

RELIGIOUS MOVEMENTS, THE STATE, AND THE LAW: RECONCEPTUALIZING "THE CULT PROBLEM"

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I

INTRODUCTION

Since the horror at Jonestown, controversies over "cults"¹ have intensified. The dangers allegedly associated with such groups and their potential for harming individuals and disrupting the social fabric have been widely discussed.² Such groups allegedly use sophisticated techniques of mind control and brainwashing to mentally enslave individuals and paralyze their critical faculties, thereby producing "armies of zombies" whose existence imperils democracy, order, and civilization.³ Various remedies have been proposed, including the criminalization of "menticide" (the destruction of an individual's free will),⁴ voluntary deprogramming or forcible treatment through conservatorships,⁵ and the application of state and federal kidnapping statutes.⁶

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1. The term "cult" increasingly is applied to a disparate collection of groups and movements, and consequently has become unsuitable as a precise legal or social scientific category. The term will be used here to refer to the label applied to unpopular, unconventional religious (and sometimes political) groups. Groups to which this label is applied are frequently, but not always, authoritarian, communal, and totalistic. In effect, a "cult" is any group stigmatized as a "cult."

2. See, e.g., F. CONWAY & J. SIEGELMAN, *SNAPPING: AMERICA'S EPIDEMIC OF SUDDEN PERSONALITY CHANGE* (1978); R. ENROTH, *YOUTH, BRAINWASHING, AND THE EXTREMIST CULTS* (1977); Delgado, *Religious Totalism: Gentle and Ungentle Perusasion Under the First Amendment*, 51 S. CAL. L. REV. 1 (1977) [hereinafter cited as *Religious Totalism*]; Singer, *Coming Out of the Cults*, *PSYCH. TODAY*, Jan. 1979, at 72.

3. One assistant district attorney, for example, attempting to prosecute the Hare Krishna sect for using mind control to illegally imprison converts, described it as "an army of zombies or robots who could undermine the government and law enforcement." Robbins, *Even a Moonie Has Civil Rights*, *THE NATION*, Feb. 26, 1977, at 238, 241. More recently, Dr. John Clark, a psychiatrist, depicted cults as groups which strive "to change the very fabric of . . . society, which they would ultimately place under . . . totalitarian controls at all levels." Dr. Clark was concerned that "[g]uards at prisons, military, atomic, and other critical installations, atomic submarine crews, and the like," might be susceptible to mind change. J. Clark, *Sudden Personal Change and the Maintenance of Critical Government Institutions* (May 1979) (paper presented to the International Society of Political Psychology).

4. Teschner, *The Law and the Cults*, *THE ADVISOR*, Aug. 1979, at 7.

5. *Religious Totalism*, *supra* note 2, at 88.

6. See *id.* at 95 n.503.

Others have suggested that authoritarian "false religions" should not receive the privileges and protections accorded the "true" traditional religions.⁷ While considerable attention has also been given to possible abuses regarding the finances, political lobbying, and commercial activities of cults, the most persistent allegations involve the use of psychologically coercive indoctrination techniques and their potential for producing harm to individuals, families, and society as a whole.⁸

I contend that cults do indeed present a problem of social control. Civil liberties, however, will be endangered if this problem is conceptualized as primarily one of mind control. This conceptualization makes it relatively easy to treat devotees as if they were mentally incompetent and to confine them forcibly for therapy and enlightenment. A proper conceptualization of the problem should consider: (1) the activities of cults that ordinarily are subject to regulation but escape normal scrutiny because of first amendment protection; and (2) the stringent regimentation of devotees by the cults that produces conflicts with other institutions, notably the family and the state. These two dimensions of the cult problem 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. This pattern maximizes both the tension between cults and governmental authorities and the potential for clashes between the cults and competing societal forces.

Comprehensive treatment of the legal and moral issues associated with cults must consider not only the rights of cults, ex-devotees, families, and the state *against* cults, but also the rights of committed devotees who claim fundamental freedoms of religion and association and affirm the legitimacy and rationality of their spiritual commitment.⁹ Coercive deprogramming, which treats these rights and affirmations cavalierly, is not an appropriate response to the abuses of authoritarian sects.

II

DUBIOUS APPROACHES

A. Conceptual Confusion of Mind Control

The current controversy over the alleged abuses of cults unfortunately has centered on allegations of brainwashing and mind control. Concepts such as brainwashing, coercive persuasion, and thought reform were developed to ex-

7. *E.g.*, Teschner, *supra* note 4.

8. *See* note 2, *supra*. *See also* Shapiro, *Destructive Cultism*, 15 AM. FAM. PHYSICIAN, Feb. 1977, at 80.

9. This criticism can be applied to the otherwise comprehensive approach of Professor Richard Delgado who contrasts the constitutional rights of cults and the rights of the state and other parties *against* cults but pays scant attention to the rights of committed devotees. *See Religious Totalism*, *supra* note 2, and Delgado, *Investigating Cults*, N.Y. Times, Dec. 27, 1978, at A23, col. 2.

plain processes of indoctrination and identity transformation in government operated institutions such as prisoner-of-war camps, where raw physical constraints and coercion created a uniquely oppressive opportunity for persuasion.¹⁰ This element of physical constraint, however, generally is lacking in cults,¹¹ which do not possess a state's coercive powers and appear to have a substantial voluntary turnover rate.¹² The public controversy surrounding the trial of Patty Hearst elicited strong statements from a number of scholars who questioned the acceptance of brainwashing as either a legal concept or an analytical tool of psychiatry.¹³ While models of coercive persuasion have some heuristic value in the analysis of indoctrination in relatively authoritarian movements, serious distortions have arisen when using these models as rhetor-

10. R. LIFTON, *THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM: A STUDY OF "BRAINWASHING" IN CHINA* (1961); E. SCHEIN, *COERCIVE PERSUASION* (1961). See A. SCHEFLIN & E. OPTON, *THE MIND MANIPULATORS* (1978). Schefflin and Opton review the arguments on "religious brainwashing" and conclude that although elements of classic "brainwashing" syndromes are present in cults, they are substantially attenuated. *Id.* at 52-63. True brainwashing necessarily involves the raw coercive power of "prison walls and prison guards to prevent escape." *Id.* at 40.

11. A recent psychiatric study produced the following description of indoctrination workshops operated by the Unification Church:

Initially, participants are often not aware that the workshop is associated with the church. However, in our interviews members reported no overt coercion or physical deprivation during the period. In fact, when they were asked to indicate the strongest action taken at any point to discourage them from leaving the church, 97% indicated that there was no more than some disapproval or a little argument. However, respondents (1%) did report "members overtly limiting [their] freedom of movement or travel, but for less than an hour."

Galanter, Rabkin, Rabkin, & Deutsch, *The "Moonies": A Psychological Study of Conversion and Membership in a Contemporary Religious Sect*, 136 AM. J. PSYCH. 165, 166-67 (1979).

12. On the significant voluntary turnover in relatively authoritarian communal sects such as the Unification Church, see L. N. Skonovd, *Becoming Apostate: A Model of Religious Defection* (Apr. 1979) (paper presented to the Pacific Sociological Ass'n); C. STONER & J. PARKE, *ALL GODS CHILDREN: THE CULT EXPERIENCE—SALVATION OR SLAVERY?* (1977); Welles, *The Eclipse of Sun Myung Moon*, NEW YORK MAGAZINE, Sept. 27, 1976, at 32. According to Welles, "The church is now constantly losing members. While the arduous deprogramming often necessary to wrest devout Moon converts from the Divine Principle has gotten much publicity, many Moonies simply walk away from the church because they are worn out by the Spartan routine and frustrated and dispirited by the church's obsession with private gain instead of public betterment." *Id.* at 38. Another journalist who has studied the Unification Church has observed, "For every ten individuals who show up at a Moonie residence for the nightly free dinner and lecture, eight leave without further contact. Among those who remain, there is constant attrition as they journey through the realms of Mooniedom." Collier, *Bringing Home the Moonies: The Brain Snatch*, NEW TIMES, June 10, 1977, at 25, 39. See also Ofshe, *Synanon: The People Business*, in *THE NEW RELIGIOUS CONSCIOUSNESS* 116 (C. Glock & R. Bellah eds. 1976).

13. See, e.g., Reich, *Brainwashing, Psychiatry, and the Law*, 39 PSYCH. 400 (1976); Szasz, *Patty Hearst's Conversion: Some Call it Brainwashing*, NEW REPUBLIC, Mar. 6, 1976, at 10.

ical devices to legitimate religious deprogramming and other measures designed to lure members from cults.¹⁴

Brainwashing and mind control can be viewed as "residual" concepts. They embody what sociologists have called "residual deviance" or "residual rule-breaking."¹⁵ They are useful stigmatizing labels for the elements of sectarian indoctrination which may appear objectionable but which cannot easily be codified into familiar actionable categories (such as fraud, physical threat, or false imprisonment), or for the seemingly aberrant thought and behavior of devotees which cannot be fitted into standard mental illness syndromes.¹⁶

14. T. Robbins & D. Anthony, *The Limits of "Coercive Persuasion" as an Explanation for Conversion to Authoritarian Sects* (May 1979) (paper presented to the International Society for Political Psychology) (forthcoming in *POL. PSYCH.*); D. Anthony & T. Robbins, *Religious Movements and "Brainwashing"* Issue (Sept. 1979) (paper presented to the American Psychological Ass'n).

15. "Residual rule-breaking" is a concept developed by sociologist Thomas Scheff to denote the application of deviant labels to responses which appear vaguely aberrant to an observer (labeler), who, however, has difficulty coding the responses into standard deviant categories.

The culture of the group provides a vocabulary of terms for categorizing many norm violations: crime, perversion, drunkenness, and bad manners are familiar examples. Each of those terms is derived from the type of norm broken, and ultimately, from the type of behavior involved. After exhausting these categories, however, there is always a residue of the most diverse kinds of violations, for which the culture provides no explicit label. . . . For the convenience of the society in construing those instances of unmanageable rule-breaking which are called to its attention, these violations may be lumped together into a residual category: witchcraft, spirit possession, or, in our own society, mental illness. In this discussion, the diverse kinds of rule-breaking for which our society provides no explicit label, and which, therefore, sometimes leads to the labeling of the violator as mentally ill, will be considered to be technically *residual rule-breaking*.

T. SCHEFF, *BEING MENTALLY ILL: A SOCIOLOGICAL THEORY* 33-34 (1966). A study by two sociologists has recently identified ten "stigmata" which embody traits alleged to characterize "Moonies" and which are viewed as indicative of mental thralldom and evil possession: (1) linguistic changes (*e.g.*, truncated vocabulary due to compulsive repetition of cliches), (2) monotonic voice level, (3) fixed smile, (4) glassy stare, (5) hunched frame, (6) skin rash (due to vitamin deficiency), (7) body odor (due to neglect of hygiene), (8) cheap, ill-fitting clothes, (9) overall physical debility (*e.g.*, hollow eyes), and (10) hyperactivity and extreme nervousness. Shupe & Bromely, *Witches, Moonies and Evil*, in *IN GODS WE TRUST: NEW PATTERNS OF RELIGIOUS PLURALISM* (T. Robbins & D. Anthony eds. 1980).

16. Scheff considers "mental illness" and "schizophrenia" as constituting prime examples of residual labeling. There are, however, sufficiently codified and standardized mental illness syndromes, and the possibility arises that "bizarre" behavior will emerge which cannot be easily fitted into these conventional psychopathological categories. In one celebrated case, *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977), in which parents sought temporary conservatorships over members of the Unification Church, a clinical psychologist testifying on behalf of the parents acknowledged that the pathological traits she observed in the devotees, "did not fit into any class under headings offered in a standard psychiatric and psychological diagnostic and statistical manual." *Id.* at 978, 141 Cal. Rptr. at 250. She believed that the devotees had been subjected to coercive persuasion by the Church. LeMoult, *Deprogramming Members of Religious Sects*, 46 *FORDHAM L. REV.* 599, 634 (1978). For a discussion of psychiatric testimony in this case, see Collier, *supra* note 12; T. Robbins, *'Brainwashing' and Religious Freedom*, *THE NATION*, Apr. 30, 1977, at 518.

Residual concepts such as brainwashing and mind control generally aggregate various behaviors which may not in themselves appear deviant, criminal, or actionable, but which, as a whole, seem insupportably sinister.¹⁷ In the case of alleged cult mind control, the operative residual concept combines plausible, if over-generalized, assertions (such as the allegation that deception is used in luring a potential recruit) which may provide a basis for certain specified modes of intervention, with very different kinds of assertions (such as the allegation that cultist rituals and regimens destroy free will) which present serious epistemological problems.¹⁸ The notion of mind control fuses into a rhetorical mystique elements that might be better considered separately. This mystique, by aggregating heterogeneous elements and by diminishing conceptual clarity and precision, may erode legal boundaries, thereby drastically expanding the scope of governmental control and intervention.

These concepts also may seem superfluous because some of the aggregated elements may suggest limited remedies by themselves. (For example, fraud and deception are punishable; mentally incompetent persons can be granted competency hearings and screened for commitment.) The strategic ambiguity of a residual concept such as mind control, however, may permit the evasion of stringent criteria and safeguards associated with certain limited remedies. Concepts such as brainwashing and mind control clearly evoke the notions of mental illness and mental incompetence,¹⁹ yet do not explicitly affirm the technical incompetence of victims. Mind control thereby becomes a borderline concept, whose use permits the stigmatization of cults and the advocacy of control measures (for example, court-ordered deprogramming). At the same time, however, the need for applying the substantive and procedural rules of civil commitment, which need would necessarily arise if a formal claim of incompetence were made, can be disavowed. The gap between the strong con-

17. According to Scheff, "offenses against these unnamed residual understandings are usually lumped together in a miscellaneous, catchall category." T. Scheff, *Schizophrenia as Ideology*, in LABELING MADNESS 7 (T. Scheff ed. 1975).

18. Professor Delgado identifies elements of deception and manipulation, as well as fatigue, emotional blackmail, and diet, which combine to constitute a broad process of coercive mental control. The latter elements are qualitatively different from the former components because they involve difficult questions of "free will" and mental competence, which, however, have not adequately been acknowledged. Delgado, *supra* note 9; *Religious Totalism*, *supra* note 2, at 10-25.

19. According to Professor Delgado, the convert to a cult initially joins an authoritarian group under deceptive circumstances in which the neophyte lacks knowledge of the group's nature. "Later, he is given information about the identity of the group and the conditions of membership, but he is permitted to learn this information only as the cult perceives that he has become so weakened by fatigue, sensory bombardment, peer pressure and induced guilt and anxiety that he has lost the ability to assess it in his ordinary frames of reference. The convert thus never has full capacity and knowledge simultaneously. . . ." Delgado, *supra* note 9. The notion that a cult member's "capacity" and "ability to assess" are eroded by induced guilt, fatigue, and sensory assault, clearly raises the issue of mental incompetence, which, however, is avoided by a conceptualization of the issue as being essentially one of "consensuality." *Id.*

notation of mental incapacity which certain terms carry and the actual denotation of these terms is ambiguous and shifting.

Several additional objections can be made to the legal institutionalization of a mind control vocabulary for policy- and decision-making. A heightened concern over the use of brainwashing and mind control by organized social movements may shift the focus of governmental scrutiny and control from the overt acts of dissidents to their personal thought, thereby imperiling their right to dissent.²⁰ While the concepts of mind control and brainwashing reflect an interest in the victim's ability to perceive rather than in the content of the victim's opinions, they mask a latent concern for the deviant content of beliefs and bizarre rituals.²¹ Finally, the acceptance of brainwashing and related notions as legal concepts continues a disturbing trend away from assigning responsibility to the individual for his acts. This trend has been viewed as undermining the foundations of American law and challenging the premises of traditional normative conceptions of individual rights and liberties.²²

Mind control is a "bull-in-the-china-shop" concept. Imprecise and unbounded, it joins incongruous propositions. Moreover, a gap exists between the medical connotations of the concept and its popular denotations. The concept of mind control can thus radically expand the scope of intervention while simultaneously evading substantive criteria and procedural safeguards. As one judge stated:

[T]he premise . . . that the religious rituals, daily activities and teachings of the Hare Krishna religion constitute a form of intimidation to maintain restraint over . . . alleged victims . . . is fraught with danger in its potential for utilization in the suppression—if not outright destruction—of our citizens' right to pursue, join and practice the religion of their choice, free from a government created, controlled or dominated religion. . . .²³

20. See Robbins, *Cults and the Therapeutic State*, 10 SOC. POL'Y 42 (1979).

21. For documentation regarding the concern of parents and deprogrammers with the content of deviant sectarian beliefs, see Kim, *Religious Deprogramming and Subjective Reality*, 40 SOC. ANAL. 197 (1979) (a study of the deprogramming process based on interviews with seventeen subjects of deprogramming that highlights the role of Bible study in some deprogramming processes). See generally ACLU, *DEPROGRAMMING: DOCUMENTING THE ISSUE* (1977); Robbins, *supra* note 3; Robbins & Anthony, *New Religions, Families and Brainwashing*, SOCIETY, May/June 1978, at 77; Sage, *The War on the Cults*, HUMAN BEHAVIOR, Oct. 1976, at 40.

22. See N. KITTRIE, *THE RIGHT TO BE DIFFERENT* (1971); Reich, *Brainwashing, Psychiatry, and the Law*, 39 PSYCH. 400 (1976).

23. *People v. Murphy*, 98 Misc. 2d 234, 240, 413 N.Y.S.2d 540, 543-44 (Sup. Ct. 1977).

B. The Problem of Deprogramming

“Deprogramming,”²⁴ at present, is the primary mode of social control over cults. This fact reflects both the public hysteria over mind control and the success of targeted movements in evading existing modes of regulation. Contemporary deprogramming takes three basic forms:

(1) Voluntary deprogramming, in which a devotee is noncoercively persuaded to talk to a conventional clergyman, anti-cult activist, or ex-devotee prior to making an extended commitment to a cult;²⁵

(2) Extra-legal deprogramming, in which a devotee is abducted by parents or parental agents without the sanction of a court order;²⁶ and

(3) Legal deprogramming, in which a devotee is seized and physically confined on the basis of a temporary conservatorship or guardianship order issued by a court (frequently *ex parte*).²⁷ Legal and extra-legal deprogramming often overlap when parents, sometimes with the complicity of local officials, exceed the authority granted in the court order.²⁸

While the overt brutality and violence that characterized some deprogramming in the early 1970's probably has diminished, legal as well as extra-legal deprogramming still may entail verbal assaults on the content of sectarian beliefs. These assaults can take the form of attacks on the doctrines, philosophies of history, and spiritual integrity of cult leaders.²⁹

The apparent support by the government of these practices is particularly disturbing. Prosecutors and grand juries, for example, are reluctant to condemn extra-legal abductions based on the view that such actions are essentially family matters. Judges and juries tend to justify these abductions under the “choice of evil” rule which allows an inference of justification based on parents’ reasonable belief that the health and well-being of children are imperiled in a deviant spiritual community.³⁰ The invocation of the “choice of evil” rule allows extensive testimony concerning the ritual and beliefs of the targeted

24. I define “deprogramming” as attempts to deconvert individuals who have become members of cults through alleged indoctrination. Often this term is used to denote attempts at deconversion in a context of forcible confinement.

25. Voluntary deprogramming is described sympathetically in C. STONER & J. PARKE, *supra* note 12, at 226-51. Because voluntary deprogramming is not legally problematic, I will have no more to say about it.

26. The well-known deprogrammer, Ted Patrick, has described his methods. *Playboy Interview: Ted Patrick*, PLAYBOY, Mar. 1979, at 53. See also Waters, *Bringing Home the Moonies: The Body Snatch*, NEW TIMES, June 10, 1977, at 30.

27. LeMoult, *supra* note 16, at 629-35; Robbins, *supra* note 3, at 239-40.

28. The court order often does not permit the conservator to fix the residence of the conservatee or to institute involuntary therapy. Slade, *New Religious Groups: Membership and Legal Battles*, PSYCH. TODAY, Jan. 1979, at 81.

29. See generally Sage, *supra* note 21; Robbins & Anthony, *supra* note 21.

30. See LeMoult, *supra* note 16, at 621-29; ACLU, *Deprogramming and the Law: Three Case Histories*, in CHILDREN'S RIGHTS REPORT, June 1977, at 5.

sect. The jurors are arguably thus permitted to determine the issue of justification based on their own religious prejudices.³¹

“Legal deprogramming” is of particular concern because the legitimization of the concepts of mind control and brainwashing reflects a potential expansion of the frontiers of repression. Critics of court-sanctioned deprogramming argue that it violates the individual’s freedom of religion guaranteed by the first amendment.³² In response to this criticism, Michael Trauscht, a lawyer for a deprogramming institution, the Freedom of Thought Foundation, noted, “Certainly the First Amendment guarantees freedom of religion, but necessary to each guaranteed freedom is freedom of thought.”³³ “Freedom of thought,” however, is not a right claimed by potential conservatees, who rather claim the right to pursue their religious commitments without interference from the state. It is questionable whether an unasserted right should take precedence over a claimed liberty. Clearly, before defeating a claimed right of freedom of association and of religion by an unclaimed right to “freedom of mind,” certain special conditions should be demonstrated as overriding. The criteria of mental incompetency for civil commitment may provide a legitimate basis for disregarding the devotee’s stated will. The substantive and procedural rules of civil commitment, however, can be short-circuited by *ex parte* conservatorship proceedings.

In New York and a number of other states, conservatorship laws are limited to protecting the *property* of disabled persons.³⁴ The use of such laws to confine the *person* of devotees of unpopular and authoritarian religious movements represents a significant innovation³⁵ that has become increasingly popular in some states. Under the California Probate Code, for example, temporary conservatorships were authorized in those emergency situations where the conservatee was “likely to be deceived or imposed upon by artful and designing persons.”³⁶ In the spring of 1977, the parents of several “Moonies” attempted to use this provision to obtain such conservatorships. A California Superior Court judge granted the conservatorships, basing his deci-

31. See generally LeMoult, *supra* note 16, at 625-40; *Voll Tells Kidnap Trial of his Conversion*, N.Y. Post, July 26, 1973, at 22.

32. See, e.g., LeMoult, *supra* note 16, at 640.

33. Collier, *supra* note 12, at 28.

34. E.g., N.Y. MENTAL HYG. LAW § 77.01 (McKinney 1978); UNIFORM PROBATE CODE §§ 5-401 to -431.

35. Temporary conservatorships were originally developed for the purpose of safeguarding elderly and senile persons. In many states such conservatorships are limited to control over property and do not extend to control over persons. The granting of conservatorships *ex parte* has traditionally required an “emergency” entailing an impending event more discrete than gradual indoctrination and assimilation to a subculture. See Baker, *Abuse and Misapplication of Conservatorship Law*, in DEPROGRAMMING: DOCUMENTING THE ISSUE, *supra* note 21, at 158; LeMoult, *supra* note 16, at 631-32.

36. Act of Aug. 16, 1972, ch. 988, § 3, 1972 Cal. Stats. 1799. [Current version at CAL. PROB. CODE § 1751 (West 1979). This language was deleted from the statute by an amendment effective July 1, 1977. Act of Sept. 29, 1976, ch. 1357, § 25, 1976 Cal. Stats. 6193.]

sion not on a finding of mental insufficiency but rather on an affirmation of the integrity of the family as "the essence of civilization."³⁷ Some of the "Moonies" were quickly deprogrammed and recanted during the course of these conservatorships; another conservatee named Jacqueline Katz, however, appealed. In *Katz v. Superior Court*,³⁸ the appellate court dismissed the conservatorships and invalidated that section of the California Probate Code authorizing the conservatorships. The statute's imprecise language was deemed unconstitutionally to limit an adult's freedom of association. The court said that ambiguous or overly broad criteria could not legitimate forcible restraint without violating fundamental liberties in the process.³⁹

In noting that the conservatorships had been granted by the lower court without a clear determination as to the incompetency or insanity of the devotees,⁴⁰ the court established stringent criteria for the granting of such petitions. The court required that only "gravely disabled" individuals could be removed from religious movements and forcibly confined.⁴¹ In effect, the court said that personal rights of freedom of religion and association override the state's interest in correcting marginal mental health aberrations, barring severe disability. An individual's best interests may conceivably be furthered outside of an authoritarian communal sect, but it is the right of the devotee to choose a less beneficial alternative. Unless severe incapacity is established, the devotee's choice must be respected. In short, it is beyond the authority of the state to employ coercion to maintain each citizen in a state of optimal mental health.

The court also recognized the difficulties of evaluating the authenticity or spontaneity of a religious faith without judging its validity.⁴² The court apparently agreed with the *amicus curiae* brief of the American Civil Liberties Union of Northern California which had argued that, in granting conservatorship petitions, the lower court had in fact evaluated the wisdom of the devotees' religious and associational choices.⁴³

The *Katz* decision, according to one commentator, "made plain the truly illegal nature of 'legal deprogramming' through conservatorship proceedings."⁴⁴ After the California Supreme Court refused to review the *Katz* decision, it was thought that judges throughout the country would become more

37. *Katz v. Superior Court*, 73 Cal. App. 3d 952, 963 n.8, 141 Cal. Rptr. 234, 240 n.8 (1977). For commentary on the decision, see Collier, *supra* note 12; LeMoult, *supra* note 16, at 632-35; Marson, Crosby & Sclosser, *On the Civil Liberties of Sect Members. Part I*, in SCIENCE, SIN AND SCHOLARSHIP: THE POLITICS OF REVEREND MOON AND THE UNIFICATION CHURCH 192, 192-97 (I. Horowitz ed. 1978) [hereinafter cited as Marson]; Robbins, *supra* note 16.

38. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977).

39. *Id.* at 969-71, 141 Cal. Rptr. at 244.

40. *Id.* at 963, 141 Cal. Rptr. at 240.

41. *Id.* at 983, 141 Cal. Rptr. at 252.

42. *Id.* at 985-87, 141 Cal. Rptr. at 254-55.

43. Marson, *supra* note 37, at 193-97.

44. LeMoult, *supra* note 16, at 635.

circumspect in granting temporary conservatorships and guardianships *ex parte*. In the aftermath of the Jonestown tragedy, however, this hope may never be realized.

The *Katz* decision is reasonable. Any parent has the right to question the mental competence of an adult child and petition for commitment to a mental health facility. If the standards for commitment are not met, however, forcible seizure and confinement is not warranted. A legal system based on the premise that citizens in general are rational and responsible cannot lightly infer incapacity or treat an individual as an incompetent. "Legal deprogramming" is pernicious because it depends on vague and ambiguous notions such as mind control and brainwashing to legitimate its abuses. As a result, a person may be forcibly confined and treated as if he were incompetent without access to the procedural safeguards of civil commitment proceedings. *Ex parte* conservatorship or guardianship hearings carried out in this manner institutionalize a presumption of incompetence.

As this author has noted earlier in another forum:

Inferring that a person who is not hysterical, violent, drugged, or under physical restraint and who talks coherently albeit dogmatically is a kind of zombie is highly questionable. At the very least, a strong burden of substantiation must be met by the party proposing forcible confinement on a restriction of freedom of association. . . . Over the past two decades it has become more difficult to incarcerate noncriminals—the consequence not only of overcrowding in mental hospitals but also of a growing recognition that alleged mental incompetents have rights which have been violated. Should the few existing safeguards against being railroaded into arbitrary incarceration be dispensed with simply because a person belongs to a cult?⁴⁵

III

A DIFFERENT APPROACH TO THE PROBLEM

Court-ordered deprogramming and extended custody are not appropriate responses to the cult problem. Deprogrammers do not alter the financial and organizational arrangements of religious sects, but rather restructure the mental understandings of the devotee. The employment of deprogrammers thus implies that the problem is essentially "mental."⁴⁶

45. Robbins, *supra* note 20, at 44.

46. Recent justifications for deprogramming have focused on the proposition that involvement in cults is nonconsensual rather than focusing on the devotee's mental disability. *See, e.g., Religious Totalism, supra* note 2, at 38-41, 49-62. The cults' use of deceptive practices allegedly produces this nonconsensual involvement. *Id.* While some movements have used deceptive practices, however, the following considerations must be taken into account:

(1) Deception is a "foot-in-the-door" tactic and does not induce prolonged involvement in a cult. Prolonged contact is due to the cumulative effects of fatigue and conditioning which undermine the individual's capacity to rationally comprehend and evaluate his commitment. *Id.* at 41. Consequently, the argument for intervention actually *is* based on mental incompetence.

The limitations of the current focus on cult mind control⁴⁷ suggest that a reconceptualization of the "cult problem" is needed. Any such reconceptualization must entail not only a rejection of the deprogramming and mind control mystiques, but also a shift of emphasis from the process of sectarian indoctrination and proselytizing of individuals to the extra-religious activities of cults and to issues arising from religious movements' attempts to preempt both family and state regulation of individual behavior.

A. *The Extra-Religious Activities of Cults*

In general, the diversification of new religions is a natural and perhaps healthy trend, albeit one that raises legal problems and creates a potential for abuse. Religious movements not only provide a variety of services but also integrate these services institutionally and ideologically. At one time such a variety of counseling and therapeutic services was provided by collectivities such as extended family systems and closely knit neighborhoods. The decline of such "mediating collectivities" has produced a new atomization and rootlessness in American society.⁴⁸ The growth of communes, cults, encounter groups, and ethnic and evangelical revivalism is a response to this trend and "a sectarian reaction to mass society."⁴⁹

In our society, services such as psychotherapy, counseling, child care, and medical care are often prohibitively expensive and bureaucratically organized. Moreover, each service is provided independently of other services. These factors partially explain the appeal of many cults, which not only provide and interrelate a number of the same services but also link them to a spiritual meaning system or "sacred cosmos."⁵⁰ Because new religions are isolated from society, they tend to be multifaceted and multifunctional collectives, involved in a range of activities, and providing a range of services including therapy, medical and child care, drug counseling, and legal services.

(2) While nonconsensuality could justify various remedies, it cannot justify forcible confinement or deprogramming, a therapeutic relationship which itself is nonconsensual. Such coercive treatment of a person who has committed no crime can only be justified by the imputation of mental incapacity.

47. In my view, the "psychologizing" of the cult problem has obscured the structural dimensions of the problem. This dimension involves the diverse involvements of cults and the challenge often posed to the state and other legitimate institutions. My opinions have been influenced by the views of Richard Ofshe. See also R. Coser & L. Coser, *Jonestown as a Utopia*, 26 *DISSENT* 158 (1979).

48. P. BERGER, *In Praise of Particularity: The Concept of Mediating Structures*, in *FACING UP TO MODERNITY* 130 (1977).

49. Marx & Ellison, *Sensitivity Training and Communes: Contemporary Quests for Community*, 18 *PAC. SOC. REV.* 442, 444 (1975). See also Coleman, *Social Inventions*, 49 *SOC. FORCES* 163 (1970).

50. See Zaretsky & Leone, *The Common Foundations of Religious Diversity in RELIGIOUS MOVEMENTS IN CONTEMPORARY AMERICA* xvii (I. Zaretsky & M. Leone eds. 1974); Anthony, Robbins, Doucas & Curtis, *Patients and Pilgrims: Changing Attitudes Toward Psychotherapy of Converts to Eastern Mysticism*, 20 *AM. BEHAVIORAL SCIENTIST* 861 (1977).

Services within cults, however, can also become expensive and bureaucratically organized. As cults tend, moreover, to expand into commercial areas as a means of supplementing income to support the movements, commercial profitmaking can become an end in itself, displacing original spiritual goals.⁵¹ In addition, some new religions may be heavily involved in political lobbying and electoral activities. These activities are pursued either to further theocratic goals or to defend tax privileges and other benefits from governmental regulation of the cult's financial and commercial activities.⁵²

The political, commercial, and financial activities of cults are practices ordinarily subject to governmental regulation. The question then becomes whether these activities should be exempt from regulation merely because they are carried out by a religious organization. The answer to this question is not found by restricting the categories of "religion" and "church" to respectable, conventional, nonauthoritarian, nondogmatic, or noncommunal groups.⁵³ Indeed, the political involvements of some traditional religious groups may be extensive⁵⁴ and the flamboyant "entrepreneurial" quality of religious leaders is hardly unprecedented in American religious history.⁵⁵ Policymaking in this area must be evenhanded; it cannot condone certain churches by failing to apply to favored groups the same restrictions applied to stigmatized cults.⁵⁶ Claims of religious freedom have arguably inhibited proper scrutiny of far-

51. See, e.g., Cawley, *God's Little Acres*, CONNECTICUT, Aug. 1979, at 35; Ofshe, *supra* note 12.

52. See Nelson, *The Church Political: God, Man and the Rev. Moon*, THE NATION, Mar. 31, 1979, at 325.

53. One commentator, for example, has noted:

Not all of the cults are genuine religions and the way for a particular cult to be destroyed is to remove its religious veil. . . . Thus far, the law has failed to distinguish between true and bogus religions. . . . Nonetheless, the time has come for a frontal legal attack on the false religions because of the tragic damage they do to the spirit and humanity of many of their members. . . . No longer should the law tolerate the pseudo-religious cults which seek to destroy people as free moral agents, as masters of their own fates.

Teschner, *supra* note 4, at 7. For other perspectives on the judicial definition of religion, see Pfeffer, *The Legitimation of Marginal Religions in the United States*, in RELIGIOUS MOVEMENTS IN CONTEMPORARY AMERICA, *supra* note 50, at 9; Burkholder, "The Law Knows No Heresy": Marginal Religious Movements and the Courts, in RELIGIOUS MOVEMENTS IN CONTEMPORARY AMERICA, *supra* note 50, at 27.

54. See generally, *Preachers in Politics*, U.S. NEWS & WORLD REPT., Sept. 24, 1979, at 37.

55. As two commentators have noted:

What gives the current religious revolution its strength is that it is so typically American and so entrepreneurial. It is the display of the middleman as a religious leader. The loose and diverse organization, the do-it-yourself theology, the preach-whatever-the-market-will-bear attitudes are part of the pattern. In historic terms this is part of the genius of America and one of the major characteristics of middleman theology over the past 150 years.

Zaretsky & Leone, *The Common Foundation of Religious Diversity*, *supra* note 50, at xxxiv.

56. See LeMoult, *supra* note 16, at 611.

flung commercial, financial, and political activities associated with certain movements.⁵⁷ Yet, a plausible constitutional distinction does exist between the religious and extra-religious activities performed by religious movements: while one can make money for God, the process of money-making is not equivalent to a mode of worship, ritual, or sacrament. Thus, commercial, financial, or political activities, being *nonverbal* behavior, may receive diminished constitutional protection.⁵⁸

Regulating the outside activities of cults raises the issue of exploitation.⁵⁹ The power that cults exert over individuals can produce abuses; these abuses entail unfair conditions which might not be tolerated in nonreligious organizations. Allegations have been made that businesses operated by religious movements tend to flourish in part because devotee-employees receive more spiritual than material remuneration.⁶⁰ Should a devotee affirm his willingness to receive a low rate of pay or to donate an inordinate amount of his income to the church, it may be difficult to challenge such a commitment without resorting to the terminology of mind control. Nevertheless, it is not always certain that devotees are given the formal option of a higher rate of remuneration or that they are informed of the prevailing minimum wage.⁶¹ Allegations regarding joint purchasing or borrowing ventures which consequently defraud devotees or enhance their dependence upon the organization also have been made.⁶² The fact that these allegations involve religious groups should not prevent authorities from pursuing an investigation.

57. For instance, Reverend Moon has escaped paying taxes on what seems to be a purely commercial activity:

[Reverend Moon] has purchased a vast complex of fishing fleets and fish-processing plants. . . . These make Moon the leading exporter of untaxed fish in the United States, his so-called Church of Unification having the tax-exempt status of all religious institutions. The bluefin tuna caught in Gloucester, for instance, is shipped to the Orient under the pretense that it is a "gift" to his followers there, and is sold in Japan at \$20 a pound.

du Plessix Gray, *The Heavenly Deception*, N.Y. REV. BOOKS, Oct. 25, 1979, at 8, 10. It has also been questioned whether the alleged ties between Reverend Moon's movement and the South Korean government warrant the application of foreign registry laws. See *Little Action on Fraser Recommendations*, THE ADVISOR, Aug. 1979, at 1; Lec, *The Activities of the Korean Central Intelligence Agency in the United States*, in SCIENCE, SIN, AND SCHOLARSHIP: THE POLITICS OF REVEREND MOON AND THE UNIFICATION CHURCH 120 (I. Horowitz ed. 1978).

58. LeMoult, *supra* note 16, at 611-14.

59. R. Ofshe, *Synanon: An Organizational Explanation of the Synanon Horrors* (Oct. 1979) (address to the Graduate Sociology Club, Yale University); R. Ofshe, *The Social Development of the Synanon Cult* (Aug. 1979) (paper presented to the Ass'n for the Sociology of Religion).

60. See, e.g., R. Ofshe, *Synanon: An Organizational Explanation of the Synanon Horrors*, *supra* note 59; M. Lester, *Profits, Politics, Power: The Heart of the Controversy*, in SCIENCE, SIN, AND SCHOLARSHIP: THE POLITICS OF REVEREND MOON AND THE UNIFICATION CHURCH 148 (I. Horowitz ed. 1978).

61. R. Ofshe, *Synanon: An Organizational Explanation of the Synanon Horrors*, *supra* note 59.

62. LeMoult, *supra* note 16, at 611-14.

B. *The Cult, the Family, and the State*

Because cults provide a variety of services, they exercise substantial power over devotees. The strong dependency that often develops may make it difficult for participants to leave the movement.⁶³ An individual's dependence on a cult is not intrinsically objectionable, although it may violate the norms of personal autonomy prevalent in American culture.⁶⁴ Apart from the issue of "abuses" entailing exploitation,⁶⁵ problems arising from the power and authority wielded by cults over converts should be conceptualized as conflicts of authority between religious movements and other institutions, notably the state and the family, which also claim exclusive authority over individuals in some areas.

Conflicts between families and religious movements are not new.⁶⁶ Authoritarian groups such as the Hare Krishna movement, for example, cut devotees off from parents and discourage contacts with friends and relatives:⁶⁷

Parents often lose contact with their progeny when the latter are assimilated into totalistic religious movements. Even spouses have been lost to the "God squad." Retaliatory tactics like abduction and forcible deprogramming widen the gulf between converts and their relatives: as the former avoid the latter lest they be seized and carried off to a motel room for deprogramming.⁶⁸

Parents and relatives of converts thus constitute a basic resource for the anti-cult movement.⁶⁹ Organizations dedicated to exposing and combating the abuses of authoritarian religious groups directly appeal to family ties, and have names such as the "American Family Foundation," and "Citizens for Reunit-

63. *E.g., id.; U.S. Labor Party: Cult Surrounded by Controversy*, N.Y. Times, Oct. 7, 1979, § 1, at 1, col. 4.

64. There are indications of the erosion of these norms. This development has profound implications for both the growth of cults and the deterministic popular conception of religious conversions to deviant groups as merely the product of mind control. *See generally* Glock, *Consciousness Among Contemporary Youth: An Interpretation* in *THE NEW RELIGIOUS CONSCIOUSNESS* 353 (C. Glock & R. Bellah eds. 1976); Glock & Piazza, *Exploring Reality Structures*, *SOCIETY*, May/June 1978, at 60; Robbins & Anthony, *supra* note 21; R. WUTHNOW, *THE CONSCIOUSNESS REFORMATION* (1976).

65. *See* text accompanying notes 51-62.

66. *E.g.,* "I have come to part asunder a man from his father, and a daughter from her mother." *Matthew* 10:35.

67. For an interesting comparison of the Hare Krishna sect and the Divine Light Mission of the Guru Maharaj-ji that highlights the less authoritarian and totalistic character of the latter, *see* Pilarzyk, *Conversion and Alternation Processes in the Youth Culture*, 21 *PAC. SOC. REV.* 379 (1978). *See* the distinction between "adaptive" and "marginal" movements in Robbins, Anthony & Curtis, *Youth Culture Religious Movements: Evaluating the Integrative Hypothesis*, 16 *Soc. Q.* 48, 55-59 (1975).

68. *See* Robbins, *supra* note 3, at 241.

69. *See* A. Shupe & D. Bromley, *The Moonies and the Anti-Cultists: Movement and Counter-movement* (Aug. 1979) (paper presented to the Ass'n for the Sociology of Religion).

ing Families.”⁷⁰ Cults, like gay militants and strident feminists, have become scapegoats both for the problems of contemporary American families and the neo-traditionalist emphasis on familial bonds.⁷¹

A clear example of the challenge to familial and state authority posed by the cults is the cults' alleged opposition to the orderly resolution of child custody suits through legal hearings.⁷² When one member of a married or cohabiting couple leaves or enters a communal religious group, bitter custody conflicts over the couple's children frequently ensue. The resulting battle contains a potential for violence and infringement of legal rights.⁷³ Of course, attempts to frustrate legal resolutions of child custody disputes are also pervasive outside of cults. The case of communal religious movements, however, is unique. Spiritual leaders often claim the right to resolve the custody dispute, denying that the state has any right to make this decision. Evasive or uncooperative with authorities, the religious organization may conceal the child or transfer it to another state where a custody order may not be valid.⁷⁴

Child custody disputes illustrate the cult's disregard for government controls. This disregard, in its extreme form, can lead to a state-within-a-state pattern in which the religious movement not only implicitly rejects the state's right to regulate the movement, but also seeks to exercise certain social control usually exercised by government. Aside from the People's Temple community at Jonestown, which relocated from California to Guyana and was contemplating a second relocation to avoid state interference with internal processes,⁷⁵ the most striking example is Synanon, which developed its own paramilitary “national guard” and “imperial marines,” its own punishments and “subpoenas,” and its own rationale for violent retaliation against “enemies.”⁷⁶ At the peak of Synanon's power, beatings of adults and children allegedly were common and “authorities were powerless, if not intimidated themselves.”⁷⁷ The Synanon state-within-a-state pattern is an extreme variation, however, and although elements of this pattern can be discerned in relatively authoritarian groups such as the Hare Krishnas or the Unification Church, it would be a mistake to assume that less extreme authoritarian sects embody the state-within-a-state pattern.

70. The American Family Foundation publishes *The Advisor*. The purpose of *The Advisor* is to “report the legal and mental health issues in events involving organizations in which behavior modification threatening the integrity of the family unit and the rights of individuals may be a factor.” *Statement of Purpose*, THE ADVISOR, Aug. 1979, at 1.

71. See Collier, *supra* note 12, at 39; Robbins & Anthony, *supra* note 21, at 80.

72. See, e.g., Galler, *Inside a New York Cult: From Rags to Riches for Leader*, N.Y. Daily News, Jan. 3, 1979, at 4, col. 1; Galler, *Inside a New York Cult: 3 Kids Hostage, Runaway Returns*, N.Y. Daily News, Jan. 1, 1979, at 3, col. 1. See also Robbins, *supra* note 20, at 46.

73. Robbins, *supra* note 20, at 46.

74. Conservatorship and guardianship court orders pertaining to adult devotees can also be evaded in this manner, although such court orders are of more questionable legality than are custody orders pertaining to minors, and, moreover, have extralegal dimensions. See Slade, *supra* note 28.

75. Hall, *Apocalypse at Jonestown*, SOCIETY, Sept./Oct. 1979, at 52, 56.

76. Anson, *The Synanon Horrors*, NEW TIMES, Nov. 27, 1978, at 28.

77. *Id.* at 49.

The state-within-a-state pattern exists in part because religious movements exercise authority and perform functions that would otherwise be subject to government regulation.⁷⁸ The pattern is also a response to society's hostilities towards the cults. Most allegations of violence or violent proclivities pertaining to "Moonies," for example, have been in retaliation against deprogramming.⁷⁹ Other groups also have felt threatened by the local community. A large Hare Krishna community in West Virginia, for example, was subjected to harassment and violent assault and was unable to obtain legal redress. The community amassed a sizable arsenal and aggravated an already tense situation.⁸⁰ The situation may have been exacerbated by the sect's tendency to impute demonic significance to external opposition and to envision the possibility of an apocalyptic "final showdown" with demonic forces.⁸¹ "Paranoia" of this type, combined with the need to protect the groups' commercial and institutional "empire" from outside interference, can result in a spiraling process of "deviance amplification,"⁸² ultimately resulting in the destruction of the group.

Can this process be interrupted? Is it the inevitable fate of "religious totalism"? Systematic constraints must be imposed on religious movements at their inception before the possibility of a state-within-a-state can arise. A haphazard pattern of constraint which lacks systematic controls on financial, commercial, political, and paramilitary diversification is a recipe for instability when combined with the intermittent repression of these groups. Controls must be fairly and consistently applied. As has been stated previously: "Authoritarian religious movements must obey the law like everyone else, but when the law itself is prejudicial and persecutory with respect to such movements, it enhances the plausibility of paranoid cultic conceptions of the social environment and escalates the conflict between the group and its critics to a dangerous level."⁸³ Is it fair to expect cults to respect the state's prerogative to constrain their behavior if the state fails to restrain anti-cult vigilantes? "Legal" deprogramming activities seem to be increasing and are not being deterred by

78. In some cases, religious movements may enjoy regulatory exemptions that are not guaranteed by law but exist as a result of official timidity in making legitimate inquiries into the non-religious activities of religious groups. McWilliams, *Second Thoughts*, THE NATION, Jan. 27, 1979, at 70.

79. E.g., *Moonies Mender Hit on Head with Rock*, N.Y. Post, Aug. 16, 1979, at 10.

80. *When Country Meets Krishnas*, Wash. Post, Jan. 5, 1979, § A, at 1.

81. See Robbins, *supra* note 20, at 46.

82. "Deviance amplification" is a term some sociologists have used to refer to spiraling processes where persons involved in stigmatized lifestyles become increasingly alienated from mainstream patterns and orientations. At the same time, others perceive them as increasingly insupportable. The term highlights the increased tension arising from the mutually reinforcing interaction between deviants' interpretation of the hostility of nondeviants and nondeviants' negative stereotypes of deviants. Professor Roy Wallis has applied this model to the escalation of tension between the Scientology Movement and both British and Australian authorities in the sixties. Wallis, *Societal Reaction to Scientology: A Study in the Sociology of Deviant Religion*, in SECTARIANISM 86 (R. Wallis ed. 1975). See also R. WALLIS, THE ROAD TO TOTAL FREEDOM: A SOCIOLOGICAL ANALYSIS OF SCIENTOLOGY (1977).

83. Robbins, *supra* note 20, at 46.

civil suits filed by unsuccessfully deprogrammed converts.⁸⁴ Extra-legal de-programmers are becoming increasingly immune to effective prosecution.⁸⁵ These phenomena must be taken into account when considering the increasing violence and militance of the cults.

IV

POSTSCRIPT

In this paper I have given priority to reconceptualization rather than to specific remedial solutions. This approach is consistent with the ideal of giving greater protection to verbal religious belief than to nonverbal religious behavior.⁸⁶ It is also consistent with the paths cults likely will follow in the 1980's:

(1) Authoritarian communal groups, which were probably declining before Jonestown,⁸⁷ may now decline more quickly.

(2) Cults will continue to diversify, increasing their involvement in businesses and other services. This diversification will partially replace recruitment and street solicitation as a source of funds.⁸⁸

(3) Cults will deemphasize proselytization and street solicitation. The socialization of second generation members will be stressed.

(4) Internal diversification in terms of a widening of the lifestyles tolerated within the spiritual community will be encouraged. More members will live and work outside of the organization. These developments may be viewed as accommodations to conventional social expectations.

(5) Dynamic religious movements of the 1980's may seem more closely linked to the American evangelical tradition.⁸⁹ They therefore will have more grassroots support in the local communities.

These speculations could easily be upset by emerging socio-cultural shifts.⁹⁰ If valid, however, they underscore the necessity of a reconceptualization of the cult problem. This reconceptualization will highlight the issues raised by the political, financial, and commercial ties of religious movements, and the conflicts of authority with the state and the family.

84. E.g., *U.C. Members Appeal Rejected in "Deprogramming" Case*, THE ADVISOR, Aug. 1979, at 5.

85. See *Playbody Interview: Ted Patrick*, supra note 26.

86. See LeMoult, supra note 16, at 613-15.

87. *Religious Cults: Is the Wild Fling Over?*, U.S. NEWS & WORLD REP'T, Mar. 27, 1978, at 44-45.

88. "The Krishnas and the Moonies are deemphasizing religious panhandling. Instead, these sects are putting millions of dollars into businesses that range from incense factories to ship-building." *Id.*

89. See J. RIFKIN & T. HOWARD, *THE EMERGING ORDER: GOD IN THE AGE OF SCARCITY* (1979). According to Rifkin and Howard, surging evangelical movements are becoming increasingly diversified and multifaceted; they are associated with television and radio shows, shopping centers, banks, and nightclubs.

90. The possible emergence of "political cults" may not have been sufficiently considered. See, e.g., *U.S. Labor Party: Cult Surrounded by Controversy*, N.Y. Times, Oct. 7, 1979, § 1, at 1, col. 4.

