

THE THEOLOGY OF THERAPY: THE BREACH OF THE FIRST AMENDMENT THROUGH THE MEDICALIZATION OF MORALS*

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I

Expressing the essence of a nation in a single image is more like drawing a person's caricature than like painting his portrait. As a good caricature reveals more about a person than does his portrait, so the true symbol of a nation reveals more about it than do its formal self-definitions.

We have no difficulty in compressing the spirit of America into a single word, symbol, or image. That word is "liberty." To understand the concept of liberty, and especially its characteristically American formation and deformation, it is necessary to understand the interests and institutions that encourage and impede its development. I shall assume that, in our national experience, we recognize the rule of law in general and the first amendment in particular as encouraging and indeed creating liberty. I shall argue that we ought similarly to recognize medicine in general, and psychiatry in particular, as impeding and indeed destroying liberty. The gist of my thesis will be that as the founding fathers regarded coercive religion not as religion but as repression, and hence incompatible with the American political system, so we should regard coercive medicine and especially psychiatry not as therapy but as tyranny, and hence equally inconsistent with the spirit of American liberty.

II

Sometimes it is convenient to view nations as if, like individuals, they pass through a life cycle of childhood and youth, adulthood and maturity, old age and senescence, and finally die. Consider the imagery that this metaphor generates: the American continent, dormant and virginal; the development of colonial America under the protection of the mother country; the severance by the young adult of his ties to his parents; the Declaration of Independence; the self-development of the new nation, in a bare century-and-a-half, to the freest, richest, strongest, and most envied people on the face of the earth.

What are the main obstacles facing a young person in his quest for independent adulthood? On the one hand, there are the external obstacles—in particular, parents and other adults, who, whether altruistically seeking to protect a weaker person, or egotistically seeking to prey upon him, endeavor to keep

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him tied to them. On the other hand, there are the internal obstacles—in particular, the individual's own sense of weakness, his fears of the uncertainties and dangers of life—in short, his longing for the sort of protection to which he had become accustomed as a child. A person may thus remain immature either because his parents actively discourage his independence, or because he himself succumbs to the seductions of his own longings for security. Similar obstacles loom before people seeking independence as a nation.

Two hundred years ago the American people were faced with the task that typically confronts the young adult—namely, securing a material existence separate from one's parents, and a spiritual existence separate from one's priests. The founders of this Republic were amazingly aware of both of these obstacles, and were boundlessly courageous, intelligent, and resourceful in overcoming them. Thus, on the one hand, they secured the military, territorial, and political independence of the United States from Great Britain and all other nations; and, on the other hand, they secured the separation of church and state.

Our situation today differs from that of Americans in 1776 much as the situation of an established middle-aged person differs from that of a young man or woman struggling to create his or her identity. Like the American colonists, we too face the unremitting danger of external obstacles to independence: the ideologies and powers of other nations that would, if they could, subjugate and re-colonize us. But I do not here want to address myself to that danger. Instead, I want to focus attention on our internal danger to independence: the perpetual temptation to reject freedom as a burden too heavy to bear.

We know how the American people and their leaders reacted to this internal, spiritual danger two hundred years ago: by creating a societal arrangement with respect to religion such as the world had never seen before. Theirs was not just a struggle for religious freedom, although it assuredly was that too; it was also a struggle for freedom from religion, and, more particularly, from an alliance between religion and the state.

But that was in 1776. As the external danger to our independence is no longer Great Britain, so the internal danger to our independence is no longer "religion" in the sense in which people then used this term or in the sense in which we now usually interpret it. What, then, is the internal danger that faces us? It is simply the deeply human ambivalence about freedom and responsibility and the unremitting propensity to seek security by submission to individuals or institutions, whether clerical or clinical, that promise peace and protection.

III

It is no historical accident that the American struggle for religious liberty antedated the struggle for national independence. That struggle and the tradition it engendered culminated in the great writings on the separation of church and state by Jefferson and Madison, and in the first amendment to the Constitution of the United States. For Jefferson and Madison, religious freedom—freedom from religious coercion or constraint of any kind—was the crux of the struggle for freedom in general. Although this fact is familiar enough to historians, I am not sure that they, or others, have made enough of its psychological importance: namely, that men like Jefferson and Madison, who

were themselves genuinely independent human beings, recognized that so long as a people want to submit themselves to a higher authority, whether it be king or Pope, crown or church, their struggle for freedom will be compromised, and probably defeated, by their refusal to accept the indivisibility of freedom and responsibility across all areas of human concerns.

I realize that, today, my views on the alliance between medicine and the state may sound strange or even absurd. I dare say that in Europe in 1791, the first amendment also sounded strange or even absurd. The point is that we, Americans, now live in a society in which we take the alliance between medicine and the state for granted, just as, for centuries, Europeans took the alliance between church and state for granted. Such habits beget closed minds filled with hatreds and follies which their owners mistake for love and wisdom.

I know that the mere suggestion of a separation of medicine and state is enough to make people raise horrified and incredulous questions such as: "You mean the government should not supervise medical education and license doctors? Should not support cancer research? Should not control dangerous drugs?" These questions leap out at one like flames at a heretic: they are not genuine inquiries seeking a dialogue, but rather accusations seeking to discredit the person to whom they are addressed.

Although we lack a tradition exalting a separation of medicine and state—indeed, we possess a contrary tradition exalting their union—we have an amazingly prescient warning, about precisely the sorts of dangers to which I am pointing, by one of the chief architects of the first amendment. "Was the government to prescribe to us our medicine and diet," wrote Jefferson in 1782, "our bodies would be in such keeping as our souls are now. Thus in France the emetic was once forbidden as a medicine, the potato as an article of food."¹ These phrases highlight our medical-political predicament: with every forward step that we take holding the hand of the medical scientist, we take two backward steps holding the hand of the medical politician.

Jefferson was contemptuous of the French state for forbidding emetics and the potato. What would he think of the state he himself created that not only forbids the use of harmless sweeteners but also encourages the use of harmful contraceptives? The state that not only prohibits marijuana but also promotes tobacco? Surely, it is not mere self-serving if I suggest that were Jefferson with us today, he would conclude that the liberties he sought to guarantee for Americans have been subverted; specifically, that they have been undermined by the American Medical Association, the National Institute of Health, the Food and Drug Administration, the Department of Health, Education and Welfare—by the "unholy" alliance between medicine and the state which these agencies and organizations both symbolize and serve.

IV

The parallels between church and state relations two hundred years ago, and between medicine and state relations today are close indeed. In each case, we are faced with a social institution to which men and women turn for protec-

1. T. JEFFERSON, *Notes on Virginia*, in *THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON* 275 (A. Koch & W. Peden eds. 1944).

tion when they feel most endangered. Hence, they want their "protector" to be as powerful as possible; they reason that the more powerful is their protector, the more secure is their protection. It is usually useless to point out the fallacy in this belief, to demonstrate that protection from some things, for example, injuries and diseases, requires knowledge and skills, not power; that protection from some other things, for example, shame and guilt, requires honesty and courage, not power; that, in short, power is necessary to oppose the external, but not the internal, enemies of freedom. Why is it useless to demonstrate this? Because as soon as people set their sights on protection from responsibility, they lose sight of freedom. Two hundred years ago, many Americans understood that Jefferson and Madison were fighting not against religion, but for freedom. Today, few Americans understand that a person opposing government involvement in, or state support for, medicine—medical care, medical education, drug controls, and psychiatric interventions—is fighting not against health but for freedom. It might be worthwhile to recall how, in 1784, Madison put the case for freedom from an alliance between church and state:

Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution.²

Such words betoken that both he who speaks them and those who listen to them dearly cherish self-reliance as a virtue. Although the spirit of independence has not been extinguished in our collective soul, it is clear that contemporary Americans have neither the same zest for life nor the same faith in themselves as did their colonial forebears. In what, then, do they repose their faith? To what ideas and institutions do they look, as people looked formerly to religion and the church, as sources of protection from the vicissitudes of life, as guarantees of future happiness, as substitutes for their own good sense and personal judgment? The answer is that they look to science, to medicine, and to psychiatry.

V

Medicine's hostility to liberty has a long and distinguished history, dating back at least to Plato, whose model for the benevolent despot was the doctor.³ For our present purposes it will suffice to show how, even while seemingly fighting for political independence, one of America's leading physicians, who signed the Declaration of Independence, was already laying the groundwork for medical despotism.

Benjamin Rush, the author of the first American text on diseases of the mind,⁴ and the "father" of American psychiatry (his portrait adorns the seal of

2. J. MADISON, *Memorial and Remonstrance Against Religious Assessments*, in II THE WRITINGS OF JAMES MADISON 183, 187 (G. Hunt ed. 1901).

3. See Szasz, *The Moral Physician*, 8 THE CENTER MAGAZINE, Mar.-Apr., 1975, at 2, 3-6.

4. B. RUSH, *MEDICAL INQUIRIES AND OBSERVATIONS UPON THE DISEASES OF THE MIND* (1812). For a detailed discussion of Rush's views, see T.S. SZASZ, *THE MANUFACTURE OF*

the American Psychiatric Association), never tired of insisting that therapy was more important than liberty. "Mankind considered as creatures made for immortality," he wrote in 1783, "are worthy of all our cares. Let us view them as patients in a hospital. The more they resist our efforts to serve them, the more they have need of our services."⁵

For Rush, just as for his disciples today, loss of liberty was, moreover, merely a prerequisite for the triumphs of therapeutic totalitarianism. Brutal coercion was the truly ideal therapeutic agent. "Terror," declared Rush, in one of his many Orwellian phrases, "acts powerfully upon the body, through the medium of the mind, and should be employed in the cure of madness."⁶

Finally, anticipating contemporary madness-mongers by two centuries, Rush asserted that virtually everyone is mad and advocated that political reform be replaced by "medical treatment:" "The majority of mankind are *madmen at large*. . . . Were we to live our lives over again and engage in the same benevolent enterprise [political reform], our means should not be reasoning but bleeding, purging, low diet, and the tranquillizing chair."⁷

Because Rush had no intention of being as vigilant against the powers of physicians as he was against those of priests; because he was eager to redefine disagreements as diseases, and tortures as treatments; and because, in his passion to medicalize morals, he was at once an influential follower of other medical leaders and an influential medical leader in his own right, Rush's concepts and conduct exemplify the sort of danger that medicine posed to Americans even before 1776.

Clearly, the danger that medicine poses to our liberties today is infinitely greater than it was two hundred years ago. Although the encroachments of organized medicine on personal freedom have been numerous and widespread, affecting, for example, medical education and practice, abortion and contraception, the use of drugs, blood, and other organs,⁸ the most obvious deprivations of individual liberties have occurred in relation to so-called psychiatric disorders and treatments. Actually, the birth and growth of psychiatry is itself a manifestation of this phenomenon.⁹ This is why we now regard persons disturbed by their own behavior as suffering from a "neurosis," and those disturbing others as suffering from a "psychosis;" why we call the buildings in which such people seek retreat, or in which they are incarcerated, "mental hospitals;" and why we accept the things done with and to them—ranging from conversation and drugging to the artificial induction of epilepsy and the amputation of the frontal lobes of the brain—as "treatments."

Having thus medicalized morals, we are, nevertheless, surprised at, and revolted by, the so-called "abuses" of the healing professions. But I submit

MADNESS: A COMPARATIVE STUDY OF THE INQUISITION AND THE MENTAL HEALTH MOVEMENT 137-59 (1970).

5. Letter from Benjamin Rush to Granville Sharp, Nov. 28, 1783, in Woods, *The Correspondence of Benjamin Rush and Granville Sharp 1773-1809*, 1 J. AM. STUDIES 1, 20 (1967).

6. RUSH, *supra* note 4, at 13.

7. Letters from Benjamin Rush to John Adams, July 20 & Aug. 6, 1811, in II LETTERS OF BENJAMIN RUSH 1090, 1092 (L.H. Butterfield ed. 1951) (emphasis in original).

8. See T.S. SZASZ, CEREMONIAL CHEMISTRY: THE RITUAL PERSECUTION OF DRUGS, ADDICTS, AND PUSHERS (1974).

9. See generally T.S. SZASZ, THE MYTH OF MENTAL ILLNESS: FOUNDATIONS OF A THEORY OF PERSONAL CONDUCT (rev. ed. 1974).

that the contemporary medical persecutions are the inexorable consequences of the alliance between therapy and the state, just as the earlier religious persecutions were the inexorable consequences of the alliance between theology and the state.

The facts are indisputable and are wholly analogous to those to which Madison pointed in the passage I have cited. We have witnessed the murderous alliance between physicians and the Nazi state in Germany; the similar alliance between physicians and the Communist state in Russia; and the only slightly less odious alliance between physicians and the Therapeutic State in America. These have been the "fruits" of the "legal establishment of medicine," and they are none the less poisonous even if, under propitious circumstances and in proper doses, they have had some beneficial consequences as well. Jefferson and Madison did not rest their case for a separation of church and state on the proposition that an alliance between them never had any beneficial consequences.¹⁰ Thus, if we propose to accept, and indeed to embrace, the alliance between medicine and the state so long as it has any beneficial consequences at all, we might as well know it, as that is what we are now doing.

VI

Section One of the Virginia Bill of Rights declares "that all men are by nature equally free and independent, and have certain inherent rights," and the Declaration of Independence "that all men are created equal, that they are endowed by their Creator with certain unalienable rights."

It is no put-down to call these phrases noble rhetoric. I do it to emphasize that there remains the practical problem of demarcation or classification. Who are the "men" that are "by nature equally free," that possess "certain unalienable rights?" Are Negroes such? Are women? Are mental patients? For Negroes, the question was answered by Chief Justice Roger B. Taney in 1857, as follows:

The words "people of the United States" and "citizens" . . . mean the same thing The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people We think they are not . . . intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides¹¹

I mention this opinion not to dwell on the injury done to blacks, but to underscore that the identical problem has confronted, and continues to confront, Americans with respect to the religious clause of the first amendment. What constitutes religion, within the meaning of this clause, and what does not? Analogies between the Dred Scott decision and contemporary interpretations of the first amendment abound.

Thus, a person is free to believe that the Jews are the Chosen People, but

10. See C. MOEHLMAN, *THE WALL OF SEPARATION BETWEEN CHURCH AND STATE: AN HISTORICAL STUDY OF RECENT CRITICISM OF THE RELIGIOUS CLAUSE OF THE FIRST AMENDMENT* 72-73, 76-79, 81-83, 101-02, 107-13 (1951).

11. *Dred Scott v. Sandford*, 60 U.S. (19 Howard) 393, 404 (1857).

not that he is chosen to save the world; or that the Pope is infallible, but not that he is infallible. The disjunction between the rights accorded by the courts to people who choose to be pious as against those who choose to be "psychotic" could not be more dramatic.

Illustrative of the Supreme Court's profound respect for religious piety is its decision to protect the rights of Jehovah's Witnesses who choose to believe that their God objects to saluting the flag. "If there is any fixed star in our constitutional constellation," declared the Court in 1943, "it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion If there are any circumstances which permit an exception, they do not now occur to us."¹²

The amnesia here displayed by the Justices of the Supreme Court is reminiscent of their amnesia displayed toward slavery. For what was involuntary servitude if not an exception to the unalienable rights of persons to their life, liberty, and property? What are involuntary psychiatric interventions if not exceptions to the "fixed star in our constitutional constellation" restraining officials from prescribing what shall be "orthodox . . . in matters of opinion"? Surely, the fact that American psychiatrists now vote on whether a traditionally acknowledged mental illness such as homosexuality should continue or cease to be a mental illness establishes, beyond a shadow of a doubt, that definitions of mental illness and treatment are indeed "matters of opinion."

My point is that as formerly a human being was a person only if he was white, so now he is a person only if he is mentally healthy. The Negro was chattel, and the mental patient is a child. Such "objects" of benevolence need protection, not liberty. "If a man brings his daughter to me from California," declared a former president of the American Psychiatric Association at a 1961 Senate hearing on the constitutional rights of the mentally ill, "because she is in manifest danger of falling into vice or in some way disgracing herself, he doesn't expect me to let her loose in my hometown for that same thing to happen."¹³ Throughout American history, the courts have considered such loss of liberty not a penal but a medical matter, not punishment but treatment. Now they view reading the Talmud or the Bible as a matter of religion, but reading Freud or Spock as a matter of mental health. Thus have we transformed the cure of souls into the cure of minds, and our prohibitions against clerical coercion into our prescriptions for clinical coercion.

In short, I contend that we now classify many medical acts as scientific when, in fact, they are moral, and that we classify many psychiatric acts as medical when, in fact, they are religious. These opinions, which may seem strange or even outlandish today, are actually the opinions of the "founding fathers" of modern psychiatry.

VII

Toward the end of his life, Sigmund Freud asserted, "I have assumed . . . that psycho-analysis is not a specialized branch of medicine. I cannot see how

12. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

13. *Hearings on Constitutional Rights of the Mentally Ill Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 87th Cong., 1st Sess., pt. 1, at 63, 71 (1961) (statement of F.J. Braceland).

it is possible to dispute this.”¹⁴ His reason for so classifying psychoanalysis was that “[t]he case of analysis differs from that of [a specialized branch of medicine]. . . . [T]he only subject-matter of psychoanalysis is the mental processes of human beings and it is only in human beings that it can be studied.”¹⁵

If psychoanalysis is not a branch of medicine, what is it a branch of? According to Freud, it is a branch of religion:

[T]he words, ‘secular pastoral worker’, might well serve as a general formula for describing the function [of] the analyst We do not seek to bring [the patient] relief by receiving him into the catholic, protestant or socialist community. We seek rather to enrich him from his own internal sources. . . . Such activity as this is pastoral work in the best sense of the words.¹⁶

Carl Jung, the co-architect of modern psychiatry, was even more emphatic in rejecting the medical pretensions of psychotherapy (and psychiatry), and in reiterating the essentially religious character of soul-curing:

[I]n most cases the sufferer consults the doctor in the first place, because he supposes himself to be physically ill That is why patients force the psychotherapist into the rôle of a priest, and expect and demand of him that he shall free them from their distress. That is why we psychotherapists must occupy ourselves with problems which, strictly speaking, belong to the theologian.¹⁷

These declarations of Freud and Jung are like the declarations, two hundred years ago, of the abolitionists and Quakers that Negroes are human beings. As the view that blacks are persons had the most far-reaching implications for the American way of life then, so the view that psychiatric and certain other medical activities constitute religious functions has the most far-reaching implications for our way of life now.

Slavery and psychiatry are, in short, the two great deformations of American liberty. The Declaration of Independence and the Constitution proclaimed lofty liberties for people and citizens. But who were “people” and “citizens”? Not Negroes; they were chattel. We now face the same problem in a different guise. Who are “people” and “citizens” today? Not mental patients; they are irresponsible children.

Moreover, we now face a serious problem concerning classification not in just one crucial area, but in two. Our forebears went astray in categorizing some people—blacks—as non-persons; but at least they recognized religion when they saw it, and demarcated ecclesiastical from secular institutions and interventions correctly and wisely.

We go astray in categorizing some people—mental patients—as non-persons; and we no longer recognize religion when we see it, demarcating medical from moral institutions and interventions incorrectly and stupidly.

14. S. FREUD, *Postscript to the Question of Lay Analysis*, in XX THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 252 (J. Strachey ed. 1959).

15. *Id.* at 254.

16. *Id.* at 255-56.

17. C. G. JUNG, *Psychotherapists or the Clergy*, in MODERN MAN IN SEARCH OF A SOUL 221, 227, 241 (1933).

As a result, medicine is now a threat to freedom, not because it is, in principle, an evil enterprise, but because it is, in practice, imposed by fraud and force on a deliberately confused and misinformed people.