

PREFACE

In the last decade, this country has experienced a marked increase in the number and types of groups professing to be religious movements. These movements vary in both their doctrines and their rituals. Some groups are communal, some are authoritarian; some require total commitment, some only infrequent participation. Whatever their doctrine and rituals, however, *all* of these groups have elicited intense reaction from mainstream religious organizations, parents of group members, and members of the medical and legal community.

Critics call for strict regulation or even prohibition of these new religious movements, contending that the groups exploit and physically and psychologically abuse their members. Those opposed to such regulation respond that the first amendment's protection of the free exercise of religion prohibits interference with these groups and the individuals who join them. In an effort to examine whether these two views could be reconciled, the *Review of Law and Social Change* sponsored a Colloquium entitled *Alternative Religions: Government Control and the First Amendment*. The purpose of the Colloquium, held on November 3, 1979, was to determine if abuses are in fact being perpetrated by these new religions and, if so, what means exist to counter these abuses which would not offend first amendment freedoms.

The Colloquium's morning session was devoted to the presentation of papers. Participants included clinical psychologist Dick Anthony; U.C.L.A. Law School Professor Richard Delgado; Jeremiah Gutman, Counsel of the New York Civil Liberties Union; Leo Pfeffer, noted authority on constitutional freedoms; author Marcia Rudin; and sociologist Thomas Robbins.

Marcia Rudin noted that today's cults "exhibit characteristics that set them apart from past religious cults and from established religions."¹ She claimed that the cults can destroy their members' mental and physical health, and that these groups are "dangerous to society because they are authoritarian and anti-democratic."² Leo Pfeffer, however, was unwilling to concede that today's cults are different from other established religions or that they should be accorded a lesser degree of first amendment protection. He argued, "The heart of the first amendment would be mortally wounded if the religions we now call cults were excluded from the zone of its protection because of their disfavor in the eyes of government officials or of the majority of Ameri-

1. Rudin, *The Cult Phenomenon: Fad or Fact?*, at 24 *infra*.

2. *Id.* at 31.

cans.”³ The fact that the cults are unpopular with many elements of our society, according to Pfeffer, should in no way affect the degree of protection afforded these cults by the first amendment.

Richard Delgado likened cults to slave systems and therefore proposed the use of a thirteenth amendment analysis as a new means of limiting cult activities. He claimed, “[T]he rigidly hierarchical, authoritarian, isolated living arrangements established, with the aid of intensive thought manipulation techniques, by certain religious cults contravene the thirteenth amendment,”⁴ and thus can be prohibited without offending the first amendment. Jeremiah Gutman, however, found Professor Delgado’s approach to be an outright violation of the first amendment’s anti-establishment clause *and* its freedom of religion clause.⁵

Thomas Robbins proposed a complete reconceptualization of the problem. Although he conceded that “cults do indeed present a problem of social control,”⁶ he argued that the problem must not be conceptualized as one of mind control. A proper conceptualization would focus on the activities of cults which “produce a ‘state-within-a-state’ pattern whereby sectarian movements seek to exempt themselves from legal constraints and to exercise social controls generally reserved to government authorities.”⁷ The problem, according to Robbins, is that the cults often ignore established social controls, and *not* that the cults “brainwash” their members. Dick Anthony called for the establishment of nonsectarian counseling centers, thereby obviating the need for government regulation. According to Anthony, both present and potential cult members would be willing to participate in a counseling program as long as it was “non-ideological.”⁸

The afternoon session consisted of two panel discussions. One panel was entitled “Effects of Cult Membership and Activities” and was moderated by New York University School of Law Professor David Richards. Professor Richards reminded the panelists that any debate over the negative effects of new religious cults and the consequent need for appropriate regulation must face both our constitutional tradition of religious tolerance⁹ and the “enormously influential modern reductionist theories of religion.”¹⁰ Marcia Rudin argued that our Constitution has a tradition not only of religious tolerance, but

3. Pfeffer, *Equal Protection for Unpopular Sects*, at 11 *infra*.

4. Delgado, *Religious Totalism as Slavery*, at 52 *infra*.

5. Gutman, *Extemporaneous Remarks*, at 69-71 *infra*.

6. Robbins, *Religious Movements, the State, and the Law: Reconceptualizing ‘The Cult Problem,’* at 34 *infra*.

7. *Id.*

8. Anthony, *The Fact Pattern Behind the Deprogramming Controversy: An Analysis and An Alternative*, at 74 *infra*.

9. Panel Discussion: Effects of Cult Membership and Activities, Opening Remarks of D. Richards, at 91 *infra*.

10. *Id.*

of protection of freedom of thought, which includes protection of one's ability "to freely decide to accept or remain with a particular religion."¹¹ Because one of the cults' most dangerous effects, according to Rudin, is a loss of freedom of thought, the first amendment does not prevent regulation of these groups.

Richard Delgado recognized that although religious belief *is* absolutely protected under the Constitution, "religious conduct has never been held to be absolute liberty."¹² Once the rights of others are affected, a balancing test must occur and "questionable cult practices can be controlled."¹³ Delgado maintained that these practices lead to the physical, psychological, and emotional scarring of cult members and need not be tolerated.

Paul Traub, an attorney representing deprogrammers, argued that deprogrammers, too, should be accorded first amendment protection. He suggested that either "the charade of calling some of the groups cults, alternative religions, or even 'religions' "¹⁴ must be dropped or this protection also must be given to those who wish to lead cult members from the cults.¹⁵

Paul Chevigny, Professor of Law at New York University, noted that most cult members have run away from difficult family situations and are merely seeking stability and security in their lives. He argued that it would be "cruel to try to deprive [cult members] of this search,"¹⁶ and that to do so would violate the first amendment.

Thomas Robbins cited the beneficial services the cults can provide, including psychotherapy, counseling, child care, and the linking of these services to an overarching spiritual meaning system.¹⁷ Leo Pfeffer argued that even if these groups are dangerous and harmful, and provide no beneficial services, "[T]he effects of trying to suppress these cults are just as harmful as the effects of those who hate the cults and are trying to phase them out."¹⁸ He argued that the cults must be left alone but that ultimately they would destroy themselves.¹⁹

All of the panelists acknowledged that the new religious groups affect both their members and the community as a whole. While some charged that their effect was negative and therefore required governmental control, some were unwilling to encourage regulation, no matter what the groups' effect.

The second panel was entitled "Regulation of Alternative Religions by Law or Private Action: Can and Should We Regulate?" and was moderated by Dean Norman Redlich. Dean Redlich asked the panelists to address the question "whether enforcement of traditional religiously neutral laws, applying to

11. *Id.*, Opening Remarks of M. Rudin, at 93.

12. *Id.*, Opening Remarks of R. Delgado, at 94.

13. *Id.*

14. *Id.*, Opening Remarks of P. Traub, at 98.

15. *Id.*

16. *Id.*, Opening Remarks of P. Chevigny, at 101.

17. *Id.*, Opening Remarks of T. Robbins, at 96.

18. *Id.*, Opening Remarks of L. Pfeffer, at 98.

19. *Id.* at 99.

criminal conduct, is an effective weapon against the harmful consequences of cult activities. The question also must be addressed whether cults pose such a unique problem that such laws are ineffective against them.”²⁰

Nathan Dershowitz, Director of the Commission of Law and Social Action of the American Jewish Congress, argued that traditional religiously neutral laws are not being enforced against cult groups. According to Dershowitz, the police and the courts cannot or do not act effectively in response to the illegal activities perpetrated by these groups.²¹ Theodore Freedman, national Program Director of the Anti-Defamation League of B'nai B'rith, argued that “existing regulations probably are adequate in dealing with the problems of cults,”²² but that it is “not the law, but the private sector of individuals and religious bodies”²³ that must learn to reach out to those individuals attracted to the cults and “compete ideologically”²⁴ with the cults for these individuals’ attention and support.

Jonathan Rosner, a member of the adjunct faculty at New York University School of Law, argued that the law must be modernized to face the problems posed by today’s religious groups. According to Rosner, “Our law *does* have to catch up with the fact that acts are being pursued by institutions in the name of religion which remove the question of freedom, and remove the question of voluntariness, in accepting beliefs.”²⁵

Patrick M. Wall, who has served as an adjunct professor at New York University School of Law, stated that, prompted by the doctrine of “justification,” he would be willing to break the law if it were necessary to free his child from the cults.²⁶ If one were “confronted with a choice to either obey the law as it is written or have some evil consequence flow from obedience to the law,” Wall argued that one must make the “rational, intelligent judgment”²⁷ to break the law. Jeremiah Gutman, however, labeled this “anarchy.”²⁸ He argued that “it is not appropriate to take the law into one’s own hands except in true emergency situations,”²⁹ and that changing a child’s ambitions or ideology is *not* a true emergency situation. Dick Anthony agreed that the government and the private sector should not attempt to regulate the cults. “Only to the extent that government supports research and counseling strategies should the public sector be at all involved.”³⁰

20. Panel Discussion: Regulation of Alternative Religions by Law or Private Action: Can and Should We Regulate?, Opening Remarks of N. Redlich, at 109 *infra*.

21. *Id.*, Opening Remarks of N. Dershowitz, at 110.

22. *Id.*, Opening Remarks of T. Freedman, at 111.

23. *Id.*

24. *Id.*

25. *Id.*, Opening Remarks of J. Rosner, at 112.

26. *Id.*, Opening Remarks of P Wall, at 113-14.

27. *Id.* at 113.

28. *Id.*, Opening Remarks of J. Gutman, at 114.

29. *Id.*

30. *Id.*, Opening Remarks of D. Anthony, at 116.

Although allegations were made as to the harms cults inflict and remedies were proposed to counter these harms, the participants were unable to reach a consensus or provide a definitive solution. The most telling comment was made at the end of the day by a member of the audience, a parent whose child had been a member of a cult for several years. Frustrated by the panelists' inability to provide answers to the many questions raised, she cried, "I think you should be ashamed of yourself Where can your hearts be? Who will help *us*? Do not be complacent."³¹ Perhaps no one can help; perhaps no one needs to be helped. In either case, the discussion must continue until definitive answers can be found.

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31. *Id.*, Audience Comment, at 123.

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