whether a trust may be a corporation or association within the meaning of § 421(1)(a), N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972).


63. Id. at 790, 408 N.Y.S.2d at 789 (Mikoll, J., dissenting).
for environmental and conservation purposes as a wilderness area open to the public constitutes a “charitable” use. The court concluded that such use was charitable and, thus, exempt.\textsuperscript{64} Had the court stopped there, conservation lands would have been afforded constitutional protection from taxation.

Later in the opinion, after tracing the history of the Trust, its organization, and its use of the land, the court reframes the issue and asks whether the uses of the land are for religious, charitable, hospital, moral or mental improvement, or cemetery purposes. The reframed issue and the conclusion that follows more closely approximate the wording of section 421(1)(a). The court still finds the land exempt but now reasons that Mohonk exhibits “an assortment of ‘charitable . . . educational, [and] moral improvement of men, women or children’ purposes . . . .”\textsuperscript{65} This second line of reasoning may alter the nature of the exemption. To be insulated constitutionally the land must be used primarily for religious, educational, or charitable purposes.\textsuperscript{66} If the land is characterized as exhibiting an “assortment” of uses, one of which is not constitutionally exempt, there may not be constitutional insulation.

Immediately following this alternate explanation for its holding, the court notes that

where the Legislature has chosen to create only limited exemptions for particular activities which might otherwise be deemed to fall within the somewhat broader exemptions provided by sections 421[(1)(a)], those distinctions must be given full effect by the courts . . . . As it is, however, the Legislature has not seen fit to remove environmental and conservation purposes from the broad category of charitable, educational, or mental or moral improvement of man purposes within which they so neatly fit. Hence, we conclude that such purposes are exempt . . . .\textsuperscript{67}

One could infer from this statement that the legislature may be able to remove conservation lands to the discretionary exemption category, 421(1)(b). This language, when read in conjunction with

\textsuperscript{64} 47 N.Y.2d at 479, 392 N.E.2d at 877, 418 N.Y.S.2d at 764.
\textsuperscript{65} Id. at 484, 392 N.E.2d at 880, 418 N.Y.S.2d at 767 (citation omitted).
\textsuperscript{66} Although the constitution refers to “exclusive” use as entitling land to tax exemption, N.Y. CONST art. 16, § 1, exclusive has been construed to mean principal or primary in this context. \textit{See} Association of the Bar v. Lewisohn, 34 N.Y.2d 143, 153, 313 N.E.2d 30, 35, 356 N.Y.S.2d 555, 561 (1974); text accompanying notes 14-15 \textit{supra}.
\textsuperscript{67} 47 N.Y.2d at 484-85, 392 N.E.2d at 880, 418 N.Y.S.2d at 767-68 (citations omitted).
the court's second rationale, lends itself to the interpretation that the exemption for conservation lands is not constitutionally insulated.

The Dichotomous Decision

Instead of resolving the issue of whether the conservation and preservation of wilderness land for the public benefit is charitable in nature and thus constitutionally protected, the court wrote a confusing and contradictory opinion. The court gave two potentially inconsistent rationales for its holding. First, it stated that the "use of real property for environmental and conservation purposes as a wilderness area open to the public constitutes a charitable use exempt under the statute."68 Since the statutory provision exempting charitable use is constitutionally mandated,69 land use held to be charitable under the statute would also be charitable under the constitution, and conservation lands would be constitutionally immune from taxation. However, the court's later statement that the land is exempt because it exhibits an "assortment" of charitable, educational, and moral and mental improvement uses70 is vague and inconsistent with the first rationale. If the land is not used primarily for religious, charitable, or educational purposes, but rather for an "assortment" of uses, one of which—mental and moral improvement—is not a constitutionally exempted use, then the land is not constitutionally exempt. The court's recharacterization of the Mohonk land is, therefore, of import.71 In addition, there is the undecipherable wording that follows the court's second line of reasoning: "As it is, however, the Legislature has not seen fit to remove environmental and conservation purposes from the broad category of charitable, educational, or mental or moral improvement of man purposes within which they so neatly fit."72 This suggests that the legislature has always been able to abrogate the exemption

68. Id. at 479, 392 N.E.2d at 877, 418 N.Y.S.2d at 764.
69. N.Y. CONST. art. 16, § 1. See 47 N.Y.2d at 482, 392 N.E.2d at 879, 418 N.Y.S.2d at 766.
70. 47 N.Y.2d at 484, 392 N.E.2d at 880, 418 N.Y.S.2d at 767.
71. One may only speculate why the court did not discuss the constitutional issue. The court may have purposely avoided the issue, or the alternate lines of analyses may reflect a compromise made in an effort to reach a unanimous decision. Counsel for Mohonk suggested that the language at the end of the opinion may evidence such a compromise. Interview with William R. Ginsberg, Counsel for Petitioner-Appellant, Mohonk Trust v. Board of Assessors, 47 N.Y.2d 476, 392 N.E.2d 876, 418 N.Y.S.2d 763 (1979) (Nov. 10, 1979).
72. 47 N.Y.2d at 485, 392 N.E.2d at 880, 418 N.Y.S.2d at 768.
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for conservation lands by placing such use in the discretionary exemption category of section 421(1)(b).

In deferring to the legislature, the court could mean either of two things. First, that the legislature could have exercised its power of definition and excluded conservation lands from the mandatory exemption category before the Mohonk decision, but now that conservation lands have been defined by the court as charitable in nature the legislature no longer has this option. In this case, conservation lands would be constitutionally protected. Second, the court may have meant that the legislature could have excluded conservation lands from mandatory exemption before the Mohonk decision and can still do so even in light of that decision. The court may have held the Mohonk lands exempt only because the legislature had not acted. In this case, there is no constitutional protection for conservation lands. As such, conservational use could be removed to the discretionary exemption category of 421(1)(b) and then would be exempt only at local option. This interpretation parallels the second line of reasoning, if by “assortment” the court meant there was not primarily charitable or educational use.

Shortly after the Mohonk decision a similar issue was presented to the court of appeals in North Manursing Wildlife Sanctuary, Inc. v. City of Rye.73 This case involves the same wildlife sanctuary that previously was granted an exemption under the “mental and moral improvement” provision.74 The case was remanded to determine whether the sanctuary was legitimately used for a purpose that benefited the public.75 However, the confusion surrounding the Mohonk decision seems to pervade this case in three specific ways. First, the court adverts to its own holding in Mohonk stating that it recently held that section 421 provides an “exemption for real property used as a wildlife sanctuary by a charitable organization.”76 The Mohonk decision did not involve a wildlife sanctuary, but involved the preservation of wilderness land. Second, despite the court’s use of the word “charitable,” there is again no mention of the constitutional implications of such a holding. Also, the court’s opinion does not mention that wildlife sanctuaries had previously been held exempt under the “moral and mental improve-

75. 48 N.Y.2d at 141, 397 N.E.2d at 695-96, 422 N.Y.S.2d at 4.
76. Id. at 139, 397 N.E.2d at 695, 422 N.Y.S.2d at 3.
Is the court using these terms interchangeably? If so, since these terms have different legal consequences, this only leads to more confusion concerning the nature of the exemptions in these two cases. Third, as in Mohonk, at the end of the opinion the court discusses the removal power of the legislature without saying which land uses can be made subject to legislative abrogation. Therefore, the nature of the exemptions granted in Mohonk and in North Manursing are unclear.

The Court’s Role

The issue before the court concerning the eligibility of conservation lands for exemption was narrowly framed by counsel in Mohonk. Because the statute offered a broader range of exemptions than the constitution, it was tactically wiser for counsel to argue for exemption under section 421(1)(a). Although the court was within its rights to deal only with the issue before it, and the immediate practical result of a holding of exemption under the statute is the same as a holding of exemption under the constitution, there are still several reasons why the court should have used a constitutional analysis.

Initially, it must be recognized that the court’s role is different than the litigator’s. The litigator presents the client’s best case while the court resolves the dispute before it. However, the court’s decision does affect more than the individuals currently in the courtroom. Where there are important societal issues underlying the private individual’s claim, it is imperative for the court to address those broader issues and clarify the precedential implications of its holding.

78. 48 N.Y.2d at 142, 397 N.E.2d at 697, 422 N.Y.S.2d at 5. See also Catskill Center for Conservation & Dev., Inc. v. Voss, 63 A.D.2d 1091, 406 N.Y.S.2d 375 (3d Dep’t 1978).
81. See Boomer v. Atlantic Cement Co., 26 N.Y.2d 219, 257 N.E.2d 870, 309 N.Y.S.2d 312 (1970) (Jasen, J., dissenting). In Boomer the cement-making operations of the defendant were found to constitute a nuisance. The threshold question raised was “whether the court should resolve the litigation between the parties now before
Second, because of the similarity in the language of the statute and the constitution, and because a holding under the statute has constitutional implications, the court should have dealt with the constitutional issue. Whether conservation land is characterized as primarily a charitable or educational use or primarily a mental or moral improvement use determines whether exemption for conservation land is constitutionally insulated. Since the court in its initial statement of the holding explicitly states that the use of the Mohonk land was “charitable,” it was incumbent on the court to have at least specified and elaborated more clearly on the precise scope of the exemption it granted.

Third, the court itself mentions article 16 of the constitution in a footnote, explaining that parts of section 421(1)(a) implement and are mandated by article 16.82 If the statute implements the constitution, some type of constitutional analysis would seem appropriate. Instead, the court reached the conclusion that the Trust land was exempt entirely on statutory grounds.

When the court is dealing with the article 16 categories it is important to remember that the New York Constitution states that educational, charitable, and religious institutions “as defined by law” are exempt.83 The court has a role in defining the law and interpreting the constitution. It should not be left to the legislature alone to define the terms religious, charitable, and educational. If this had been the intention, article 16 would have been worded differently. For example, article 3, section 22, of the New York Constitution explicitly states that in any law imposing a tax measured by income, the legislature may define income.84 Since article 16 reads “as defined by law,” the court must play a part in giving definition to the categories involved.

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82. 47 N.Y.2d at 482 n.2, 392 N.E.2d at 879 n.2, 418 N.Y.S.2d at 766 n.2.

83. N.Y. CONST. art. 16, § 1. For the text of this provision, see note 7 supra.

The court could have helped to resolve this issue if it had offered some definitional distinction between "charitable" and "mental and moral improvement." Both of these terms are broad and sound similar in purpose. However, as previously stated, there are important legal distinctions. Only charitable use is protected against legislative abrogation. When the court refers to the Mohonk land as "charitable" and as exhibiting an "assortment" of purposes—one of which is the "mental and moral improvement" purpose—the distinction between these terms is further clouded.

There are two possible theories that could be advanced to provide a workable distinction between the "charitable" and the "mental and moral improvement" categories. One distinction that has been advanced is that mental and moral improvement pertains to use that is limited to a more specific group. For example, lands held by the YMCA, YWCA, the Boy Scouts, and the Girl Scouts have been placed in this category. This basis for distinction appears precluded, however, by the existence of a few discordant decisions. In the past, the court has held that wildlife sanctuaries and a social research organization fall in the mental and moral improvement category.

A second possible definition of mental and moral improvement was provided by a lower court in a case where the YWCA was a party. There the court stated: "We believe that organizations such as the [YWCA] are distinguished by their combination of benevolent, religious and charitable aspects. It is this type of organization to which the term "moral or mental improvement . . ." was meant to apply". Thus the court used this category when there was a variety of uses, one of which, benevolent, is not entitled to constitutional protection. In this situation the land does not qualify

85. Ginsberg, supra note 4, at 1, col. 1.
86. See Young Womens Christian Ass'n v. Wagner, 96 Misc. 2d 361, 409 N.Y.S.2d 167 (Sup. Ct. 1978); Opinion No. 17 (1975), 5 Opinions of Counsel, New York State Board of Equalization and Assessment; Opinion No. 10 (1971), 1 Opinions of Counsel, New York State Board of Equalization and Assessment.
88. Lower E. Side Action Project, Inc. v. Town of Liberty, 87 Misc. 2d 860, 387 N.Y.S.2d 342 (Sup. Ct. 1972) (organization formed to investigate social problems of youths held to be "mental and moral improvement" use).
for constitutional insulation because no single use is primary and the constitutionally protected uses, even when joined, do not constitute the primary use of the land. If it is this “combination of uses” that sets this term apart from a purely charitable use, then the second rationale—the assortment of uses explanation—that the Mohonk court gives for its holding of exemption would not provide constitutional protection for conservation land.

New York law is clear that a charitable organization must be (1) nonprofit in nature,90 (2) devoted to the welfare of the general public,91 and (3) organized or conducted “primarily” for a charitable purpose.92 In the past, the court has attempted to define what was primarily “religious” or “educational” use, and in Mohonk it should have attempted to do the same for “charitable.” For example, in Watchtower Bible & Tract Society v. Lewisohn93 the issue was whether the Jehovah’s Witnesses were organized primarily for bible purposes and therefore entitled to only a discretionary exemption under 421(1)(b), or primarily for religious purposes and therefore entitled to a mandatory exemption under 421(1)(a). In refining the definition of “religious,” the court held that despite the concurrent distribution of religious literature, the house-to-house preaching was religious preaching and thus the society was conducted primarily for religious purposes.94

Similarly, in a case where the tax-exempt status of certain university property was challenged, the court has exercised its role in defining what is “educational” use.95 The court determined that although university courses dealt exclusively with race relations and social problems and many students in those courses were not qualified for admission, this did not mean that the courses were not educational. In so holding, the court stated that its function was “to examine the type and character of the use of the property” to determine if the land was entitled to exemption.96

90. E.g., Mohonk Trust v. Board of Assessors, 47 N.Y.2d at 485, 392 N.E.2d at 881, 418 N.Y.S.2d at 768; N.Y. REAL PRop. TAX LAw § 421(1)(d) (McKinney 1972).
91. E.g., In re Will of MacDowell, 217 N.Y. 454, 460, 112 N.E. 177, 178 (1916).
92. E.g., Mohonk Trust v. Board of Assessors, 47 N.Y.2d at 482, 392 N.E.2d at 879, 418 N.Y.S.2d at 766.
94. Id. at 98, 315 N.E.2d at 804, 358 N.Y.S.2d at 760-61.
The court has also exercised its role in removing institutions from the three broad categories granted mandatory exemptions. In *Religious Society of Families v. Assessor of Carroll* the court determined that an organization relying totally upon human reason that denied the existence of a divine being was not a religious organization and thus not entitled to a tax exemption. Since in the past the court has helped to define what is religious and educational use and has also removed specific types of organizations from the three categories of exemptions allowed by the constitution, it should not be left to the legislature alone to decide to remove conservation lands from the broad categories that offer mandatory exemptions.

Our perception of what constitutes a charitable use changes as society changes, and charitable use should not be defined by rigid legislative enactments. Since the court is a more flexible decisionmaking body than the legislature, it is in the best position to give definition to this word. If the court allows the legislature alone to determine the nature of the exemption for conservation lands, the court would be abdicating its role in defining the law and the constitution.

**Constitutional Insulation for Conservation Land**

Providing constitutional insulation for conservation land would not have been a bold step nor a break with tradition. Not only is there precedent for holding that conservation lands are charitable in nature and thus constitutionally exempt, there is no precedent for removing this type of use to the discretionary exemption category of 421(1)(b). *People ex rel. Untermyer v. McGregor* held that parklike grounds dedicated to the public's use and enjoyment were charitable in nature. The dicta in *In re Estate of De Forest* suggests that the preservation of forest lands could also be considered charitable.

Furthermore, since the purpose of tax exemption is to implement state policy, the court could have read article 16 along

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98. *Id.* at 927, 343 N.Y.S.2d at 162.
100. 295 N.Y. 237, 243, 66 N.E.2d 292, 295 (1946). *See* text accompanying notes 41 to 44 *supra*.
101. 147 Misc. 82, 85, 263 N.Y.S. 135, 139 (Sur. Ct. 1933). *See* text accompanying notes 45-46 *supra*.
with existing environmental and conservation policies of the state: Article 14 of the constitution declares forest and wildlife conservation to be policies of the state and allows the legislature to appropriate money to acquire land for these purposes. The court could also have used the flexible rule of *In re Estate of Rockefeller*—"‘a charitable use . . . may be applied to almost any thing that tends to promote the well-doing and well-being of social man’ "—and held that conservation lands are charitable in nature and should be constitutionally protected as long as they are held by a nonprofit organization for the public benefit.

If, on the other hand, the court did not want to provide constitutional immunization for conservation land, the differences and similarities of the wording of section 421(1)(a) and article 16 of the constitution should have been analyzed, and the court could have held Mohonk exempt under only the moral and mental improvement clause of the statute. As a result, conservation lands would be held exempt as long as the courts continue to reason that they fall under this clause, or until the legislature passes a law excluding them from exemption. This analysis has merit because it addresses the constitutional issue and provides the clarity and consistency lacking in the *Mohonk* decision.

**CONCLUSION**

In the landmark *Mohonk* case the New York Court of Appeals held that conservation land qualifies under New York law for tax-exempt status. As this decision recognizes the benefits gained by protecting the natural beauty of our environment, its results must be heralded. If the court had not held the Mohonk land exempt, it is likely that in the upcoming years we would see many acres of unspoiled land owned by private individuals sold for development. However, because of the inconsistent language within the opinion, the nature of the exemption is unclear. This ambiguity is lamentable because it has the potential to undermine the result. The language in the decision concerning the legislature’s power to remove may inadvertently prompt unconstitutional legislative action and is,  

103. N.Y. Const. art. 14, § 3(1). For a partial text of this provision, see note 1 supra.

104. 177 A.D. 786, 791, 165 N.Y.S. 154, 157-58 (1st Dep’t 1917).

105. See North Manursing Wildlife Sanctuary, Inc. v. City of Rye, 52 Misc. 2d 96, 274 N.Y.S.2d 915 (Sup. Ct. 1966) (land used as bird and wildlife sanctuary exempt only by statute; held to fall under “moral or mental improvement” category), rev’d on other grounds, 28 A.D. 891, 282 N.Y.S.2d 18 (2d Dep’t 1967).
at the least, anomalous in an opinion that initially reasoned that the use involved was primarily charitable in nature.

The analysis suggested by this Comment would have added clarity to the opinion and would have determined whether conservation lands are constitutionally exempt and thus safeguarded against future adverse legislation. Since this question was not answered, Mohonk may be a hollow victory for environmentalists.

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