churches, cults and constitutionality

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Antagonism between established churches and newly emergent religious groups is not unique to our time. Ways in which religious and judicial authorities may deal with a leader and set of followers who operate outside the approval of the orthodox are disclosed in the New Testament, while historians have described others: expulsions, proscriptions, burnings with or without trial. The opprobrium dispensed upon Mormons, Freemasons and Roman Catholics in nineteenth century America is remarkably parallel to current attitudes toward cults.[1] Thus the leadership in our day of Christian clergy, rabbis or "born again" laity against the cults is historically no surprise. They stand in a long tradition of authorities disturbed by word of a new messiah or the itinerant teaching of a strange guru. What is new in the confrontation of cults and churches today is, on the one hand, that we live in a society with a constitutional guarantee of religious liberty and, on the other, that we have only recently become aware of a new technology—psychological manipulation. We talk not about witch hunts and heresy trials but about brainwashing, de-programming and coercive persuasion. The question is whether new techniques render contemporary cults sufficiently different from their predecessors as to warrant special confrontation and if they are, what kind of confrontation can be appropriate in view of our constitutional commitments.[2]

i

The Constitution's First Amendment reads: "Congress shall make no

0026-3079/85/2602-0031$01.50/0

law respecting an establishment of religion or prohibiting the free exercise thereof.'' We need not review all the Supreme Court decisions which have cited and interpreted these words to remind ourselves of the importance of both phrases. The ''no establishment'' clause, combined with the disallowance of any religious test for the holding of public office (Article VI of the Constitution), forbids any state-determined orthodoxy. The state, for example, is not to define what is acceptable as a religious belief, providing a basis even for something in which it is as essentially interested as conscientious objection.[3] Humanistic or secular views, as long as they are ''not based on policy, pragmatism, or expediency . . . are constitutionally religious.''[4] Meanwhile, the ''free exercise'' clause has helped avoid governmental interference or ''entanglement'' in religious faith or worship. Supreme Court Justice Robert H. Jackson made the point abundantly clear in defending the rights of Jehovah's Witnesses: ''If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or matters of opinion, or force citizens to confess by word or act their faith therein.''[5]

That ''fixed star'' actually shines with a light which pre-dates the Constitution's. In 1777 Thomas Jefferson framed a ''Bill for Establishing Religious Freedom'' for consideration by the House of Delegates of Virginia. The bill proposed

> that no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or beliefs; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.[6]

Jefferson called it ''a dangerous folly'' to ''suffer the civil magistrate to intrude his powers into the field of opinion'' and insisted on his own great faith

> that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.[7]

Among the many maneuvers which postponed the General Assembly's deliberation of Jefferson's bill was a proposal by Patrick Henry, ''A bill establishing a provision for teachers of the Christian Religion.'' No particular denomination or sect would be established; rather, all would be supported from general taxation. In the absence of Jefferson, then serving as ambassador to France, James Madison identified the dangers in Henry's proposal in his celebrated ''Memorial and Remonstrance to the General Assembly on the Commonwealth of Virginia,'' circulated in the

summer of 1785. Madison declared that because it is held "a fundamental and undeniable truth" that religion and "the manner of discharging it" are to be "directed only by reason and conviction, not by force or violence," it followed that "The Religion . . . of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate."[8] One implication of Henry's generalized establishment Madison saw as pernicious was that "the Bill implies either that the Civil Magistrate is a competent Judge of Religious Truth; or that he may employ Religion as an engine of civil policy." Madison underscores both: "the first is an arrogant pretension . . . the second an unhallowed perversion of the means of salvation."[9] Stopping the progress of Henry's bill, Madison managed finally to call for action on Jefferson's, which passed the House December 17, 1785 and the Senate by January 16, 1786. While Jefferson recognized that any succeeding legislature would have the power to rescind the actions of its predecessors, he tried to point out in the closing paragraph of his bill that they would not have the "right," for indeed, the bill asserted "natural rights of mankind."[10] Religious liberty was becoming a "fixed star" in the American constellation.

Those who find cults dangerous to personal well-being and/or the common good argue that constitutional guarantees ought not to apply to cults because they are distinctively different from traditional religious groups, either because of their supposedly mind-manipulative techniques or in view of their allegedly commercial or exploitative purposes. The term "cult" has proved particularly useful to many in distinguishing these from what are apparently more acceptable religious and spiritual groups, although the term is rarely defined. Examples of cult members may be offered instead: Hare Krishnas, Moonies or Jonestown victims, but a definition is assumed from common usage or media mock-up. Only *others* belong to cults; *we* participate, if at all, in "deeply meaningful religious groups." While the term is merely a pejorative in popular usage, historians of religion continue to employ it to designate groups which do not quite fit the categories of church, faith-tradition, denomination or sect.[11] A sect will generally remain within a faith-tradition while emphasizing a specific tenet or practice as essential for salvation; a cult, instead of identifying with a particular historical stream, will center instead on a spiritually-dominant leader and an ecstatic experience he/she has known which the followers may achieve. While useful in historical and religious studies, such a definition hardly justifies a status any different from other religious communities either in terms of the First Amendment or of the tax exemption categories of the Internal Revenue Service. The commercial enterprises of cults may not be that dissimilar from the vineyards and cattle ranches of orthodox groups. The issue which anti-cultists therefore press is a more ominous one: included in the characteristics of cults is their use of mind-manipulative procedures by which young people are coerced into commitment of themselves, their allegiances, activities and personal wealth to the group or its leader without their actual volition or informed consent.[12]

The Korean War contributed the term "brainwashing" to popular vocabulary. Military psychiatrists asserted that prisoners of war had been subjected to techniques which had forced them to make pro-Communist statements. Robert Lifton followed this theory with extensive interviews of civilian as well as military personnel, reporting his findings in the now-classic book, *Thought Reform and the Psychology of Totalism*, in which he identifies the basic procedures of brainwashing.[13] "Milieu control" removes one's capacity to influence the conditions of his or her own life, using dietary restrictions, sleep deprivation, unpredictable interruptions and a time schedule to inhibit private reflection. "Communication control" involves forcing thought into the confines of interview questions as well as censoring communication with others. "Mystical manipulation" uses rewards and punishments as well as proffered trust and distrust to elicit and reinforce dependency. The "demand for purity" divides the experienced world into the pure and the impure, developing in the subject strong approbations of guilt and shame, with emphasis on confession using techniques of total exposure to purge the self of any remnants of its own identity. A "sacred science" will maintain an aura of holiness about basic doctrines and "loading the language" will tend to terminate personal thought through oversimplification, repetition and constricted terminology. Doctrine is valued over persons, their experiences and views; through the "dispensing of existence" people are differentiated from non-people according to compliance or non-compliance with the ideology.[14]

Lifton's analysis is not necessarily limited to the indoctrination procedures used by the Chinese Communists against prisoners; he discovered these same techniques in Jim Jones' People's Temple.[15] A leader can win an "extraordinary degree of psychological submission with the promise of transcendence."[16] Members of a cult thus can feel a part of something greater than themselves. In Jonestown, Jones was able to elicit and reinforce the absolute loyalty of his devotees through his control of all communication, his surveillance system and the repetition of terms and phrases which were so introjected that even internal communication maintained the same categories. Individual guilt feelings were stimulated and manipulated by public criticism, confession and humiliation. Jones "dispensed existence" by insisting that only those who saw the light and would follow the path he prescribed would earn the right to exist. At the end, only those willing to undergo the "white night" experience, demonstrating willingness to die by drinking the common potion, could claim the privilege to live.

To be sure, the People's Temple is an extreme case of the power of brainwashing. Unique features include the pathology of its leader and the social conditions of Jonestown. Nonetheless, other groups may be as absolute in their claims to possess truth and as exclusive in defining the line between the redeemed and the unredeemed. Others, too, control communication by prescribed terminology and sacred propositions, disallowing individual differences in basic views. The argument against such groups does not question their right to believe the extraordinary or unorthodox,

nor to worship in some unusual manner, but rather challenges their employment of techniques of coercive persuasion, whereby their recruits lose the ability to make up their own minds or act according to their own wills.

ii

Those who would deny cultists First Amendment protections because of alleged use of mind-manipulative techniques on recruits have a difficult case to prove. They must demonstrate, as matters of fact and evidence, the deliberate use of the technique in the particular case in question.[17] What is more, the general argument needs to be so convincingly presented that such techniques are not only identifiable but may be shown as effective in analogous cases. Serious difficulties are encountered at both points. On the general issue, as many expert witnesses may be mustered on one side as the other; theories vary widely as to the effectiveness of such a technique as coercive persuasion.[18] Walter Reich, a research psychiatrist at the National Institute of Mental Health, points out that theories about coercive persuasion have not as yet been subjected to enough scrutiny for making reliable judgments as to the power of the brainwashing experience or its effects on subsequent attitudes and behavior.[19] Which techniques are required, which optional? For how long must they be applied and with what intensity or frequency of repetition? What kinds of attitudinal or behavioral changes are to be expected, and what changes are less likely? How lasting are the purported effects? Are we dealing with brainwashing in states similar to hypnosis, in which the conventional assertion has been that suggestibility has limits, such as deeply held convictions or matters of personal survival? In order to claim scientific authority regarding brainwashing, a broad consensus on such issues, resulting from experimentation and observation independently established, would need to be available.

The factual issue may be almost as intractable as the theoretical. The deliberate application of techniques needs to be demonstrated; circumstantial evidence is, of itself, inadequate. The accusation made against the Hare Krishna group that they intentionally practiced coercive persuasion because a copy of Lifton's book was found in their possession simply will not do.[20] Group leaders have as much reason for studying the book in order to understand the accusations made against them of using totalist methods, as to learn to apply them more efficiently.

A case conceivably can be made that the techniques of mental manipulation are to some degree implicit in the kind of totalist perspectives endemic to some cults. The hymnody of the Unification Church, for example, tends to instill basic themes along with particular angles of meaning. The Fatherhood of God, who providentially cares for his children, tends in some of the songs to slide into more particular reference to the "Father," Sun Myung Moon. Code-images or phrases known only to initiates elicit identification with those "in the know" and thus draw individuals into group allegiances.[21] Meanwhile, the doctrines of the

Divine Principle encourage the simplification of societal and personal problems by centering all analysis around a few propositions, including the distinction between the "perfect family" and the unredeemed descendents of Satan. Teachings of the swamis in the Hare Krishna and other Hindu traditions, and the terminology of Scientology with its sets of definitions from which deviation is not permissible, tend to be replete with the "thought-terminating cliches" Lifton found in his studies. Cycles of need-gratification are established in the practices of cults whereby patterns of chanting or silent meditation develop strong longings only they themselves may satisfy, while emphases on purity result in feelings of guilt which only prescribed ritual and renewed dedication can allay. Observers have remarked about the manner in which the repression of sex drives serves to deepen allegiance in the cult through the prohibition of preferential emotional ties with other members, confining expression of passionate devotion to the god or leader.[22] In some groups, as in the Unification Church, sexuality once "purified" is to be given expression in marriages not based on erotic attraction but on religious mission, to be approved (if not actually arranged) by the cult authorities. In many, shared symbols, practices or doctrines (generally including strong statements about the degeneration of contemporary society) undergird a sense of participation in a community of the redeemed in an alien world.

That such practices are used deliberately by cults as techniques to enslave or defraud is, however, difficult to prove. Thomas Robbins and Dick Anthony point out that those who make such assertions generally draw their inferences from reports by ex-cultists.[23] Dean Kelley insists that post-deprogramming denunciations should be held suspect to some degree as the person has "doubly defected," from parental values and then from a tightly-formed group, and must operate under "strong pressures for self-justification."[24] One's natural perception at that point would be that he or she had been victimized by ingenious devices of which one could not have been expected to be aware. The urgency with which the story must be told to the world reinforces the conviction in the believer that brainwashing has occurred and continues to be a danger for others. Meanwhile, parents are most likely to be comforted in a trying, emotionally-jarring time in their own lives by some form of the "outside agitator" syndrome: belief that the causes of the strange behavior are not to be sought in deprivations in their own family life nor in the possibility that other beliefs or practices could be more viable than their own.[25] But the insistence that "my son/daughter was manipulated" must sooner or later encounter the fact that at some point in the process of conversion, the initiate had made an overture, that is, had voluntarily approached or responded to the cult. The argument of involuntary allegiance or absence of consent is in some way incomplete—and what is incomplete is inconclusive.

What is more, the use of such techniques we have been discussing is not in itself criminal. The landmark case in New York, *People v. Murphy*, was the consequence of the abduction of two Krishna devotees by their parents in a deprogramming effort which failed. The devotees pressed charges,

only to find the Queens County Grand Jury counter-charging that the Krishna Consciousness leaders had kept the two in a state of "unlawful imprisonment by psychological means." The judge dismissed the indictment, insisting that the maintenance of religious beliefs by methods of mind control is not a criminal offense.[26] This is not to say, however, that a religious group is exempt from prosecution for conscious deception or false advertising. If stated assurances of particular results from courses offered and paid for on a commercial basis are not realized, groups will continue to be subject to litigation. But the distinction from the maintenance of religious beliefs and practices by a community of faith is clear. Such procedures are not criminal.

Actually, many of the "techniques" of "mind-manipulation" we have been examining as implicit in a totalistic faith system have been in use by established churches, synagogues and temples for centuries. Is the singing of hymns or the bowing in reverence before the Torah or the cross to be proscribed as among the "techniques of mind control?" Is catechistic instruction, summarizing complicated doctrinal positions for the appropriation of the young or unlearned to be forbidden? Are vows of celibacy to be disallowed by law because they imply sexual repression? Surely the wealthy merchant of Assisi, when his son Francis became mentally transfixed by strange obsessions, losing the ability to "think in reality-oriented terms," must have been as disturbed as any contemporary parent by a daughter or son's decision to join a cult. What then is the difference between cults and churches? Before one cites the openness of the latter to alternative ideas, he or she should first review enough history to see how long that openness has taken some communities to achieve and how far away it may remain for others. As for marketing techniques which give less than full disclosure, the precedent is readily available in pervasive business practices and the remedies for gross violations are the same under current laws.

iii

Let us suppose that a consensus were established in the scientific community on the effectiveness of the manipulative methods Lifton identifies, and legislation were passed making employment of such techniques a criminal offense. We would still have difficulties justifying direct interventions against cults in their religious activities, difficulties so serious as to offer such justifications little chance of success.

First, the analogy of the initiation and conversion procedures of cults with indoctrination methods on the Korean War prisoners Lifton studied is clearly too remote to apply to most cults. While Lifton's studies included non-prisoners, his typology of brainwashing techniques is evidently drawn from and most clearly visible in those suffering in a crucial way: from physical restraint, imprisonment. Incarceration has implicit psychological as well as physiological effects which resist comparison with the situation of recruits in a cult weekend or "intensive." A better analogy for cult initiatory procedures would be seduction rather than imprisonment. In this

process, too, under the influence of "milieu control," "loaded language" and an occasional "thought-terminating cliche," a person may in fact discover the analytical or discriminating functions of the mind becoming temporarily inactive. This may be attributed to being under some external influence but it is understood as neither a matter of compulsion nor coercion—that would be rape. The point is that temporary lapses in the discriminating functions of the mind and the choice-making operations of the will are pervasive and presumably natural aspects of the human experience, which does not indicate that mind or will are thereby constitutively paralyzed. Our usual experience is that mental and voluntary capacities soon return, albeit sometimes not before original intentions have been compromised. Human growth in part is precisely a matter of learning to deal not only with external influences but with our own internal processes, needs, drives, wants and wishes, as well.

A second consideration against the argument for coercive persuasion is that it calls for nothing less than a fundamental change in our legal system, a change so extensive as to require overwhelming proof to warrant it. Walter Reich commented on the Patricia Hearst trial, in which F. Lee Bailey argued a novel defense, that Miss Hearst ought not to be held responsible for her actions in the robbery of the Hibernia Bank because she was an involuntary participant. Because it became clear that she affirmed allegiance to the Symbionese Liberation Army, his argument was elaborated: in the early weeks of her captivity she was "brainwashed." Psychiatrists testified that such a process of "coercive persuasion" could have been used. Reich finds this argument and the testimony supporting it threatening. He holds that criminal law is based on the assumption that we are personally responsible for our behavior, that we as human beings can choose between right and wrong and, when we do wrong, can be assured to have so chosen. We are then criminally responsible. In the philosophy of the law, the only exceptions are those who lack free will, who do not have a *mens rea,* an evil mind or "vicious will," for, in Blackstone's terms: "An unwarrantable act without a vicious will is no crime at all."[27] Persons who may be said to lack free or vicious wills are children who are not responsible for their actions under criminal law, the insane or those who are externally coerced. Insanity must really be insanity, not the mere suggestibility of it, and coercion must really be coercion, not vague threat. The attempt to open up a new category, those subjected to internal coercion, combines the inadmissible variants of these others. The law is threatened because "the concept of free will on which it is based is already fragile," according to Reich, and would suffer continued attacks which ultimately could undermine it altogether.[28]

A third consideration requiring notice is argued by William Shepherd. He holds that a case justifying intervention, on the grounds that techniques of coercive persuasion were applied, will inevitably run afoul of the free exercise clause. His analysis of relevant cases led him to identify five elements in the "balancing of interests" mode of judicial treatment. Five essential questions may apply and require answers:

1) Are the religious beliefs in question sincerely held?
2) Are the religious practices under review germane to the religious belief system?
3) Would carrying out the state's wishes constitute a substantial infringement on the religious practice?
4) Is the interest of the state compelling? Does the religious practice perpetrate some grave abuse of a statutory prohibition or obligation?
5) Are there alternative means of regulation by which the state's interest is served but the free exercise of religion less burdened?[29]

The aura of sincerity obvious in young converts will support the cult's contentions; the integrity of their practices and beliefs is generally difficult to disprove. Surely the state's sanction of a deprogramming effort would be nothing less than a "substantial infringement on the religious practice." It would require the balance of a strongly compelling interest on the part of the state, difficult to substantiate: is it all that critical for the welfare of the society that a particular person has taken on new religious commitments? Further, is not deprogramming as drastic an alternative as may be devised? The focus of the argument then must turn to the religious belief, for to claim that techniques of persuasion were used in a manipulative manner is to probe the intrapsychic foundations of the defendant's faith—how it was gained and supported. Such a judicial review would insinuate the legal presence of the state into a realm where it has no constitutional right to interfere.

A fourth consideration may be included against the argument for coercive persuasion. Techniques of mind control are claimed to reduce victims to mental zombies with perpetual smiles on their faces and otherworldly gazes. But one tradition's "zombie" may be another's "person at peace with himself." However, Robert Shapiro entertains the theoretical possibility that legal intervention could be justified if it can be shown that the person in question had been actually changed into a robot, a "nonperson," by mental manipulations. Reich's objection that vague alternatives to mental incompetence will undermine the legal system is avoided by specificity: he or she would have lost personal autonomy, the capacity to make independent decisions, particularly having been rendered incapable of choosing religious beliefs.

Although the theoretical possibility is offered, an actual intervention is encumbered with obstacles. How could the transformation of a person into a robot be verified? It would obviously be itself a form of mental manipulation if the state would insist that the subject demonstrate independence of mind by giving up the recently adopted religious beliefs, besides being a blatant violation of the "free exercise" clause. The "victim" must be shown to have been "involuntarily subjected to persuasive influences and, as a result of that coercion, must presently lack the capacity to adopt or affirm a genuine belief."[30] The conversion must be demonstrated as involuntary because one must have the right to subject oneself to a coercive process. A further obstacle is that the argument could

not base itself in any way on the content of a religious belief to demonstrate mental incompetence or incapacity. That again would transgress the "free exercise" boundary. What is more, even if the case could still be made that a person had been changed into a robot by coercive procedures, the remedy the court could legitimately allow must not subvert First Amendment protections. "Specifically, the treatment would have to restore the capacity to choose religious beliefs without dictating the content of those beliefs. Otherwise, deprogramming becomes nothing more than *re*-programming."[31]

iv

Enough court cases have resulted in rulings on cults that precedents are fairly well established. We have noted that charges against the leadership of a local Hare Krishna Temple concerning use of mind control techniques were dismissed in *People v. Murphy* (1977). Justice John J. Leahy disallowed inferences that the situation parallelled cases involving "psychologically induced confessions, . . . hypnosis to destroy free will, intoxication, and coverture," for in those the defendents were seeking to compel victims to perform illegal acts. The judge affirmed that

> Religious proselytizing and the recruitment of and maintenance of belief through a strict regimen, meditation, chanting, self-denial and the communication of other religious teachings cannot under our laws—as presently enacted—be construed as criminal in nature and serve as a basis for a criminal indictment.[32]

In March of the same year, the parents of several "Moonies" sought grants of conservatorship over their children who not only were legal adults at the time but had reached their majority before having joined the religious group. San Francisco Superior Court Judge S. Lee Vavuris granted a thirty-day conservatorship on the basis not of researching the law, which he claimed provided "nothing to give . . . a guiding light," but on his understanding of what he called "the essence of civilization," the concern of parents for their children. Two of the converts were quickly deprogrammed but another pressed the case.[33] In *Katz v. Superior Court* the decision was reversed at the appellate level: "The (lower) court's orders following the hearing . . . contain no findings of fact which would disclose the ground or grounds on which the orders were based."[34]

The California law under which the case originally had been brought provided that a conservator could be appointed over a person "likely to be deceived or imposed upon by artful or designing persons."[35] The ruling included these observations:

> Although the words 'likely to be deceived or imposed upon by artful or designing persons' may have some meaning when applied to the loss of property which can be measured, they are too vague to be applied in the world of ideas. In an age of subliminal advertising, television exposure, and psychological salesmanship, everyone is

> exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will succumb. In the field of beliefs, and particular religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured.[36]

In any case, the courts have no competence to determine the validity or invalidity of a person's chosen religion. The Katz case made clear the inadmissibility of sanctioning deprogramming through the use of conservatorship statutes.

Richard Delgado proposes an alternative approach to the prosecution of cult leadership: using the prohibition of slavery in the Thirteenth Amendment as a basis.[37] Delgado has previously written extensively on the constitutional issues on coercive persuasion both by cultists and deprogrammers, insisting on the justification of forcible deprogramming by virtue of its restorative character: it did not revolutionize their values and mental processes but returned persons to a previous, stable condition.[38] Nevertheless, Delgado acknowledges the difficulties posed by the free exercise clause and hence offers another strategy: the attack on the basis of involuntary servitude avoids the problem of an initial voluntariness on the part of the convert. Further, such a strategy need not rely on a medical model for finding cults culpable, placing the state in a therapeutic role which may become precedental for dealing with other forms of dissent. The state here becomes emancipator, releasing persons from a bondage all the more insidious by being internal.

Shepherd counters this argument insisting that the medical model is operative nonetheless. A real difficulty emerges with the person Delgado calls the "happy slave," who does not perceive him or herself in involuntary servitude. The happy slave must be shown to be mentally incapable of understanding how bound he or she is—an endeavor which leads us directly back to the medical model. What is more, investigation into the intrapsychic aspects of the process of conversions to a particular set of beliefs carries one into the evaluation of those beliefs themselves, which is precisely what is constitutionally forbidden.

Cases grounded in the Thirteenth Amendment strategy have failed. In *Turner v. Unification Church* (1979) the plaintiff charged that the church had conspired to hold her in involuntary servitude by threats and that the resultant fear destroyed her ability to resist; she had been required to work long hours at jobs she would not have chosen. Her argument was not allowed: the court required evidence of both complete psychological domination and physical restraint if the charge were to hold.[39]

The consequences of *Peterson v. Sorlien* (1980) are more ambiguous. The Minnesota Supreme Court upheld the lower court ruling excusing parents and deprogrammers from charges of false imprisonment and intentional infliction of emotional distress brought in a tort case. The parents insisted that their adult daughter's mental processes had been impaired and pointed out that she was not always uncooperative in the deprogramming attempt. The court held that in such a situation "limitations upon the

child's mobility do not constitute meaningful deprivation of personal liberty sufficient to support a judgment for false imprisonment."[40] Furthermore, the obvious good-will of the parents in undertaking the project was held as an adequate counter to the charge concerning infliction of emotional distress.

Several factors ought to inhibit the use of *Peterson v. Sorlien* to countenance deprogramming. Two strongly dissenting opinions were filed, both based on First Amendment freedoms of association and belief: "it is unwise to tamper with those freedoms and with longstanding principles of tort law out of sympathy for parents seeking to help their 'misguided' offspring, however well-intentioned and loving their acts may be."[41] Furthermore, the difficulty in demonstrating false imprisonment in a deprogramming attempt ought to make such charges against cults virtually impossible. Here the court ruled that voluntary, cooperative behavior constituted a waiver of the subject's opposition; how much more voluntary is the initial association with a cult? Deprogramming procedures include physical abduction, involuntary restraint, sleep and dietary deprivation, psychological humiliation and often assault and battery. Deprogramming *is* analogous to imprisonment. As LeMoult has observed, the method of deprogramming, a kind of counter-conversion, "is far more like 'brainwashing' than the conversion process by which members join various sects."[42] Finally, the Minnesota Court itself was uneasy about precedents others might find in its ruling, expressing its disapproval of deprogramming: "owing to the threat deprogramming poses to public order, we do not endorse self-help as a preferred alternative."[43] The court does not go nearly far enough in its reservation. It has, in fact, offered a precedent for non-interference with parents and deprogrammers, a posture which in effect implicates the courts in activities which directly contravene constitutional protections. In his *Notes on the State of Virginia,* Thomas Jefferson wrote two hundred years ago that the effect of coercion in religion was "to make half the world fools, and the other half hypocrites."[44]

conclusion

A review of relevant court cases and the arguments behind and within them leaves us with some guiding principles regarding the constitutional status of the new religious groups often termed "cults." Primary among them must be the reiterated insistence on the "fixed star" which is traceable all the way back to Jefferson and Madison, that the protections of religious liberty must apply to all persons in their religious beliefs, if they are to be retained for any. As Justice Jackson vividly described it in one of his dissents, "the price of freedom of religion or of speech or of the press is that we must put up with, or even pay for, a good deal of rubbish."[45]

We have seen that the argument which attempts to justify deprogramming or similar interventions by charging cults with the use of methods of coercive persuasion fails in terms of legal cogency although the practice may still continue to disturb us. The state of the psychological sciences is

not such as to offer assurance as to the effectiveness or longevity of these techniques, and the analogy with the prison experience is too remote to stand as legitimate in most cases. Nevertheless, the potential impacts of such methods warrant further investigation and research apart from any considerations about drafting new legislation. Similarly, the argument based on involuntary servitude fails, although the possibility of psychological enslavement is troubling. Cults, of course, are not to be immune from prosecution, where warranted, on such counts as false advertising, deceit, fraud or attempts at tax evation. But clearly, neither are they to be charged nor prosecuted in a manner which will interfere in their belief-systems.

The way to deal with the dangers of mind-manipulating technologies, whoever might use them, must be primarily educational. In addition to the investigation and research into their operation, educational and religious institutions need to find ways of informing their constituents about how such technologies function on the one hand and about those internal personal needs and inclinations which result in vulnerability, on the other.

Finally, of even more significance would be initiatives by established churches, synagogues, cults or sects in the life of the spirit. Religious leaders, acknowledging the application in some cults and churches of methods of coercive persuasion, need to develop more clearly and forthrightly a religious alternative to totalism, in which the absolute commitment of the person is reserved for the Transcendent Reality, while totalist allegiance to any other person, belief-system or institution, is understood as undermining the spiritual life. William Shepherd points out that "we may wish for openminded and tolerant people, but we cannot produce them in the courts. . . ."[46] We may not "produce" them in religious organizations either, but at least we can nurture the conditions in which they may flourish.

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notes

1. David Brion Davis, "Some Themes of Counter-Subversion: An Analysis of Anti-Masonic, Anti-Catholic, and Anti-Mormon Literature," *Mississippi Valley Historical Review,* 47 (September, 1960), 205-224, cited by Thomas Robbins and Dick Anthony, "Cults, Brainwashing and Counter-Subversion," in *Annals of the American Academy of Political and Social Sciences,* 446 (November, 1979), 78-90.

2. Background works on the relation of public concerns and religious beliefs and practices which present particularly the historical treatment of issues of religious liberty include: Anson Phelps Stokes and Leo Pfeffer, *Church and State in the United States* (Westport, Connecticut, 1975); Leo Pfeffer, *The Liberties of an American: The Supreme Court Speaks* (Boston, 1956); Joseph L. Blau, *Cornerstones of Religious Freedom in America* (Boston, 1949); John J. McGrath, ed., *Church and State in American Law: Cases and Materials* (Milwaukee, 1962); William Haller, "The Puritan Background of the First Amendment," in Conyers Read, ed., *The Constitution Reconsidered* (New York, 1938), 131-141.

3. U.S. v. Seeger, 380 U.S. 163 (1965) and Welsh v. U.S., 398 U.S. 333 (1970).

4. William C. Shepherd, "The Prosecutor's Reach: Legal Issues Stemming from the New Religious Movements," *The Journal of the American Academy of Religion,* 50 (June, 1982), 196.

5. West Virginia State Board of Education v. Barnette, 319 U.S. 632-642 (1943).

6. H. S. Smith, R. T. Handy and L. A. Loetscher, *American Christianity,* 1 (New York, 1960), 446-448.

7. *Ibid.*

8. R. A. Rutland, et.al., eds., *Papers of James Madison,* 8 (Chicago and London, 1973), 299.

9. *Ibid.,* 301.

10. Smith, Hardy and Loetschen, 448.

11. Robert S. Ellwood, Jr. offers a brief discussion of a cult as a religious type distinctive from the sect in *Religious and Spiritual Groups in Modern America* (Englewood Cliffs, New Jersey, 1973), 19-36. He draws on J. Milton Yinger's *Religion, Society and the Individual* (New York, 1957), and *The Scientific Study of Religion* (New York, 1970), as well as G. K. Nelson's *Spiritualism and Society* (New York, 1969).
12. cf. David G. Bromley and Anson D. Shupe, Jr., *Strange Gods: The Great American Cult Scare* (Boston, 1981), where the anti-cultist position is reviewed in the opening chapter.
13. (New York, 1963).
14. *Ibid.*, 419-437.
15. "The Appeal of the Death Trap," *New York Times Magazine* (January 7, 1979), 26.
16. *Ibid.*
17. Robert Shapiro, "'Mind Control' or Intensity of Faith: The Constitutional Protection of Religious Beliefs," *Harvard Civil Rights-Civil Liberties Law Review*, 13 (1978), 793.
18. *Ibid.*, 786.
19. Walter Reich, "Brainwashing, Psychiatry, and the Law," *Psychiatry*, 39 (November, 1976), 400-403.
20. Interview with devotee formerly aligned with the Boston Hare Krishna temple.
21. Clay McNearney, "Unification's 'Holy Songs' and 'Empty Nest' Syndrome," unpublished paper presented at Southeast Regional Meeting, American Academy of Religion, March 1983.
22. Lorna Goldberg and William Goldberg, "Group Work with Former Cultists," *Social Work*, 27 (March, 1982), 165-170.
23. Robbins and Anthony, 87.
24. Dean M. Kelley, "Deprogramming and Religious Liberty," *The Civil Liberties Review* (July-August, 1977), 31.
25. Robbins and Anthony, 87f; cf. James A. Beckford, "A Typology of Family Responses to a New Religious Movement," in F. Kaslow and M. B. Sussman, eds., *Cults and the Family*, special edition of *Marriage and Family Review*, 4 (New York, 1981).
26. 98 Misc. 2d. 235, 413 N.Y.S. 2d. 540 (Sup. Ct., 1977).
27. Blackstone cited in Reich, 400.
28. Reich, 401.
29. Shepherd, 193.
30. Robert Shapiro, "Of Robots, Persons, and the Protection of Religious Beliefs," *Southern California Law Review*, 56 (1983), 1299.
31. *Ibid.*, 1312.
32. Cited by John E. LeMoult, "Deprogramming Members of Religious Sects," *Fordham Law Review*, 46 (March, 1978), 616.
33. S. Lee Vavuris, "On the Civil Liberties of Sect Members," in Irving L. Horowitz, ed., *Science, Sin and Scholarship* (Cambridge, Massachusetts, 1978), 199.
34. 73 Cal. App. 3d 963, 141 Cal. Rptr. 240 (1977).
35. cf. LeMoult, 632. The language was soon to be deleted.
36. Katz v. Superior Court, 73 Cal. App. 3d at 970, 141 Cal. Rptr. at 244.
37. Richard Delgado, "Religious Totalism as Slavery," *New York University Review of Law and Social Change*, 9 (1979-80), 51-67.
38. Richard Delgado, "Religious Totalism: Gentle and Ungentle Persuasion under the First Amendment," *Southern California Law Review*, 51 (1977), 1-98.
39. 473 F. Suppl 367 (D.W.I.) 1978 aff'd, 602 F.2d 458 (1st Cir. 1979). Described in O. D. Luckstead and D. F. Martel, "Cults: A Conflict between Religious Liberty and Involuntary Servitude?," *FBI Law Enforcement Bulletin*, 51 (1982), n.4:16-20; 5:16-23, 6:16-21.
40. Minn., 299 N. W. 2d 123 (1980), discussed in Luckstead and Martel, 6:20.
41. Minn., 299 N. W. 2d 133 (1980).
42. LeMoult, 606.
43. Peterson v. Sorlien, Minn., 299 N. W. 2d 124 (1980).
44. Cited in Fawn Brodie, *Thomas Jefferson: An Intimate History* (New York, 1974), 157.
45. U.S. v. Ballard, 322 U.S. 78, 94-95, (1944).
46. Shepherd, 209.