

spectrum of theological reflection Rahner entered the lists, publically and privately, for figures and movements to which he was bound by personal relations or professional respect J B Metz, Hans Kung, Gustavo Gutierrez He spent a great deal of time with young people (1982b) He vigorously supported the interpretation by his own Society of Jesus of its contemporary mission as the conjoined service of faith and promotion of justice (1983b, 369-70) But he also spoke more and more eloquently of "the inexhaustible transcendence of God," of the human need to love God for God's own sake, to forget oneself ultimately in adoration (1980a, 405-21 [ET, 173-86]) In the personal dialectic of Rahner's own life the church and people he served were meant to be the inheritance of a God before whom he bowed ever more profoundly His method had never been merely transcendental, issues of his time and lessons of the past had always guided his reflections on the dialectical unity-in-difference of time and eternity, worldly figure and sacramental grace, and the ineffable triune God's everlasting love for the world Nor had his inspiration been primarily philosophical, his thought was permeated with religious passion and prophetic conviction In these last writings I believe it is clear that Karl Rahner was preeminently a dialectical religious thinker who came increasingly to recognize theology's mediating role in a culturally pluralistic world No one knew better than he that his method, the corpus of his writing, and his own life all remained quite clearly incomplete How fitting, then, that on his eightieth birthday he was able to receive the first printing of *Prayers for a Lifetime* (1984a) Among many other moving lines there, one reads "I wait, O God, with patience and in hope I wait like a blind man who has been promised the dawning of light I await the resurrection of the dead and of the flesh"

## NOTE

<sup>1</sup> All references in the text are to the German original, with the relevant ET (when available) cited in brackets

<sup>2</sup> From a homily delivered on April 27, 1982, in Innsbruck on the occasion of his sixtieth anniversary as a Jesuit

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## NEW RELIGIOUS MOVEMENTS, BRAINWASHING, AND DEPROGRAMMING— THE VIEW FROM THE LAW JOURNALS: A REVIEW ESSAY AND SURVEY

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In his famous dissent in the *Ballard* case Justice Jackson opined that the real harm perpetrated by "false prophets" lies "not in the money the victims part with half so much as in the mental and spiritual poison they get" (*U S v Ballard*). Jackson further maintained that it is precisely the mental

and spiritual poison which is constitutionally protected from legal sanctions.

With the conviction of the Rev. Sun Myung Moon for tax fraud, increasing attention has focused on legal issues involving religious movements, and especially on questions involving money and the commercial, financial, educational, and political diversification of certain controversial "cults" (Moore, 1980; McClaughry, 1983; Grafstein, 1984). As has been pointed out elsewhere (Robbins, 1985), such issues are very similar to questions arising in connection with respectable religious organizations, whose leaders also fear a possible restriction of the legal definition of "religion" to worship and preaching (*U.S. News*, 1982). However, there is another set of issues which appears to set esoteric "new religions" or "cults" apart from more conventional and traditional churches. These issues do indeed involve alleged "mental and spiritual poison." More specifically, they entail allegations of the operation of sinister "mind control" in the conversion processes of esoteric movements, as well as disputes over the use of forcible abduction and confinement ("deprogramming") to "rescue" putatively enslaved adult converts. These issues have been of particular concern to a number of social scientists and have evoked widespread interest on the part of students of religion (W. Shepherd, 1982, 1985). However, there have also been a number of important law review papers dealing with these issues (e.g., Aronin, 1982; Babbitt, 1979; Delgado, 1977, 1979-80, 1982; LeMoult, 1978; Luckstead and Martell, 1982; Pierson, 1981; Shapiro, 1978, 1983). The purpose of this essay is to acquaint students of religion with the arguments and analyses which current legal writers have applied to questions pertaining to religious conversion processes.

It is our view that, although legal questions pertaining to taxes and finances may ultimately be more vital to the survival of new movements, issues involving conversion and deconversion processes are particularly important both from the standpoint of civil liberties and the study and appreciation of religion. There are several reasons underlying our view:

(1) Questions of taxation or political influence really involve attempts to separate bona fide religious and arguably extrareligious dimensions of an organization.<sup>1</sup> When, however, proselytization, repetitive chanting, or teaching religious doctrines about retribution for sins are made the basis for attributing pathological "mind control" to a religion (Robbins, 1984), the religion itself is arguably "reduced" to a mental pathology. As one deprogrammer has stated, "We deal with the Unification Church as a mental health problem, not a religion" (*New York Daily News*, 1981, 11).

(2) The practice of deprogramming as well as the inference of mind control or mental pathology from the absolutist or intolerant quality of a religious ideology shifts the focus of inquiry and remediation from behavior to inner belief or faith. Thus, one legal writer, urging new legislation to counter the depredations of "high demand sects," refers to "thought disorders" associated with cultist indoctrination which impair cognition such that "the thinking process is limited to a black-white totalistic perspective where everything external to the cult is evil and everything within is good" (Rosenzweig, 1979, 150-51). However, religious belief, unlike religious behavior, has traditionally been viewed

as enjoying an *absolute* constitutional protection (Shapiro, 1978).

(3) Issues involving mind control also direct the focus of inquiry and control to the murky realm of *subjective consciousness*, where precise knowledge is lacking and inferences are particularly susceptible to bias. However, some "experts" propose to make confident judgments about whether someone involved in a formally voluntary association but subject to peer pressure has or has not retained free will. Arguably, personal autonomy has traditionally had the status of an *assumption* underlying the American legal system and conception of human rights (Robbins, 1977; Shapiro, 1978). The present disposition to question the voluntary quality of commitments to cults and to consider the possibility of forcible intervention to "restore autonomy" is related to a larger trend whereby the broad application of psychiatric expertise in criminal trials and other contexts is eroding the presumption of human autonomy and extending the medical model of nonconformist behavior (Gann, 1978; Hargrove, 1980; Robbins and Anthony, 1982).

The remainder of this essay will review legal and philosophical arguments surfacing in law review articles (and a few other sources) pertaining to conversion dynamics and deconversion practices regarding stigmatized cults. Our emphasis will be on current arguments and analyses rather than on actual cases, decisions, and legislation, although the sources we will highlight will often deal with the latter. The next section, however, will very briefly review a number of articles, monographs, and collections which purport to present overviews of these issues. Then we will examine the contrasting approaches of two outstanding legal writers in this area, Richard Delgado and Robert Shapiro.

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#### INTRODUCTIONS AND OVERVIEWS

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A three-part article by two FBI agents presents a useful brief overview of issues arising from allegations against new religious movements (NRMs) for psychologically abusing their members, notwithstanding the writers' evident bias against stigmatized movements. Part one (Luckstead and Martell, 1982, April) reviews legal trends in the definition of "religion" and the meaning of freedom of religion under the First Amendment. Part two (Luckstead and Martell, 1982, May), which may infuriate some knowledgeable scholars, reviews the nature of NRMs and the allegations against them. Recriminations by apostates and findings by clinicians who excoriate NRMs are taken at face value, while different findings reported by other researchers are ignored. However, part three (Luckstead and Martell, 1982, June) is useful because it briefly reviews legal issues arising from vigilante abductions, from attempts to allow parents to retrieve adult children legally through conservatorship and guardianship laws, and from attempts to sue or prosecute NRMs for the use of psychological coercion. The authors call for "new legislation" and cite Congressman Richard Ottinger's proposed Deceptive and Coercive Practices Act (see also Gutman, 1985). NRMs must not "be allowed to hide behind the first amendment, while at the same time, denying constitutional rights to some of their members" (Luckstead and Martell, 1982, June, 21).

A very different viewpoint is expressed by Thomas Brandon whose short monograph on *New Religions, Conver-*

sions and Deprogramming (1982) has been published by the Center for Law and Religious Freedom, a ministry of the Christian Legal Society. Brandon covers the definition of religion, history of the First Amendment, deprogramming, and "anti-conversion statutes." He devotes particular attention to attempts to legalize deprogramming through new legislation providing for special temporary guardianships and conservatorships. "Deprogramming and the anti-conversion statutes do violate . . . individual liberty and freedom of religion, thought and conscience" (1982, 56).

Brandon's monograph has one unfortunate peculiarity. His 150 footnotes cite several law review articles, but none of them deals specifically with controversies over NRMs or deprogramming. The reader will thus get the impression that legal writers have not directly confronted these issues, which is simply not the case.

*The Center Magazine* published a special symposium issue on "Cults and the Constitution" (1982). An essay by law professor Richard Delgado provides a brief overview of legal developments relating to NRMs, conversion, and deprogramming. William Shepherd's essay sympathetically reviews recent attempts to base a federal civil remedy for physically coercive deprogramming on the Civil Rights Acts, originally enacted in the Reconstruction Era to protect racial minorities from deprivation of basic liberties. Other essayists include psychiatrist Louis J. West, ex-Moonie Gary Scharff, sociologist James Richardson, and religion historian Robert Gordon-McCutcheon. A taped discussion session includes the above contributors plus several other concerned scholars including the present writer. Shepherd's essay is reprinted in Robbins, Shepherd, and McBride (1985).

Several years earlier a larger symposium on *Alternative Religions: Government Control and The First Amendment* was published as a special issue of the *New York University Review of Law and Social Change* (1979-80). There are essays by legal experts Richard Delgado, Leo Pfeffer, and Jeremiah Guttman; by social scientists Thomas Robbins and Dick Anthony; and by anti-cult crusader Marcia Rudin. There are two taped discussion sessions involving the essayists as well as civil liberties lawyers who have defended NRMs and lawyers who have defended deprogrammers. The sessions were taped before a raucous audience which included both NRMs members and anti-cult partisans; thus the reader may get a "feel" for the emotional dimension of cult-anti-cult controversies.

Unlike the shorter essays in *The Center Magazine* symposium, the essays in the NYU symposium are extensively documented. However, few of the references are to law review articles. Indeed, much of the legal literature on these issues has appeared subsequent to this symposium; however, several recent law review articles have cited articles from the NYU symposium. The essay by Richard Delgado, "Religious Totalism as Slavery," is particularly provocative. None of these papers provides a review of cases and trends, although any such review in the NYU symposium would now be seriously outdated.

Sociologist David Bromley and his associates have written a very useful article on "The Anti-Cult Movement and the Law" (Shupe, Bromley, and Oliver, 1984) as well as an essay on "Conservatorships and Deprogramming: Law and Political Prospects" (Bromley, 1983). The May/June 1984

issue of *Society* is devoted to contemporary church/state tensions. Articles by Robbins and Barker deal with NRMs; Barker's compares the resolution of legal disputes involving NRMs in Britain and the United States.

For several years preceding his untimely death, religious studies scholar William Shepherd devoted himself to the exploration of legal issues involving processes of conversion and deconversion in new religious movements. His monograph, *To Secure the Blessings of Liberty: American Constitutional Law and the New Religious Movements*, was nearly completed at his death in 1982. It has been completed by his wife, Molly Shepherd, a lawyer. Molly Shepherd has added an introduction and a final chapter which reviews the Supreme Court's arguably cavalier treatment of religious liberty issues in its 1983 term.

Shepherd (1985) argues that judicial and legislative support for procedures in which a convert is forcibly abducted from a religious sect and subjected to counterindoctrination (deprogramming) in a context of forcibly confinement begins to infringe on the hallowed dictum that "the law knows no heresy." Invading a person's right to believe in religious doctrine violates both First Amendment guarantees and a person's right to treatment as an equal (Shepherd, 1985). Barring grave individual incapacity and paramount social policy imperatives, individual rights must be given precedence over utilitarian perceptions of the public good and over *parens patriae* or the state's concern with individual well-being.

The Shepherd monograph discusses a number of topics, including the evolving interpretation of the religion clauses of the First Amendment, the elaborate arguments developed by Richard Delgado (1977, 1979-80) in favor of enhanced government intervention in the conversion processes of totalistic religious movements (see below), the propriety of legalizing deprogramming through conservatorships and guardianships awarding temporary custody of adult devotees to parents and their agents, and the grounds for using a broad interpretation of the Ku Klux Klan Act to fashion a civil remedy in federal courts for abduction conspiracies against members of religious minorities (see also Babbitt, 1979). However, Molly Shepherd points out in the final chapter that the majority opinion of the Supreme Court in a 1983 case involving labor union violence may have negative implications for the broad interpretation of key sections of the Civil Rights Acts on which the new anti-deprogramming remedy depends.

In support of a federal remedy for coercive deprogramming, William Shepherd develops a theory of individual rights, drawn largely from the work of legal philosopher Ronald Dworkin. Shepherd stresses the affirmative responsibility of the federal government to vindicate religious liberty even against private conspiracies not directly abetted by local or state officials. Here Shepherd comes close to conceiving of religious liberty under the First Amendment as a "positive freedom" which requires that individuals develop a *capacity*, which the state is obligated to actively facilitate by removing impediments. But this is close to the implicit conception of religious freedom held by supporters of conservatorships granted to facilitate deprogramming, that is, the courts must make possible the exercise of religious liberty by removing the incapacitating effects of mind control. In contrast, opponents of such state intervention (e.g., Shapiro,

1978) tend to view freedom of religion as a "negative freedom" which automatically exists when the state forbears to interfere, that is, we are "free" because the state keeps hands off.<sup>2</sup>

William Shepherd's lengthy article in the *Journal of the American Academy of Religion* (1982) deals primarily with the conservatorship issue rather than with extralegal deprogramming under private auspices, although attention is also paid to religious freedom under the First Amendment and to contemporary interventionist rationales. This article may provide students with a solid introduction to the background of contemporary disputes over proposed state intervention to remedy the effects of "spiritual and mental poison." Nevertheless, in both his article and his monography, Shepherd has focused somewhat narrowly on controversies over *deprogramming* and has little to say regarding other cult/brainwashing issues such as civil suits brought against NRMs by apostates charging fraud or false imprisonment through mind control (Heins, 1981; Delgado, 1982; Schwartz and Zemel, 1979) or proposed legislation, intended as alternatives to deprogramming, to remedy alleged deceptive or coercive practices in religious groups (Anti-Defamation League, 1983; Gutman, 1985; Richardson, 1983; Rosenzweig, 1979; Siegel, 1978).

One other volume deserves brief mention. Originally designed by William Shepherd as a companion volume to his 1985 monograph, this collection of papers deals with legal issues arising in connection with new religious movements (Robbins, Shepherd, and McBride, 1985). It consists primarily of papers based on presentations at a seminar at the Center for the Study of New Religious Movements during 1981-82. Contributors include legal experts such as Richard Delgado, Robert Shapiro, and Jeremiah Gutman, and scholars in the humanities and social sciences, including Robert Lifton, Herbert Fingarette, William Shepherd, Roland Robertson, Robert Wuthnow, and James Richardson. Although most of the articles deal with mind control controversies, there is some material on nondeprogramming issues relating to mind control, as well as some material on tax questions. Three of the papers are essentially shorter versions of law review articles. Two papers deal with the sociocultural context of contemporary spiritual ferment. One paper discusses the church-state orientation of the Moral Majority. Fingarette's paper on the legal meaning of "coercion" as a factor mitigating personal responsibility is particularly provocative.

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#### LEGAL DEFENSES FOR DEPROGRAMMING

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Extralegal or vigilante deprogramming abductions are rarely successfully prosecuted. Officials often consider these incidents to be private family matters. When prosecution transpires, the defendants often successfully plead the *defense of justification or necessity*, which is a defense of "yes-I-broke-into-my-neighbor's-house-but-I-wanted-to-put-out-the-fire." The defense of necessity is associated with the "choice of evil rule" (often communicated to jurors by the presiding magistrate) whereby the jury may acquit the defendant if it feels that the latter was sincerely fearful of serious harm threatening the deprogramme, and had a basis for this expectation, such that *the evil avoided through forcible "rescue"*

*of the convert outweighs the evil of the abduction*. Defendants thus try to establish that the practices of the religious group constitute sinister mind control and that the abductee's mental health and personal autonomy were threatened. Delgado (1982) claims that the defense of necessity has been successful in approximately 50 percent of deprogramming prosecutions. It has not been successful primarily in cases in which the judge has not allowed the defense to be presented. Indeed, some defenders of religious liberty have questioned the propriety of the defense of necessity as applied to coercive deprogramming and of the prejudicial testimony on religious beliefs and practices which such defense elicits (LeMoult, 1978). Brandon (1982) has criticized the tendency of some courts to require only that the defendants *believed* that the convert was in peril.



A lengthy comment in the *Michigan Law Review* presents a complex and possibly definitive analysis of the defense of necessity as applied to deprogramming (Pierson, 1981). The author intended his article to broaden the applicability of the defense of necessity such that psychological and not merely physical harm could be considered. Nevertheless, he propounds rather vigorous criteria for establishing necessity; were his guidelines followed, the defense would probably not be successfully applied as broadly as it actually has. The burden of proof in the defense of necessity must be placed squarely on the defendant, who must establish (1) the defendant perceived the action necessary to prevent imminent harm, (2) the harm avoided through the defendant's drastic action outweighs the harm entailed in the abduction (including both distress to the deprogramme and the violation of his or her rights), and (3) no reasonable alternative existed to drastic illegal action, including legal custody proceedings. The violation of the abductee's rights is acknowledged; however, rather than treat this as a definitive consideration, the author factors it into the balance as a strong weight against the defendants.

Pierson's comment actually subdivides the defense of necessity into two separate defenses: the *choice of evil* defense, involving the balancing of harms, and the defense of *compulsion* in which the anxiety of loving parents is treated as a coercive force mitigating criminal responsibility. Both defenses, the author concludes, will, when properly applied, be more likely to vindicate parents than hired deprogrammers. Parents may be excused for overestimating the degree of harm impinging on their beloved progeny, while deprogrammers, as self-proclaimed "experts" on NRMs, cannot be so indulged. Deprogrammers can also not be legitimately "compelled" by perceived threats to other persons' children.

Although the defense of necessity pertains primarily to criminal trials, something similar also appears to operate in civil suits brought against parents and deprogrammers. Also important is a defense of *consent*, which alleges either that the abductee did not consistently object to the actions of

parents and deprogrammers and/or that the abductee would have given consent had his judgment not been impaired by mind control. The great triumph of this defense is the 3-2 opinion of the Minnesota Supreme Court in *Petersen v. Sorlien* (1980). The majority held that a charge of false imprisonment cannot be sustained where parents or their agents are convinced that the judgment of an adult child is impaired, and when "at some juncture" the child consents to actions aimed at extricating him from what the actors reasonably believed is a dangerous cult. "At some juncture" need not mean at the outset or consistently; hence courts sympathizing with parents tend to infer apparent consent from the absence of continual violent struggle on the part of an abductee who has been physically restrained. Thus, in *Weiss v. Patrick* (1978), a restrained convert's claim of having been falsely imprisoned was dismissed by a federal district court because the plaintiff had not demonstrated "meaningful deprivation of liberty," even though Weiss, a Krishna devotee, had to escape out of a window eight feet off the ground. The *Petersen* and *Weiss* decisions (particularly the former) have been strongly criticized (Babbitt, 1979; Brandon, 1982; Grim, 1981; Shapiro, 1983; Shepherd, 1985). As a result of these decisions, an effort has been made to avoid both state courts and dependence on the claim of false imprisonment by fashioning a civil remedy for deprogramming through a broad interpretation of the Ku Klux Klan Act, which can be viewed as protecting the civil rights of members of religious as well as racial minorities from private conspiracies (Babbitt, 1979; Shepherd, 1985).

In March 1984 a federal judge in Minneapolis directed a verdict for the plaintiff (deprogramme) on the issue of false imprisonment. His opinion declares that apparent consent is not a sufficient defense against a charge of false imprisonment. It was further maintained that a defense of necessity is undermined if the defendants, having physically seized a troubled person, did not quickly turn him or her over to proper authorities.<sup>3</sup>

#### THE STATE AS DEPROGRAMMER

The practice of legally deprogramming adult sectarians under custody orders obtained from local magistrates was common in the middle 1970s (Robbins, 1977), although it was subject to critical commentary in law journals (Greene, 1977; LeMoult, 1978; Spendlove, 1976; Note, 1978). The practice of "legal" deprogramming became less common after a California appeals court voided conservatorships granted by a superior court to the parents of five "Moonies." The court declared that only "gravely disabled" persons could be confined for therapeutic reasons. The court also suggested that in trying to determine whether a given religious commitment was induced by authentic faith or coercive persuasion, a court is necessarily and inappropriately second-guessing the wisdom and validity of that faith (see Aronin, 1982, 190-91, for a contrary view).

The case of *Katz v. Superior Court* is a compelling precedent only in California, but it has been widely cited as indicating that standard conservatorship and guardianship provisions of state probate codes are inadequate for the purpose of removing adult converts from sects and imposing therapy. In response, supporters of deprogramming

have proposed new legislative statutes which would provide for special custody arrangements for individuals who have allegedly experienced some (not necessarily disabling) psychological problems while becoming involved in an organization that employs "systematic coercive persuasion" and deception to produce converts (Brandon, 1982; Bromley, 1983; Gutman, 1985). Such bills are generally similar to the Lasher bill (State of New York, 1981), which was twice passed by both houses of the New York state legislature (1980, 1981) but was vetoed each time by the governor. Such legislation has been severely criticized by several legal writers (Brandon, 1982; Gutman, 1985; Shapiro, 1983; Worthing, 1982), but the enterprise of conditional legalization of deprogramming through revised guardianship statutes has recently been defended as an orderly response to the anarchy of private vigilante deprogramming (Aronin, 1982).

The issue of legal deprogramming through conservatorships and guardianships, perhaps because it involves *the state* in intervening to affect an individual's faith, has evoked more legal commentary than has private deprogramming. A widely cited article by LeMoult (1978) is largely a celebration of the *Katz* decision (see also Bernick, 1978). Other writers have been more critical of the court's reasoning but have basically endorsed the result as a vindication of the free exercise of religion (Note, 1978; Shapiro, 1978; Shepherd, 1982).

#### THE APPROACH OF RICHARD DELGADO

Until the publication of a more recent proposal by Aronin (1982), the only defense of legalized deprogramming to appear in a reputable law review was Richard Delgado's (1977), although he has recently appeared to back away somewhat from advocacy of deprogramming (Delgado, 1982). However, the work of Delgado is, in our view, primarily important because of his general analytical framework for looking at conversion processes in terms of *informed consent* and his theory of nonconsensuality in cultist conversion. Criticisms of Delgado have too often ignored his general model and have focused exclusively on his initial advocacy of court supervised deprogramming (e.g., Anthony, 1979-80).

Delgado argues that the conjunction of *harm* perpetrated on devotees (including psychological harm) and the absence of voluntariness or *informed consent* to the risk of such harm constitutes adequate grounds for government intervention in the "thought reform" processes of NRMs. Informed consent requires a coincidence of *knowledge* and *capacity*. According to Delgado, NRMs initially deceive targeted potential converts as to the identity and membership obligations of the group. By the time the recruit becomes aware of the concealed elements of the group's life, he or she has been ground down by fatigue, emotional manipulation, and intense peer pressure, such that the recruit has lost the capacity to rationally reevaluate his or her continued involvement with the group. Robbins (1984) articulates a sociological critique of this model of cultist commitment.

In his original, influential article on "Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment" (1977), Delgado presents a continuum of possible "remedies." These range from a preconversion disclo-



sure requirement, through an enforced "cooling-off period" in which a new convert would leave the religious group for a few days to reflect quietly in a milieu insulated from intense sectarian pressure, to a temporary conservatorship, under which an adamant, acculturated convert could be deprogrammed or subjected to therapy. "The refusal of treatment of an indoctrinee may be overridden, consistent with traditional notions of liberty and non-substitution of judgment if it appears that the indoctrinee is incapable of fully understanding the conditions to which he has been subjected that account for his recent change of outlook" (Delgado, 1977, 59). Given the uncertainty over whether an individual is really an involuntary indoctrinee, Delgado suggests that the "inconvenience" experienced by a devotee who has been subjected to unnecessary physical restraint is less serious than the consequences of withholding treatment from a psychologically imprisoned convert, who may be indefinitely enslaved and face personality disintegration. However, Delgado imposes procedural qualifications and rules out direct attacks on the beliefs of a convert who has been restrained.

Delgado's "Religious Totalism" has been influential and was quoted in the majority opinion in *Petersen v. Sorlien*. It has influenced the framers of anti-cult conservatorship and guardianship bills. However, more recently, Delgado appears to have acknowledged that appeals courts are likely to strike down legal deprogramming legislation on review. In a recent paper in the *Georgia Law Review* (1982) Delgado sets forth a "moderate" solution to controversies over conversion by proposing a civil remedy for victims of a deception-coercive persuasion procedure who might sue for the costs of their prolonged involvement with a manipulative sect. This article (reprinted minus the footnotes in Robbins, Shepherd, and McBride, 1985) restates the basic framework originally developed in the much lengthier 1977 piece.

Delgado's basic analysis in terms of informed consent has been presented in several places (Delgado, 1977, 1980, 1982). However, one important article (1979-80) proposed a radically different analytical framework in terms of the Thirteenth Amendment. Inconclusive arguments over voluntariness and inner motivation may be obviated through the unearthing of a fact pattern indicating that a given pattern of religious totalism constitutes *slavery*, notwithstanding the subjective conviction of autonomy experienced by the "cheerful robot," and thus contravenes the Thirteenth Amendment. The latter *absolutely* prohibits slavery and thus may take precedence over liberties claimed by gurus and converts. However, Gutman (1979-80) claims that the issue of consent cannot be evaded in inferring slavery qua involuntary servitude. Shepherd (1982, 1985) argues that a close reading of Delgado's paper reveals a dependence on allegations about "thought control techniques" such that, in effect, the brainwashing/nonconsensuality argument is bootlegged into a model which purportedly obviates the need to substantiate such allegations.

Delgado's original informed consent model implies that the constitutional protection of the "free exercise of religion" applies only when religious behavior is truly *free*, that is, "consensual." Religious behavior which is heavily pressured, particularly in a manipulative context in which a convert is not initially aware of the demands which a totalistic sect will ultimately impose, forfeits some of that protec-

tion. Actually, Delgado would permit substantial "coercive persuasion" as long as the recruit has prior knowledge of the group's totalistic life style and regimented routines (e.g., marine boot camp, conventional monasticism). Whether or not one approves of Delgado's various "remedies," his informed consent approach represents one carefully considered normative response to the rise of authoritarian communal movements whose intense pressures on participants may sometimes have destructive consequences.

#### ROBERT SHAPIRO'S DEFENSE OF THE RIGHT TO BELIEVE

Delgado's main antagonist among writers of law review articles appears to be Robert Shapiro, a corporate lawyer (whose practice does not involve religions) and recent graduate of Harvard Law School. Shapiro erects his barrier to deprogramming and other modes of state intervention in conversion processes on two foundations: (1) the *absolute* constitutional protection of religious beliefs and (2) the *presumptive* autonomy of human actors.

Assertions of mind control or brainwashing, question a fundamental tenet of the legal system, the presumption of free will. Freedom of the individual lies at the heart of the process of forming faith through which a person attempts to make sense of the world. An allegation that a person is incapable of forming religious beliefs attacks the very premises on which religious freedom rests. Thus, a court should find a lack of free will only in extreme situations (Shapiro, 1978, 784).

Should an individual possess free will, his beliefs must be judged authentic and must be rigorously protected from interference.

Shapiro's basic framework is presented at length in his recent article in the *Southern California Law Review* (Shapiro, 1983). A shorter version (Shapiro, 1984) appears in Robbins, Shepherd, and McBride (1985). However, both recent pieces extrapolate the arguments of an earlier comment in the *Harvard Civil Rights-Civil Liberties Law Review* (Shapiro, 1978). In this piece Shapiro argued that the "coercive" *origins* of faith cannot, by themselves, justify coercive intervention over the protest of the believer. A person could be physically seized and subjected to classical (brutal) brainwashing techniques and yet still retain a capacity to adopt and affirm beliefs, such that a coerced conversion could nevertheless produce an authentic and constitutionally protected faith. Indeed, many of us initially develop our beliefs in restricted situations (e.g., forced attendance at Sunday School), yet these beliefs do not thereby lose constitutional protection. "That one's religious belief did not originate in a voluntary choice does not, as a rule, raise a presumption of incapacity to affirm the beliefs as one's own . . . Only when the involuntary origins of a belief are coupled with a present incapacity to adopt religious faith independently can a court find mind control" (1978, 789). Only when past coercion is combined with a *present incapacity* on the part of the coercee can coercive intervention to restrain the latter be sanctioned; however, even in this context the court must first satisfy itself that the proposed treatment will not operate to alter the beliefs of the individual to be restrained. The state is *absolutely enjoined from tampering with beliefs!*

A secondary argument maintains that the behavior from which Delgado and various clinicians infer either coercive mind control or mental disorientation—items such as

total immersion in a religious organization, or suddenness or seeming irrationality of conversion—really amounts to an arbitrary transvaluation of the *intensity of one's faith*. In this connection, Shapiro's footnotes frequently criticize Delgado's notes (or clinical analyses by psychiatrists and psychologists) with respect to the criteria for inferring harm and coercive mind control. From Shapiro's perspective, the absolute protection of religious beliefs is contravened when actionable coercion or incapacity is inferred from the content or quality of a belief. Devotees who "subject their reason to the demands of faith" (Kelley, 1977, 23; quoted in Shapiro, 1978, 795) "should not find their faith being used as proof of their incompetence" (Shapiro, 1978, 795). Beliefs need not be "acceptable, logical, consistent, or comprehensible to others" to deserve constitutional protection (Shapiro, 1983, 1307).

A deeper philosophical underpinning is provided by Shapiro's "Of Robots, Persons and the Protection of Religious Beliefs" (1983; see also 1985). According to Shapiro, the claims of brainwashing advanced to justify coercive deprogramming can have various meanings. The "weak form" of the brainwashing allegation simply implies that coercive and manipulative processes have been employed to *change the devotee into a different person*. In contrast, the "strong form" maintains that the devotee is *no longer a person*. He or she has become a robot or a "body-snatched" pod-person who "has lost the capacity to program himself. Specifically, he has become incapable of adopting or affirming religious beliefs autonomously" (1983, 1288).

Shapiro argues that coercive intervention entailing forcible restraint of a convert is only justified when two conditions are met: (1) changes in the convert are deemed involuntary due to coercion or deception, and (2) the individual has *ceased to be a person*. A coerced and/or deceived person may yet retain a capacity to affirm and adopt a faith. The court must "decide whether the convert is a changed person or a nonperson" (1983, 1299).<sup>4</sup>

Finally, Shapiro argues that the "hallmark of religion," in terms of Supreme Court definitions and modern understandings of religions, is "The willingness to stake one's all on the belief system one adopts" (1983, 1306). In effect, *intensity* has become a criterion of the "religious" quality of belief. Hence measures such as Delgado's "cooling off" period, which is aimed at defusing intensity, are inherently anti-religious and unconstitutional. "The intensity of one's religious beliefs should bring added, rather than decreased, protection" (1983, 1309).

Recently, Aronin (1982) has proposed some (mainly procedural) modifications to the Lasher guardianship bill (State of New York, 1981), which he argues would enhance fairness and the capacity to survive judicial review. Whereas Shapiro (1978) affirms that the state simply cannot tamper with religious beliefs, Aronin suggests that the absolute constitutional protection of beliefs may not be applicable to the coercive context of cultist religiosity. Although Aronin proposes multiple criteria which must be fulfilled in order for a judge to place a devotee under guardianship, he indicates that the most crucial criterion is a judgment as to whether the individual is *capable of voluntarily leaving the group*. William Shepherd (1985) argues that this criterion of situationally specific incapacity is subjective and encourages circular reasoning, that is, one's incapacity to leave a group is infer-

red from one's not having left it. Judgments of an individual's psychological inability to leave a group are probably reducible to evaluations of the *appropriateness* of the person's continued participation.<sup>5</sup>

Shapiro (1978) has argued that, in terms of exposure to arbitrary treatment, forcible confinement under private auspices is *more* rather than less restrictive than incarceration in a mental hospital. The implication here is not that cultists should be hospitalized but that anti-cult guardianship proposals err in not granting subjects at least as many rights as would be guaranteed to certified incompetents in a mental institution. One legal writer, who appears to implicitly sympathize with the goal of deprogramming, comments on the difficulties of deprogramming converts in a mental hospital context in which certain rights (e.g., to visitation, to wear one's own clothing, to an attorney, to refuse treatment) are routinely granted to patients. "Without the opportunity to isolate such persons, to restrict their communications, to remove clothing symbolic of religious experience, or to preclude religious activity including diet, treatment may well be fruitless" (Rosenberg, 1978, 26).<sup>6</sup>

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#### CONCLUSION

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In the present writer's view, there is a key difference between pro- and anti-interventionists in the area of conversion processes. Interventionists tend to view personal autonomy as a goal or desideratum, that is, individuals *ought* to be free, hence something must be done about authoritarian religious totalism. In contrast, defenders of stigmatized groups tend to stress the status of personal autonomy as an *assumptive fact*, that is, our legal system and notions of human rights presuppose that human beings are inherently rational and responsible and that innate autonomy is deeply ingrained in human consciousness and cannot be easily surrendered. On this assumption, an overwhelming burden of substantiation must be imposed on the party proposing to treat someone as other than a responsible moral agent (Shapiro, 1978, 1982; Robbins, 1979).

The assumption of personal autonomy is essentially a priori, as "free will" is ultimately a metaphysical concept. Perhaps the basic question is whether we want to live in a society in which the members are assumed to be responsible moral agents and treated as such, or a society in which individuals are conceived as frail reeds whose autonomy is negated by peer pressure and who must be protected from zealots who would "coercively persuade" them even in formally voluntary contexts. The latter approach may court a self-fulfilling prophecy whereby persons who perceive that they are not *expected* to be autonomous will be less likely to actually exercise self-control. More important, it is precisely the "unrealistic" rationalism which conceives of individuals as intrinsically free moral agents (in the face of peer pressure) which provides the philosophical context of our traditions of human rights, civil liberties, and constitutional restraints on Leviathan.<sup>7</sup>

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#### NOTES

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<sup>1</sup> However, see Moore (1980) for an argument that the commercial and financial diversification, as well as the sociopolitical involvements, of groups such as the Unification Church or Scientol-

ogy are so prominent that there is a basis for totally denying any "religious" tax exemption to such groups. This extreme argument was not made by the government in its prosecution of Sun Myung Moon for tax fraud.

<sup>2</sup> Some opponents of deprogramming seem to harmonize activism against private, extralegal deprogramming with an essentially negative (anti-state) conception of religious liberty by interpreting official tolerance for privately arranged abduction as a form of state intervention against religious beliefs (e.g., Brandon, 1982; Shapiro, 1978).

<sup>3</sup> *Eulers v. Coy* 582 F.Supp. 1093 (1984).

<sup>4</sup> Although Shapiro is not very specific on precisely how to measure "personness," there is a strong implication that "nonpersons" are extremely rare and that references to "robots" and "pod-persons" are intended to be taken somewhat literally. Notwithstanding terms such as "deprogramming," most allegations of cultist mind control really amount to assertions that someone has become a *different person* under the impact of deception and/or psychological coercion. A witness for the defense in a recent trial of deprogrammers testified that "her husband, took on a new personality as the couple became involved [in a religious group] in 1982. 'Well, I will always love Bill. I'll love the real Bill. This isn't Bill sitting here. He's nothing like my real husband,' she said in tears" (*Rochester Post-Bulletin* [Rochester, MN], March 6, 1984, 19).

<sup>5</sup> Presumably the sections of chapter ten (Conservatorships for Deprogramming) dealing with the Aronin (1982) paper were written by Molly Shepherd.

<sup>6</sup> To this writer's knowledge, Aronin (1982) and Delgado (1977) are the only law review writers to give explicit endorsement to some form of legalized deprogramming. Even legal writers who are severely critical of NRMs and propose other anti-cult measures have balked at coercive deprogramming (e.g., Moore 1980; Rosenzweig, 1979; Siegel, 1978). LeMoult (1978), who represents the American Civil Liberties Union View, is very hostile to deprogramming, whether "legal" or extralegal, as is Pfeffer (1979-80). Homer (1974), Greene (1977), and Spendlove (1976) appear generally critical of forcible abduction and coercive deprogramming. Pierson (1981) would allow a defense of necessity for extralegal deprogramming if rigorous criteria are met. Shapiro (1978, 1983) and Note (1979) would allow custodial state intervention for therapeutic purposes into a devotee's freedom of association if almost impossibly rigorous conditions are met.

<sup>7</sup> Richard Delgado has recently published a paper, "When Religious Exercise Is Not Free: Deprogramming and the Constitutional Status of Coercively Induced Belief," *Vanderbilt Law Review* 37/5 (October 1984). Delgado returns here to his original advocacy of court-ordered deprogramming as appropriate in some cases and mounts a critique of the basic approach of Robert Shapiro. Delgado argues that when intensive thought control can be shown to be employed by a group, the presumption of voluntariness regarding the commitment of converts should be discarded or reversed. He explicitly affirms that the constitutional protection of the "free exercise of religion" is inapplicable to "coerced" religion.

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## RELIGION IN SOUTHERN AFRICA

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### INTRODUCTION

Apartheid is morally wrong, theoretically confused, and the cause of extensive human suffering. Ultimately it is doomed to failure. However, I do not believe that revolution is imminent in Southern Africa. Riots and disturbances there may be, but these are a far cry from revolutionary change (Jenkins, 1983). Therefore, the study of South African religion is too important to be left until after a revolution which may or may not come.

Thinking about religion in South Africa implies risk. Empathic understanding is basic to the modern study of religion, but how can one really empathize with Afrikaner Calvinists who praise apartheid or, for that matter, with traditional African beliefs which support practices that oppress women? Studying Southern African religion takes one out of the atmosphere of academic neutrality into an area fraught with danger. In this situation religious beliefs cannot be isolated from their social context or studied exclusively in terms of texts and theoretical constructs. Instead an

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