

EXTEMPORANEOUS REMARKS

JEREMIAH GUTMAN

Because I have not heard the argument that Professor Delgado purports to derive from the thirteenth amendment before and I am fascinated by it, I would like to share my immediate reactions to it.

If we establish that certain groups calling themselves religions (but which we label as cults because of the way they influence people to become devoted to their principles) are to be labeled as slavemasters of those people whom they recruit, then we are violating both the establishment clause and the freedom of religion clause. If we say that groups A, B, and C are legitimate, so that people can become devotees of these religions and join monasteries and nunneries and priesthoods and the state will not interfere, but that groups D, E, and F are not legitimate religions, then we are establishing A, B, and C as the only true religions, and thus violating the establishment clause and interfering with the free exercise of religion by groups D, E, and F. According to Professor Delgado, if a particular group were to be defined as a "cult," then even if an individual claimed that he or she belonged voluntarily to that group, his or her protest of voluntariness would be overridden. If we say, "You are a slave and we will not permit you to remain a member of that group," we are violating both the freedom of association and free exercise rights of the individual who may want to join the group and remain a member whether we like it or not.

Professor Delgado argues that the advantage of a thirteenth amendment model is that we will not have to face the voluntariness issue; he then says (and correctly) that the thirteenth amendment cases deal without exception with either force or a threat of force. If force or a threat is involved, however, the question of whether one has voluntarily surrendered to a cult remains unresolved, and so we still must face the "voluntary" issue which Professor Delgado claims we can avoid by utilizing this model.

I have no doubt that some religious minorities do instruct their members to do some of the things that Professor Delgado has mentioned. Some religious minorities, for example, do instruct their members to chant. I do not think that we have the right, however, either to prevent someone from suggesting to another that he or she chant or to interfere with the desire to chant. I believe that right is protected by the first amendment.

The fact that many of the religious groups which Professor Delgado would, in effect, outlaw by labeling them as "slave systems" discourage their communicants from reading disapproved material may be true. I am not sure. I do know, however, that certain of the religions that we would not attack publish "indices" of forbidden readings. It is within their power to do so. Although it is not appropriate for the government to prohibit such reading, it is perfectly appropriate for a religious group to prohibit its communicants, if

they wish to belong to the group, from reading anything of which the group disapproves. This is the freedom that the first amendment provides.

The "misery" that Professor Delgado claims we would eliminate is an interesting concept. I suppose we would ask the communicant, "Are you miserable in the group which you have joined?" If the communicant said, "Yes, I am," then I suppose he would want to leave the group and that would be acceptable. If he said, "No, I am not," however, we would then say to him, "We know better than you. You only think you are happy. We are going to save you from this false happiness by separating you from the group with which you have associated yourself because we know it is better for you." I find indefensible the argument that someone else knows "better" than the individual herself or himself what group the person wants to join. Such state interference with private thought and private belief would be insupportable in a system governed by the Bill of Rights.

We cannot have an official truth. One system of dogma cannot be considered better than any other system of dogma. Just as there is no official truth, there can be no good religion and no bad religion. To label in this way is inconsistent with the first amendment because those religions which are labeled "good" become established, while the free exercise and association rights of those which are labeled "bad" are undermined. I do not believe that the badges and indicia of servitude against which the thirteenth amendment was aimed included the profession of faith.

The argument has been made by several speakers today, as it is traditionally made in these debates, that members of the so-called "cults" are engaging in irrational processes and are believing things which are not rationally defensible or provable. Many religions, perhaps most of the religions known to the modern world, glory in the very fact that a doctrine of faith does exist which cannot be rationally defensible or provable. The communicant believes, not because it can be demonstrated, but because the communicant accepts the revealed religion. Thus, all ultimate truths which religions profess and believe have the element of "faith" at their base. This argument, therefore, cannot be confined to "cults."

There are religions which condemn and declare sinful, as they have a right to do, any communicant who attempts to bring rationality to the examination of revealed doctrine. Either one believes in the divinity of the manifestation of God in one particular group, or one does not; one cannot prove that sort of thing. It is not for society even to examine whether the belief is rational or irrational; it is not for society even to examine whether or not it is beneficial to mental health to belong to a particular religion, or any religion. The first amendment simply forbids this examination.

I believe that many of those who attack the so-called "cults" as being bad for the mental health of the communicants are really saying that religion is bad for one's mental health. Many respectable professionals in the mental health field seem to believe this. These professionals have an absolute right to believe this; they also have a right to argue with others and to debate about it in forums such as this, if they wish. Yet, they do not have a right to expect the

government to participate in that kind of an examination. If I want to join a group (whether it is denominated a "religion" or not), I am free to do so. I am guaranteed that right under the freedom of association clause of the first amendment. Some may not think it is good for me. Some may try to convince me not to do it. I may listen to these arguments but I may also turn my back and walk away, as I choose. I cannot be forced to listen. My right to associate freely cannot be hindered, so long as I do not conspire to commit crimes. That is all that can be considered. We may ask only if the religious groups, in their recruitment practices, in their fund-raising practices, in their retention practices, violate the criminal law. If they do, then the individuals involved ought to be prosecuted. If they do not, then the government may not interfere.

We have heard many generalizations from many of the speakers today. It is as though all of the worst features of any small group that they may have heard about are characteristic of all the groups which they oppose. If any acts have been committed such as taking people to the countryside under false pretenses or putting them on islands from which they cannot escape (thus compelling them to remain against their will), and this can be proved, the people who have committed these acts ought to be prosecuted. They should be prosecuted because those acts constitute a crime; the crime is called kidnapping. Deprogrammers do the same thing, but with different methods. They ought to be prosecuted. If people use force and the threat of force to compel others to do anything, these people are violating the law and ought to be prosecuted. If no law has been violated, then the government simply cannot interfere.

PROFESSOR DELGADO REPLIES:

Mr. Gutman attributes to me the view that "if a particular group were to be defined as a 'cult,' . . . we [may] say [to one of its members], 'You are a slave and we will not permit you to remain'"

This is not my view. I have no interest in defining the term "cult." For me, the question is not very interesting, legally speaking. Nothing rides on a group's being—or not being—a "cult."

Some groups which sociologists regard as cults engage in behavior designed to reduce their followers to states of zombielike obedience. When this happens, we have a thirteenth amendment problem. This is the point of my article. It is the behavior of the group, not its label, that matters.

Suppose a group of detractors labelled a religious group a "human-sacrifice cult." Could society, merely on that basis, intervene? Of course not. But what if the group in fact commits human sacrifices? Or carries out slave practices reminiscent of Jonestown?

These are the hard issues Mr. Gutman ducks, preferring to ask instead easy rhetorical questions: May we prohibit chanting? Irrational beliefs? Book lists? Religious groups may of course do these things. May they also create slaves? Mr. Gutman avoids this issue, I think because he knows the answer is "No."

