

Michigan Law Review

Volume 4 | Issue 4

1906

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Recommended Citation

Edward W. Dickey, *Christian Science and Religious Liberty*, 4 MICH. L. REV. 261 (1906).

Available at: <https://repository.law.umich.edu/mlr/vol4/iss4/2>

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CHRISTIAN SCIENCE AND RELIGIOUS LIBERTY*

PROMINENT among the expressions of religious thought in this country in recent years is that of Christian Science. Its teaching in regard to the healing of disease without any material agencies has called forth many comments on the question of religious liberty. As it has attracted to it a large and ever increasing number of intelligent and law-abiding citizens, all over the country, and as there have been several efforts to partially or totally restrict its practice as a means of healing, by proscriptive legislation, we deem it proper to set forth, in a general way, some of the questions, with the conclusions of well recognized authorities, that lie at the root of the matter.

While Christian Science is a healing system it cannot be considered as a "school of medicine" but only as a religious belief. It is defined by the Century Dictionary as "a system of religious teaching, based on the Scriptures, which originated with the Rev. Mary Baker Eddy about 1866. Its most notable application is in the professed cure of disease by mental and spiritual means."

For present purposes, it may be said that Christian Science purports to be the re-establishment of the practices of primitive Christianity, and it is an historical fact, recognized by Gibbon in the "Decline and Fall of the Roman Empire," that Christian Healing was practiced down to the third century. It does its healing by virtue of a divine law. Its "treatment" is but a mode of prayer in which this ever operative divine law is sought to be applied to the sick and sinful, and this is all a Christian Scientist does, whether for himself or for others. It will be seen, therefore, that the practice of Christian Science is of a distinctly religious character. This being true, statutes passed with a view to the regulation of the practice of "medicine and surgery" cannot be said to apply to Christian Scientists, or others, who use a principle of healing which is founded upon a religious belief.¹

It is true that in *State v. Buswell*,² the practice of Christian Science was held to be within the statute regulating the practice of "medicine and surgery" in that state. The statute in question defined the practice of "medicine and surgery" by declaring that it applied to any one "who shall operate on or profess to heal or pre-

* The writer is indebted for much of the material used herein, to an article entitled, "CHRISTIAN SCIENCE AND LEGISLATION," by Judge Clifford P. Smith, which appeared in the October, 1905, issue of the *Christian Science Journal*.

¹ *State v. Mylod*, 20 R. I. 632, 40 Atl. 753.

² 40 Neb. 158.

scribe for or otherwise treat any physical or mental ailment." At the trial, the court, after explaining the practice of "medicine and surgery," as defined by the statute, gave the following instruction to the jury: "The court instructs the jury that if they believe from the evidence beyond a doubt that the defendant when at the bedside of the sick, relying upon the power of God, the Ruler of this universe, to heal mortal man of ailments which the flesh is heir to, prayed to that God in sincerity to invoke his Divine power and that he made no profession himself to heal the sick, then you are instructed that defendant for such praying would not be liable therefor under the law as explained in these instructions." The case was taken to the Supreme Court by the prosecution, on exceptions, and in sustaining them the court held that the statute would apply to Christian Scientists, and that these people were liable to prosecution and conviction, under this statute notwithstanding the constitutional provision respecting religious liberty.

The subsequent growth of Christian Science in that state, and the number of cases healed, has no doubt, created a public sentiment too strong for any action in line with this decision.

In this connection it is well to note the significant remarks of Governor Mickey of Nebraska, who vetoed in 1905 a bill aimed at Christian Science practice. Referring to the constitutional provision respecting religious freedom, which the Supreme Court entirely ignored in the *Buswell* case, he justly said: "The constitution of the State of Nebraska declares that 'all persons have a natural and indefeasible right to worship almighty God according to the dictates of their own consciences,' and further adds, 'nor shall any interference with the rights of conscience be permitted.' In the Christian Science religion the ideas of worship and of divine healing are so intermingled that it is impossible to draw the line of demarcation, and hence interference with the one or the other is an interference with 'the rights of conscience' and thus an infringement of the constitutional guaranty of religious freedom."

Because of its religious character, the practice of Christian Science is protected in this country by ample constitutional provisions, both Federal and State, so long as such practice does not imperil society or interfere with the rights of others.

The First Amendment to the Constitution of the United States provides that, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof." This provision, which is but a limitation on the power of Congress, does not protect the individual in the security of religious freedom, from the action of state government.

All of the State Constitutions have, however, provisions on this subject, and the following from the Constitution of California is substantially the same in all the states. Art. I, Sec. 4. "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the state." In these state constitutional provisions is to be found protection to religious liberty, as the security of all personal rights is a matter of state regulation.

Should there be an abridgement of the "free exercise of religion" by any state, which would deny to the citizens of the United States these constitutional rights, we believe that the 14th Amendment to the Federal Constitution, which has been termed "a hedge on the police power of the state," could be invoked to obtain relief. Sec. I. provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It cannot be too well emphasized at this point that *religious liberty* does not mean the doing of any act that may be sanctioned by a religious conviction. This is not and never was the legal import of the phrase, "the free exercise of religion." Society has rights as well as individuals that should be protected, and the law does not grant to an individual that degree of liberty that would be likely to prove injurious to others. Religious as well as civil liberty is something to be enjoyed *equally* by all, but this enjoyment must be in deference to the *rights* of all. Religious liberty has the sanction of the law only in so far that it does not violate the peace of society or infringe upon the rights of others. Liberty, says Mr. JUSTICE BREWER of the United States Supreme Court, is "simply the right to do that which one deems best, subject to the limitation that it does not interfere with the equal rights of other members of the community."³

The United States Supreme Court in the case of *Reynolds v. United States*,⁴ announced as a test as to what might be punished

³ American Citizenship, p. 87.

⁴ 98 U. S. 145.

under a prohibitory statute without violating the foregoing constitutional provisions, in an extract from 12 Hening's stat. 84, when it said, "That it is time enough for the rightful purpose of civil government for its officers to interfere when principles break out into acts against peace and good order." We submit that the above extract, approved by the highest court in the land, affords a fair test as to whether or not the practice of a religious belief should be prohibited. The practice of Christian Science heals the sick, destroys the appetite for strong drink, releases those in bondage to drug habits, reforms the sinner, shows that "honesty is the best policy" in every walk of life, and shows that one cannot be a good Christian without being a good citizen. Would any one say that these results constitute "overt acts against peace and good order" or that they are "practices inconsistent with the peace or safety of the state"?

Hand in hand with the question of religious liberty involved in all legislation proscriptive of Christian Science, is that of individual liberty. The denial of the right to choose one's own physician, directly or indirectly, is a denial of the liberty which is the very foundation of our national life. All legislation of this character is a departure from the basic principle that gave this nation birth. In his veto message, to a bill aimed at Christian Science practice in 1903, Governor Peabody of Colorado, says: "Guided by the late experience of similar legislation in other States, the conclusion is irresistible that all such legislation has a tendency to restrict the citizen in the employment of whomsoever he pleases in the treatment of his diseases, and it also has a tendency to build up, under the protection of the State, a trust or combination of certain schools of medicine, to the exclusion of all others equally meritorious."

This whole matter is well summed up by Governor Thomas of Colorado, when he vetoed a bill designed to suppress the practice of Christian Science by requiring all who practice healing to pass an examination in *materia medica* and kindred subjects: "The fundamental vice of the bill is that it denies absolutely to the individual the right to select his own physician. This is a right of conscience, and sacred as that which enables the citizen to worship God as he may desire. It is indeed the same right manifesting itself in a parallel direction. It is a part of the law of this land and no civil power is strong enough to deprive the citizen of its exercise. He may indeed select a healer of doubtful reputation or conceded incompetence, but that is his affair just as much as is his choice of a minister or attorney. His action may prove injurious, possibly fatal, to himself or to some members of his family. It is better so than to delegate to any tribunal the power to say 'thou shalt not

employ this man' or 'thou shalt employ this one.' That this bill produces such a result indirectly makes it the more objectionable. It is not the outspoken and aggressive assault upon individual liberty that men should fear, but the indirect or resultant blow that is masked and falls unexpectedly. The bill, like all kindred forms of paternalism, assumes that the citizen cannot take care of himself. The State must lead him as a little child, lest he fall into trouble unawares. He must be guarded and chided, limited here and licensed there, for his own protection. Such a system, born of the union of Church and State, crumbles into ashes in the crucible of experience. It cannot flourish, though disguised in the garments of an alleged public necessity. The privilege of choosing one's own physician is a positive essential to the public health. Yet this bill assumes to thrust the coarse machinery of the criminal law into one of the most sacred relations of human life, to drag the chosen physician, if unlicensed, from the sick-couch to the prison cell, and to substitute for him some one who, however exalted and honorable, may not command the confidence or secure the sympathy of his patient. These comments are not extreme, for it must be remembered that those who believe in and patronize the various arts of healing that are ostracised by this bill form a very large part of every community, nor are they confined to the ignorant and superstitious portions of society. They number in their ranks thousands of the most refined, intelligent, and conscientious people. They recognize in many modern forms of relief to the suffering a religious or spiritual element that appeals to their best and tenderest sympathies. The benefits they claim and the cures they narrate are not imaginary. Shall the government enact by statute that these people shall no longer enjoy their benefits or put them into daily practice? Shall it officially declare these people to be criminally wrong and the three schools legally right? By what authority does it so declare? A distinguished physician of Massachusetts has recently declared with great force that 'the commonwealth has no right to a medical opinion and should not dare to take sides in a medical controversy.' It would be as consistent to take sides in a theological or philosophical discussion. The one would be condemned by all men; the other is equally foreign to the province of government. It may regulate, but cannot prohibit the calling of the citizens; it may prevent the commission of wrongs, but cannot deprive the individual of the right to choose his own advisers."

Aside from the constitutional questions touching religious and individual liberty, here involved, is the admitted inefficacy of the prevailing schools of medicine. Dr. Oliver Wendell Holmes, in an address before the Médical Society of Massachusetts, once said:

"If the whole *materia medica* were sunk to the bottom of the sea, it would be all the better for mankind and all the worse for the fishes." Dr. Mason Good, a learned Professor in London, says: "The effects of medicine on the human system are in the highest degree uncertain; except, indeed, that it has already destroyed more lives than war, pestilence, and famine, all combined." It is noteworthy that these comments express a growing sentiment among many physicians in regard to the drugging system. It is a well known fact that medicine is not an exact science, but largely experimental, and added to this it has a list of diseases denominated *incurable*. CHIEF JUSTICE CLARK of the Supreme Court of North Carolina, in the case of *State v. Biggs*,⁵ in speaking of this matter says: "An eminent medical authority in this State has said that out of 24 serious cases of disease, 3 could not be cured by the best remedies, 3 others might be benefited, and the rest would get well anyway. Stronger statements could be cited from the most eminent medical authorities the world has known. Medicine is an experimental, not an exact, science. All the law can do is to regulate and safeguard the use of powerful and dangerous remedies, like the knife and drugs, but it cannot forbid dispensing with them. When the Master, who was himself called the Good Physician, was told that other than his followers were casting out devils and curing diseases, he said 'Forbid them not.'"

All will agree that to have a healthy government we must have healthy citizens, mentally, morally, and physically. To sanction present medical methods and suppress all others would make this impossible. When the practice of any healing system attains that point of proficiency that would warrant it in appealing to the law-making body for a monopoly, the necessity for any such action will have vanished. It would seem from what has been said thus far, that there would be no desire for legislation giving to certain medical schools a monopoly in the healing art, but as a matter of fact, during the past few years bills have been introduced before the legislatures of about thirty-eight different states, proscriptive of Christian Science healing, under the guise of being for the benefit of the public health. Investigation has disclosed the fact that there has been no public demand for this sort of legislation, but that these bills have emanated directly or indirectly from medical societies. These endeavors have manifested themselves in years of political activity.

Speaking of this matter, in vetoing a bill in 1899, aimed at Christian Science practice, Governor Thomas of Colorado said: "A

⁵ 133 N. C. 729; 64 L. R. A. 139.

decided majority of the medical profession, including a large number of personal and political friends, have urgently requested the approval of the measure. I am persuaded that they earnestly believe it to be essential to the public welfare and designed to subserve the objects set forth in the title. It is not without reluctance, therefore, that the conclusions I have reached concerning its merits make it impossible to comply with their desires. With every consideration for their judgment, I regard the bill as unjust, oppressive, and obnoxious to the general welfare. * * * The title of the bill as it relates to the public is a misnomer. This is a common subterfuge; all measures designed to promote a specific interest or protect an existing evil are ostensibly labeled 'for the benefit of the people.' The fact that the people do not seek the protection, ask for the benefit, nor suspect the existence of the alleged danger, is wholly immaterial. * * * It is a legitimate criticism of this bill that it is the offspring of an union between the allopathic, homœopathic, and eclectic schools of medicine, into whose custody the health of the public is to be unconditionally delivered. Each in its own circle is given impunity as against the other two, but the condition is that the fusion or triple alliance must stand as a unit against all others. No one will believe that this union would have been made had it not been essential to the passage of this bill. If the allopath is to be believed, the homœopath is a charlatan and the eclectic a fraud. If the homœopath is to be credited, he has saved society from the narrow dogmatism of allopathic ignorance, and if the eclectic is heard, he tells us that he has garnered to himself the wisdom of all the schools and nothing but the husks remain. Neither deems it consistent with professional ethics to confer or consult with the others, and each believes his own to be the one branch of medical science worthy of the name. Homœopathy fought its way to recognition against the bitter and implacable antagonism of the regular school, established itself in the face of abuse, ridicule, persecution, and invective. Its disciples suffered all the pains that hatred, contumely, and authority could inflict upon it. They now unite with their hereditary and still unreconciled adversaries to deny to others the claims they have so successfully vindicated for themselves, and to assist them in the effort to extinguish all forms of healing save their own. Society, however, does not forget, and it may, therefore, be pardoned if it sees in this fusion of the schools something beyond the philanthropic desire to protect the public health."

It is a fact, substantiated by thousands of cases of healing, many of which have been testified to in courts of law, under oath, and the witnesses subject to cross-examination, that Christian Science is the most effective curative agent known. So wide has been the

range of this healing endeavor that it is today a matter of public note, that this system has healed every disease that *materia medica* has ever healed as well as those it has never healed. If human testimony is worthy of any credence whatever, these facts alone, aside from the constitutional questions, respecting religious and individual liberty, involved, should forever preclude the enactment or existence of any law calculated to forbid citizens from relying upon the Christian Science teaching, or Christian Science practitioners in case of sickness. Prayer may not be considered popular as a remedy for disease, but a scientific mode thereof, that gives to the world such results as the foregoing, cannot be ostracised by law.

Christian Scientists are not opposing any legitimate legislation calculated to regulate the practice of medicine. They are not opposing legislation now deemed necessary to the preservation of the public health, and it is but just to add that Mrs. Eddy, the leader of the Christian Science movement, has always urged obedience to all such regulations. They are not practitioners of medicine in any sense of the word, and those who appeal to it know that no material agencies are used. They have no quarrel with the medical profession. It is a fact to be noted in this connection that an increasing number of physicians are turning to it, and quite frequently advise their patients to try it as a last resort. Moreover the Christian Scientists do not seek special privileges nor do they seek to force their views on others, leaving everyone to do as he chooses, extending this privilege to members of their own families. In the case of an infant it is self-evident that no one is as solicitous for the child's welfare as is the parent, especially is this true in cases of sickness. Wisdom would dictate that he employ for those under his care the means he has *proved* the most efficient.

The rights herein discussed are vital to the preservation of life. They are also fundamental principles of civil government, to which, it has been said, "A frequent recurrence * * * is absolutely necessary to preserve the blessings of liberty."

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