Ethics is clearly not a science, but rather a broad reflection upon human actions and character. Ethics also examines institutions and how they work and ultimately asks: what is the right behavior? Individuals, groups, and institutions make moral claims for their behavior, and ethics takes into account the grounds upon which these claims are made.

In taking an ethical look at the Main Street Plaza controversy, it’s imperative to sort through two incontrovertible truths: The LDS Church is the rightful property owner of Main Street, and the City has legally retained the easement. These two realities are in conflict because the easement has been ruled a public forum by the Tenth Circuit Court of Appeals, thereby protecting free speech under the First Amendment. The LDS Church intended to limit speech and the distribution of literature exclusively to its own ideology, while controlling behavior on the Plaza to conform with LDS standards. Since the high court ruled that one church cannot legally impose its own singular view on a public square, people with diverse opinions have been able to speak out on the Plaza, some highly critical of LDS Church beliefs and practices. As rightful property owners, the court’s ruling on the easement has (understandably) irritated LDS authorities and most of the followers of Utah’s dominant religion.

Since the Tenth Circuit Court’s ruling overturned an earlier judgment made in Federal Court in Salt Lake City by a Mormon judge, Ted Stewart, the behavior on the part of the LDS Church has been morally suspect. In their public relations strategy to sway opinion to their side, the LDS Church contends that the city’s easement on the Main Street Plaza was tacked on at the last minute “merely to assuage critics from concern, not because there was a legitimate need for an easement.”

The truth is that city officials identified the easement as a crucial element of the sale from the very beginning. A city report prepared before the first Planning Commission hearing on February 4, 1999, stated: “A
perpetual easement for 24-hour public access must be retained by the city from North Temple to South Temple within the existing street right-of-way. The easement should be designed and improved so as to maintain, encourage, and invite public use.” The requirement that the city retain a public easement became the very first condition to the Planning Commission’s March 4, 1999, recommendation that the City Council approve the sale of Main Street.

Even in Judge Stewart’s courtroom, when Salt Lake City attorney Roger Cutler was questioned about the easement he said it was a “critical element” and the sale of the property to the LDS Church would not have transpired “but for the easement.”

The LDS Church, in further questionable moral practice, claims that everyone knew from the beginning exactly what the intent of the church was in purchasing the property strategically located between Temple Square and the Joseph Smith Memorial Building. The public easement is treated as a nuisance; everyone, the church claims, was aware that it never would have bought the property unless it could exercise complete control.

And yet, the contract signed between the church and the city clearly indicates in provision 6.2: “Severability. In the event that it is finally determined by a court having jurisdiction over grantee or the property that any terms, conditions, limitations, or restrictions set forth in this instrument are unconstitutional or otherwise unenforceable, the remaining terms, conditions, limitations, and restrictions set forth herein shall remain binding and enforceable.”

This means, in no uncertain terms, that the Church and the City knew in advance that the terms could be subject to a court ruling on its constitutionality. And if the court ruled it unconstitutional the deal stood. It was a gamble from the beginning. The LDS Church took the risk knowing the sale was final regardless of the outcome of a court ruling. In other words, the Church knew what it was getting into; it just didn’t like the way things turned out.

For democracy to work smoothly, the ruling by an appellate court (or any court) must be observed. The Church has the option of overturning the Tenth Circuit decision by appealing to the Supreme Court, but instead has removed the issue from the courts where it belonged, and placed it squarely in the court of public opinion. Public opinion in Utah is decidedly influenced by the Mormon Church which has a 70% following. Ethically, we must ask: Why not keep a legal issue in the judicial system? Why give the believers of the dominant religion the power to control legal matters by pressuring public officials to carry out the
Church’s agenda or risk the next election? The questionable wall between church and state in Utah grows even more porous as the Church disregards law by trying to bend public officials through pressure at the polls.

While scrutinizing morals in a case study pertaining to the Main Street Plaza, any astute student must ask: Did the LDS Church demonstrate right behavior? Is this how an institution *ought* to act when it loses a case? If the risks of the sale were clearly spelled out in the contract, then must not the parties abide by the court’s decision? And finally, is it moral in a diverse culture to mobilize the members of a dominant religion to bypass the law for the sake of executing its own agenda?

Students of ethics must judge how actions will affect others. If a legal contract is rendered meaningless because the implied risks became real, then a contract is not worth the paper it is written on. When a court of law renders a decision (in this case defending First Amendment rights to guarantee the expression of minority opinions), then examine the implications when the majority tries to sway public officials to accommodate the majority’s demands. The minority will always lose in such cases, which is why the Bill of Rights has become a safeguard of American Democracy.

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