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Prosecution of Christian Scientists: A Needed Protection for Children or Insult Added to Injury

Daniel Vaillant

THE PROSECUTION OF CHRISTIAN SCIENTISTS: A NEEDED PROTECTION FOR CHILDREN OR INSULT ADDED TO INJURY?

DANIEL VAILLANT[1]

[1]Daniel S. Vaillant, J.D., Drake University Law School. Graduated *cum laude* from the University of Wisconsin-Eau Claire with a B.A. degree in Criminal Justice. The author was a Note Editor for the Drake Journal of Agricultural Law and has interned on the Vehicular Homicide, Juvenile, & Simple Misdemeanor dockets at the Polk County, Iowa, Prosecutor's Office.

I. INTRODUCTION

A young child is dead. The death occurred because the parents refused to take their child to a doctor. Now, ordinarily, this refusal to obtain medical attention for a dying child would result in immediate indictments against the parents for involuntary manslaughter. But what if the parents are Christian Scientists? This question of whether Scientists should be treated differently because of their faith is a very controversial one in America today.[2] If we allow the Scientists to practice their religion without government interference, children who could be medically treated and possibly saved may die. If, on the other hand, we step in to protect the children, we are infringing on the parent's right to freedom of religion. On its face this may seem like an easy dilemma to settle; save the children. But constitutionally and practically it is not. Many have doubts as to the constitutionality of requiring Scientists to obtain medical attention for their children.[3] Still others see no point in bringing forth prosecutions for the child's death because the parents are already grieving.[4] The current trend, though, is to bring manslaughter prosecutions, obtain convictions, and set prison sentences.[5]

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[2]Donna K. LeClair, *Faith-Healing and Religious-Treatment Exemptions to Child-Endangerment Laws: Should Parental Religious Practices Excuse the Failure to Provide Necessary Medical Care to Children?*, 13 U. DAYTON L. REV. 79, 80 (1987).

[3]Eric W. Treene, *Prayer –Treatment Exemptions to Child Abuse and Neglect Statutes, Manslaughter Prosecutions, and Due Process of Law*, 30 HARV. J. ON LEGIS. 135, 135 (1993).

[4]Treene, *supra* note 3, at 135.

[5]Walker v. Superior Court, 763 P.2d 852 (Cal. 1988); People v. Rippberger, 283 Cal. Rptr. 111 (Cal. 1991); Commonwealth v. Barnhart, 497 A.2d 616 (Pa. Super. Ct. 1985).

II. WHAT IS SCIENTISM?

A. Historically

Mary Baker Eddy founded the Church of Christ, Scientist, in 1879 and there are now over 3,000 branch churches around the world.[6] One of the central tenets of the faith is that healing comes through prayer, not through medicine.[7] As Steven Schneider noted, "Christian Science today teaches that disease exists only because the mind, believing itself diseased, inflicts the illness on the body. The way to minister to such disease is to remove the error of thinking that the disease exists. To the Christian Scientist, medicine is not the means of cure."[8]

> "According to Eddy, 'Jesus proved by his deeds that Christian Science destroys sickness, sin and death.'[9] Thus healing results from drawing close to God by following a way of life involving deep prayer, moral regeneration, and an effort to live in accord with the teachings and spirit of the Bible."[10]

There is very little confusion as to how Scientists view the use of prayer in healing. Where there is considerable confusion, both for Scientists and non-Scientists alike, is how the Church views members who use medicine anyway. Church *doctrine* does not regard the use of medicine as sin.[11] Rather, medicine is discouraged simply because it perpetuates the error in thinking and delays the sick from discovering the truth of their faith.[12] Doctrine in no way suggests that using modern medicine will result in damnation or the loss of eternal salvation.[13]

B. In Modern Times

Many current practitioners of Christian Science, though, have noticed a shift in thinking from Ms. Eddy's teachings.[14] Members have noted the strong pressure exerted against them by the Church not to use medical procedures,[15] and the strong

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[6]Janna C. Merrick, *Christian Science Healing of Minor Children: Spiritual Exemption Statutes, First Amendment Rights, and Fair Notice*, 10 ISSUES L. & MED. 321, 325 (1994).

[7]Merrick, *supra* note 6, at 325.

[8]Steven Schneider, *Christian Science and the Law: Room for Compromise?*, 1 COLUM. J.L. & SOC. PROBS. 81, 81 (1965).

[9]MARY BAKER EDDY, SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES 26 (1890).

[10]Merrick, *supra* note 6, at 326.

[11]Schneider, *supra* note 8, at 87.

[12]*Id.* at 88.

[13]*Id.*

[14]Henry J. Abraham, *Abraham, Isaac and the State: Faith-Healing and Legal Intervention*, 27 U. RICH. L. REV. 951, 967 (1993).

[15]Merrick, *supra* note 6, at 327 (Rita Swan, a former Scientist, was forced to resign from her Church offices and placed on "probation" after using professional doctors to remove a cyst from her ovary).

pressure they exert against themselves that to use medicine is to fail both God and their faith.[16] In fact, current teaching has placed such a focus on faith-healing that many members feel that "[a] vigorous legal prohibition of all faith-healing practices might destroy Christian Science altogether."[17] To these Scientists, nothing less than the parents' and child's eternal salvation is on the line when decisions on how to treat the sick child are made.[18]

Is it any wonder then that many Scientist parents make the choice they do? However incredible each of us thinks this faith may be, try for just one minute to put yourself into their shoes. You have a sincere belief that only God, not doctors, can truly heal your child. This belief of yours is equivalent in force to a Christian's belief in the need for sin confession. You believe that calling a doctor will be the act banishing you and your child to Hell for all eternity, just as a Christian who didn't ask for forgiveness would obtain a reservation in Hell. And besides, you don't think the doctors will be able to help anyway. You'd be treating your child according to society's standards, not what you thought was correct and most beneficial. How many of you, under those circumstances, would turn your backs on your faith in order to oblige the surrounding community? This is a decision that Christian Scientists have been facing since 1879, and will continue to face for the foreseeable future.

Unfortunately for Scientists, the majority of other Americans don't see much of a choice here. What they see are parents making their children martyrs to their own religious beliefs.[19] Should the rest of America have any say, though, in these Scientists' medical decisions? What about the right to free exercise of one's religion? What about the right to due process of law? How does public policy enter the controversy? Should Scientists adapt their faiths to modern society's standards? These are all questions that need to be answered to come to a resolution on this issue. And these are all questions that will be discussed in this Article.

III. THE SCOPE OF THE FREE EXERCISE CLAUSE – A HISTORY

A. A Hard View of Free Exercise by the Court

We need to begin our analysis by determining the level of scrutiny the courts apply to this type of free exercise litigation. The U.S. Constitution provides in the First Amendment that "Congress shall make no law respecting an establishment of religion."[20] It wasn't until *Reynolds v. United States*, though, in 1878 that the

[16]Abraham, *supra* note 14, at 967.

[17]*Id.* at 967.

[18]Paula A. Monopoli, *Allocating the Costs of Parental Free Exercise: Striking a New Balance Between Sincere Religious Belief and a Child's Right to Medical Treatment*, 18 PEPP. L. REV. 319, 335 (1991).

[19]Merrick, *supra* note 6, at 325.

[20]U.S. CONST. amend. I.

Supreme Court first examined the scope of this clause to determine whether it would be enforced to the extent of its plain language.[21]

In *Reynolds*, Congress had passed legislation forbidding the practice of polygamy.[22] George Reynolds, a Mormon, claimed this law was an infringement on his Mormon *duty* to practice polygamy.[23] The Court found his freedom of religion had not been violated.[24] After looking at the historical underpinnings to the amendment's creation, the Court ruled that Congress was only prohibited from regulating religious beliefs, not actions.[25] As Laura Plastine has observed, "the Court identified two concepts embodied within the Free Exercise Clause – the right to believe and the right to act in accordance with that belief."[26] While the right to believe was to be given absolute protection by the First Amendment, Congress was allowed to regulate religiously motivated conduct.[27] So under *Reynolds* it is conceivable that Congress or the states could limit the Scientists' beliefs in faith-healing to the realm of belief, and not allow their faith to be acted upon.

In 1944, *Prince v. Massachusetts* came before the Supreme Court.[28] Sarah Prince was convicted of violating state child labor laws after providing her niece with religious materials to distribute.[29] Prince argued that both the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment protected her actions.[30] The Supreme Court affirmed her conviction after balancing her interests "against the state's interest in protecting the health and welfare of its children."[31] The Court reasoned that the rights to religious freedom and parenting were subject to regulation, and that neither was an absolute freedom under all circumstances.[32] Taking the analysis one step further the Court noted that "[t]he right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death."[33] Under this analysis, the Christian Science beliefs would again probably be open to regulation.

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[21]Laura M. Plastine, *"In God We Trust": When Parents Refuse Medical Treatment For Their Children Based Upon Their Sincere Religious Beliefs*, 3 SETON HALL CONST. L.J. 123, 125-26 (1993).

[22]Reynolds v. United States, 98 U.S. 145, 146 (1878).

[23]*Id.* at 161.

[24]*Id.* at 168.

[25]*Id.* at 166.

[26]Plastine, *supra* note 21, at 126.

[27]*Id.*

[28]Prince v. Massachusetts, 321 U.S. 158 (1944).

[29]*Id.* at 160.

[30]*Id.* at 164 (Ms. Prince argued that the Due Process Clause of the Fourteenth Amendment was invoked by her parental rights).

[31]Plastine, *supra* note 21, at 129. *See also* Prince, 321 U.S. at 165 (1944).

[32]*Prince*, 321 U.S. at 166.

[33]*Id*. at 167 (citing People v. Pierson, 68 N.E. 243 (N.Y. 1903)).

The Supreme Court, though, would find its interpretation of the Free Exercise clause changing in the coming years.

B. A Change in Philosophy from the Court

Sherbert v. Verner brought a change in analysis from the Court in 1963.[34] Sherbert, a Seventh-Day Adventist, was fired from her job after refusing to work on Saturdays, her Sabbath.[35] After failing to find new employment, she filed for unemployment compensation.[36] The State of South Carolina rejected her claim, saying that she disqualified herself from benefits by refusing to work on Saturdays without good cause.[37] The U.S. Supreme Court held that Sherbert's constitutional right to free exercise of religion had been violated.[38] The Court relied upon Justice Murphy's dissent from *Prince v. Massachusetts* in holding that, as Laura Plastine states, "a state cannot legitimately burden one's free exercise of religion unless it can demonstrate that its regulation is the least restrictive means of achieving a compelling state interest."[39] In this analysis the balance is tipped in favor of protecting free exercise, and the burden lies with the state to show that no less restrictive means of achieving the state interest are available.[40]

Plastine further observed that "[w]ith these words, the scope of the Free Exercise Clause was substantially broadened, for *Sherbert* clearly repudiated the belief-action dichotomy by requiring states to meet the 'compelling state interest/least restrictive means' test when a state law burdens religious conduct."[41] This case signaled a change in free exercise interpretation by the Court. For the first time, the Court went out of its way to protect a citizen's freedom of religion at the expense of state regulation. Free Exercise would find itself even more protection nine years later in *Wisconsin v. Yoder*.[42]

Yoder signifies, quite possibly, the Court's broadest interpretation of the Free Exercise Clause.[43] In *Yoder*, several Amish parents were convicted for not sending their children to school beyond the eighth grade.[44] Wisconsin had a state statute

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[34]Sherbert v. Verner, 374 U.S. 398 (1963).

[35]*Id.* at 399.

[36]*Id.* at 399-400.

[37]*Id.* at 401.

[38]*Id.* at 402.

[39]Plastine, *supra* note 21, at 130. Justice Murphy reasoned in his Prince v. Massachusetts dissent that "[r]eligious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger." Prince v. Massachusetts, 321 U.S. 158, 176 (1944) (Murphy, J., dissenting). *See also* Sherbert, 374 U.S. at 403 (1963).

[40]*Sherbert*, 374 U.S. at 407.

[41]Plastine, *supra* note 21, at 131.

[42]Wisconsin v. Yoder, 406 U.S. 205 (1972).

[43]Plastine, *supra* note 21, at 131-32.

[44]*Yoder*, 406 U.S. at 207.

compelling school attendance for all children until the age of sixteen.[45] The parents argued that this statute was a violation of their freedom of religion.[46] According to the Amish, sending their children to high school would not only bring church censure upon the parents, but would also endanger both the parents' and child's opportunities for salvation.[47] This danger existed because of the Amish belief that "high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students."[48] On the other hand, "Amish society emphasizes learning-through-doing; a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society."[49]

The Supreme Court affirmed the lower court's decision to reverse the convictions.[50] In doing so, the Court continued to use the *Sherbert* balancing test.[51] Also, the Court again rejected a return to the *Reynolds* distinction between regulation of conduct and regulation of belief.[52] However, what most broadened free exercise interpretation was the Court's willingness to invalidate the facially neutral statute.[53] With this decision the Court effectively told states that, even when enacting facially neutral statutes, they still had a duty to accommodate religious objectors with exceptions if the objectors' beliefs and acts were infringed by the legislation.[54] Is it possible that this level of protection would have been enough for Christian Scientists to gain exempt status from these prosecutions? Unfortunately for Scientists, we may never know as the Court took a sharp turn in the 1980's and began chipping away at the degree of protection it had previously provided.[55]

C. A Reversal Back to Original Thinking

The current level of protection afforded to the free exercise of religion is illustrated in the 1990 decision of *Employment Division, Department of Human Resources v. Smith*.[56] Oregon law prohibited the possession of controlled substances unless a doctor had prescribed the substance.[57] Alfred Smith was fired from his job,

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[45]*Id.*

[46]*Id.* at 208-09.

[47]*Id.* at 209.

[48]*Id.* at 211.

[49]*Yoder*, 406 U.S. at 211.

[50]*Id.* at 213.

[51]*Id.* at 214.

[52]Monopoli, *supra* note 18, at 339.

[53]*Id.*

[54]Plastine, *supra* note 21, at 132.

[55]*Id.*

[56]Employment Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990).

[57]*Id.* at 874.

ironically with a drug rehabilitation center, after ingesting peyote during a Native American Church ceremony.[58] Smith then applied for unemployment compensation, but was denied because he had been fired for work-related "misconduct."[59] Smith contended that the state's refusal to compensate him was a violation of his freedom of religion.[60] The Supreme Court disagreed, finding that exemptions do not need to be made for religious objectors when facially neutral statutes are at issue.[61] The Court concluded, in an opinion by Justice Scalia, that "the right to free exercise of religion does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)."[62]

Scalia then went on to distinguish past precedent from the case before him.[63] He held that past cases (like *Wisconsin v. Yoder*) involved not only free exercise claims, but also other constitutional protections such as the right of parents to direct their child's education.[64] Only when these "hybrid situations" arose would a facially neutral statute need to withstand strict scrutiny analysis.[65] In all other claims dealing with facially neutral statutes, a "rational basis" analysis was to be used.[66] No longer would the state need to demonstrate its statute was the least restrictive mean to achieving a compelling state interest.[67] What would probably turn out to be even more damaging to the Christian Scientist effort, though, was the Court's return to the belief/action dichotomy.[68] This distinction, first recognized in *Reynolds*, stripped away much of the protection that had been given to religious objectors since *Prince v. Massachusetts*.[69]

IV. FREE EXERCISE AND THE CHRISTIAN SCIENTIST ARGUMENTS

A. Manslaughter Statutes – Facially Neutral or Discriminatory?

With that background, we now know where we stand with free exercise claims and what needs to be shown to obtain relief. To gain maximum protection, the Scientists need to invoke a second fundamental right in addition to their free exercise claim.[70] This done, the facially neutral legislation cannot stand unless the state's

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *Id.* at 878-79.

[62] *Smith*, 494 U.S. at 879.

[63] *Id.* at 881.

[64] *Id. See also* Monopoli, *supra* note 18, at 341.

[65] Plastine, *supra* note 21, at 136-37.

[66] *Smith*, 494 U.S. at 885.

[67] Plastine, *supra* note 21, at 137.

[68] *Smith*, 494 U.S. at 877.

[69] Plastine, *supra* note 21, at 137.

[70] Monopoli, *supra* note 18, at 341.

compelling interest is sought through the least restrictive means possible.[71] If a second right is not raised along with the First Amendment claim, the Court will only perform a "rational basis" review of the legislation.[72]

However, this analysis only takes place if the statute is facially neutral.[73] If the statute is facially discriminatory, a strict scrutiny review will immediately attach to the discriminatory law and our analysis becomes much easier.[74] So we first need to examine the types of laws typically involved in these Scientist prosecutions. Florida has a fairly typical involuntary manslaughter statute. Section 782.07 of the Florida Statutes provides:

> The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification, and in cases in which such killing shall not be excusable homicide or murder, shall be deemed manslaughter and shall constitute a felony of the second degree.[75]

This appears to be a neutral statute. Basically the statute provides that if your negligence causes another's death, then you are liable for manslaughter.[76] There is no mention of discrimination.[77] No exceptions are made for certain types of negligence.[78] The statute lays out a simple rule which, on its face, applies equally to anyone who negligently kills another. And if nothing else could establish the general neutrality of manslaughter statutes around the country, thousands of convictions of non-Scientists every year should do the job.

B. The Need for Two Constitutional Encroachments

The facial neutrality of these manslaughter statutes being relatively clear, Scientists should not waste much time arguing otherwise. Their efforts would be better devoted to establishing a second constitutional violation beyond free exercise, thereby creating a higher burden for the state to overcome.[79] If the defendant fails to show this second infringement, the manslaughter statute will stand so long as the court finds it to be rationally related to a legitimate state purpose.[80] In other words, so long as the state can show that these prosecutions *could* help save children's lives (such as through deterrence), the rational basis test is satisfied. Scientists will not win this argument. Their only chance at a successful defense is to force the government to pass a strict scrutiny analysis, and that can only happen if they come up with two constitutional encroachments brought about by the prosecution.

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[71] *Smith*, 494 U.S. at 881.

[72] *Id.* at 885.

[73] *Id.* at 877.

[74] *Id.*

[75] FLA. STAT. ANN. § 782.07 (West 1992).

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Smith*, 494 U.S. at 881.

[80] City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 441 (1985).

1. Infringement of the Free Exercise of Religion

The first constitutional right invoked by Christian Scientists is obviously the Free Exercise Clause of the First Amendment. Scientists, as a defense to these prosecutions, routinely argue that this clause provides them with absolute protection from criminal liability for actions arising from their religious beliefs.[81] The courts have not agreed that this absolute protection exists,[82] which is why Scientists are not allowed to practice their faith as they want.[83] They are being prosecuted for following their beliefs that only prayer can help the child.[84] They are being convicted because they refuse to accept society's trust in medical treatment.[85] Basically, they are being punished because they follow their love of God, *and what they feel God has instructed them to do*.[86] According to Henry Abraham, Scientists view faith-healing as a "silent yielding of self to God,"[87] as a "necessary element in the redemption from the flesh and in the overcoming of the mental illusions of pain and disease."[88] By punishing Scientists for holding these beliefs and acting on them, society is certainly encroaching on the free exercise of their faith.

Most criminal sanctions today are imposed because the state wants to deter some type of behavior on which it looks unkindly.[89] Under this assumption, punishments are handed out to Scientists in an effort to deter them from acting on their faith, because the state thinks their faith is not worth the costs of children's lives.[90] Whether states have the right to this deterrent is the ultimate issue.

2. Infringement of the Fundamental Right to Parenting

The second fundamental right potentially violated by these prosecutions is the right to parenting.[91] Parents have long held the right to direct their child's education, upbringing, and lifestyle.[92] Donna LeClair observed that "[t]he care and keeping of children is an inherent responsibility of parenthood and an obligation well-

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[81]Plastine, *supra* note 21, at 150.

[82]Walker v. Superior Court, 763 P.2d 852 (Cal. 1988); People v. Ripperberger, 231, 283 Cal. Rptr. 111 (1991); Commonwealth v. Barnhart, 497 A.2d 616 (Pa. Super. Ct. 1985).

[83]Plastine, *supra* note 21, at 150.

[84]*Id.*

[85]Merrick, *supra* note 6, at 325.

[86]Abraham, *supra* note 14, at 967.

[87]*Id.*

[88]*Id*.

[89]Judith Inglis Scheiderer, *When Children Die as a Result of Religious Practices*, 51 OHIO ST. L.J. 1429, 1443 (1990).

[90]Scheiderer, *supra* note 89, at 1443.

[91]Jennifer L. Rosato, *Putting Square Pegs in a Round Hole: Procedural Due Process and the Effect of Faith Healing Exemptions on the Prosecution of Faith Healing Parents*, 29 U.S.F. L. REV. 43, 79 (1994).

[92]LeClair, *supra* note 2, at 98.

established by common and statutory law."[93] Both the courts and states have recognized this responsibility and have made every effort to protect the privacy of the family.[94] Virtually everyone agrees that parents have the best understanding of their child's needs and wants.[95] Courts have repeatedly held that the "custody, care and nurture [of children] reside first in the parents,"[96] and that included in this right to parenting is the authority to make decisions regarding the child's medical needs.[97] Couldn't the argument be made, then, that these religious parents would know better than anyone else what the best form of treatment is for the sick child? And that, with the history behind parental rights, the Scientists should be given more freedom to direct their child's upbringing, to control their medical needs, and to have a little privacy for familial decisions?

The states don't think so.[98] And frequent prosecutions are the evidence. But when a state begins to judge the actions someone has taken *as a parent*, isn't it crossing its self-drawn line separating family from state? And when the state sets as a condition of conviction that the parent must use medical doctors with future children,[99] isn't it penetrating the border then? When Scientists have "Big Brother" looking over their shoulders at their parental job, they clearly are not free to do as they wish. When Scientists are compelled to take their child to the doctor, against their faith and better judgment, they are not being given the complete authority over the child's upbringing talked about in the Supreme Court's past decisions. These prosecutions are controls over the Scientists as parents, and they surely influence the decisions made.

V. FREE EXERCISE AND THE STATE'S ARGUMENTS

The free exercise of religion and the right to parenting are the two separate fundamental rights violated by these prosecutions. I don't think many people would argue that these rights aren't infringed upon; I certainly think Scientists' rights are being sacrificed for state concerns. The question now is, is that sacrifice justified? The overwhelming answer from both scholars and the courts is yes.

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[93] *Id.* at 98.

[94] Scheiderer, *supra* note 89, at 1444.

[95] *Id.*

[96] LeClair, *supra* note 2, at 98.

[97] Ann MacLean Massie, *The Religion Clauses and Parental Health Care Decision-Making for Children: Suggestions for a New Approach*, 21 HASTINGS CONST. L.Q. 725, 773 (1994).

[98] Hermanson v. State, 604 So. 2d 775 (Fla. 1992); State v. McKown, 475 N.W.2d 63 (Minn. 1991); Craig v. State, 155 A.2d 684 (Md. 1959); Commonwealth v. Twitchell, 617 N.E.2d 609 (Mass. 1993).

[99] Merrick, *supra* note 6, at 329. Over a century ago, the Court had to alter its belief structure and send pregnant mothers to obstetricians as a result of a prosecution of a Christian Scientist father whose wife and newborn child died without formal medical care.

A. States Do Have a Justifying Factor for Infringing on Scientists' Rights – Saving Children

Remember that states need to have a compelling state interest, achieved through the least restrictive means possible, because two constitutional rights are implicated by these prosecutions.[100] Fortunately for the state, just such an interest exists.[101] As noted by David Tate, courts have consistently held that "[t]he parents' right to practice their religion simply is not paramount to the child's right to life."[102] The state has an earnest and significant interest in protecting the lives and welfare of its youth.[103] The Supreme Court has held previously that state interests do not take priority over a parent's right to inculcate his or her child with the parent's values.[104] But the Court has routinely drawn the line when the indoctrination endangers the child's life.[105]

In the California case of *People v. Rippberger*, Mark Rippberger and Susan Middleton were parents to an 8-month old infant named Natalie.[106] Natalie became sick on November 24, 1984.[107] On December 2, a Christian Science nurse was summoned to the defendants' home.[108] For the next week this nurse cared for Natalie, "sleeping, praying, reading scriptures, and 'voicing the truth to the baby.'"[109] On December 9, Natalie died of bacterial meningitis,[110] a disease that is treatable with penicillin.[111]

The defendants argued at trial that

> because resort to conventional medical care constitutes an admission that illness is real, contrary to the most central belief of Christian Science that illness is not real, any effort by the state to force Christian Science parents such as appellants to provide medical care for their children will inevitably result in the destruction of the religion of Christian Science itself.[112]

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[100] *Smith*, 494 U.S. at 879.

[101] David A. Tate, *First Amendment: Should Parents Be Punished for Using Prayer to Treat a Fatally Ill Child? Yes: Parents Have a Duty*, 78 A.B.A. J. 38, 38 (1992).

[102] Tate, *supra* note 101, at 38.

[103] Monopoli, *supra* note 18, at 336.

[104] Wisconsin v. Yoder, 406 U.S. 205, 213 (1972).

[105] Monopoli, *supra* note 18, at 336.

[106] People v. Rippberger, 283 Cal. App.3d 111, 113 (1991).

[107] *Id.* at 113.

[108] *Id.*

[109] *Id.* at 113-14.

[110] *Id.* at 113.

[111] *Rippberger*, 231 Cal. App.3d at 115.

[112] *Id.* at 123.

California's Court of Appeals held that the state's right to protect the lives of children outweighed the Scientists' rights to practice their beliefs free from government control.[113] The court went on to hold that the right to free exercise of religion was not an absolute right, and that it needed to be balanced against the rights of others, including one's own children.[114] The court concluded that to hold otherwise would be an insult to the First Amendment.[115]

In a Maryland case, *Craig v. State*, the defendants had a six month old daughter, Elaine.[116] Elaine was ill for eighteen days prior to her death, having received only religious treatment in place of medical treatment.[117] It was discovered after an autopsy that Elaine had died of pneumonia, another illness treatable with antibiotics.[118] The father testified that the only reason medical treatment was not provided to Elaine was due to their religious convictions; they followed the "Word of God."[119]

Maryland's Court of Appeals held that this devout belief in the "Word of God" was not sufficient to avoid prosecution.[120] The court quoted a passage from *Reynolds v. United States* as its centerpiece: "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."[121] The court continued to subscribe to the belief/action dichotomy throughout the rest of its analysis, holding that while the freedom to believe was absolutely protected, the right to act was not.[122] Under this analysis, the court ruled that the state's interest in protecting the "peace, health and good order of the community" was a valid reason to infringe on the Craigs' rights to free exercise.[123] Manslaughter laws were created for the benefit of all society, for the protection and safety of others.[124] The court saw no reason to provide the religious with defenses to these beneficial laws, regardless of the strength of their beliefs.[125]

The California case of *Walker v. Superior Court* may be the most damaging case to the Scientist cause. The decision included some of the strongest language against the free exercise argument that has been seen to date.[126] The California Supreme

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[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] Craig v. State, 155 A.2d 684, 686 (Md. 1959).

[117] *Id.*

[118] *Id.* at 687.

[119] *Id.*

[120] *Id.* at 690.

[121] Reynolds v. U.S., 98 U.S. 145, 166 (1878).

[122] *Craig*, 155 A.2d at 690.

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] Walker v. Superior Court, 763 P.2d 852, 869-71 (Cal. 1988).

Court noted that Scientists would be foolish to argue that the state interest of saving children lacks significance.[127] The court found no state interest to be more compelling than protecting our children "upon whose 'healthy, well-rounded growth . . . into full maturity as citizens' our 'democratic society rests, for its continuance . . .'"[128] The *Walker* court used the *Prince v. Massachusetts* analysis as its centerpiece.[129] To recap, *Prince* had held that parents did not have the right to turn their children into martyrs to the parents' religious faith.[130] And *Prince* was dealing with child labor laws.[131] Using the *Prince* court's protection of children from religion-induced labor, the *Walker* court felt it was only logical to extend that same protection to children allowed to die.[132] The court stated that "[i]f parents are not at liberty to 'martyr' children by taking their labor, it follows a fortiori that they are not at liberty to martyr children by taking their lives."[133]

The court also took into consideration the church doctrine regarding medicine.[134] The justices thought it was quite significant that Scientist doctrine does not regard the use of medicine as sin.[135] Whatever the individual members may have thought, or may have interpreted their faith as requiring, the court was influenced by the church's admission that members were not compelled to use faith-healing.[136] No religious penalties arose from the use of medicine, and the church supposedly would not stigmatize the failing member.[137] The court adopted the view that if the church did not mandate faith-healing, then no free exercise claim could really stand.[138]

As the *Walker* court stated, someone would be hard-pressed to argue that protecting children isn't a compelling state interest, justifying infringement of Scientists' rights to free exercise. But the state still needs to get past the fundamental right to parenting that is also raised in the context of these prosecutions. As will be seen shortly, the same state interest of protecting children will also be deemed sufficient by any court to encroach upon this right.

B. Justification for Violating the Right to Parenting – Again It's Saving Children

Although historically the Courts have gone out of their way to protect the privacy of families, "the family itself is not beyond regulation."[139] The state has a duty to its

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[127] *Id.* at 869.

[128] *Id.* (quoting Prince v. Massachusetts, 321 U.S. 158, 168 (1944)).

[129] *Walker*, 763 P.2d at 870.

[130] *Prince*, 321 U.S. at 170.

[131] *Id.* at 160.

[132] *Walker*, 763 P.2d at 870.

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Walker*, 763 P.2d at 870.

[138] *Id.*

[139] Leclair, *supra* note 2, at 99.

citizens to oversee the general welfare of children through its role as *parens patriae*.[140] While the state hopes to stay out of family affairs and allow parents to raise their children as they see fit, the state does have the authority to intervene on a child's behalf when it feels the parents are not fulfilling their obligations to the child.[141] As was stated in a juvenile action, "the child is entitled to have his or her basic needs cared for. If the parent fails to furnish these needs, the state may and should act on behalf of the child."[142]

Don't our minor children need this degree of protection? Children don't have the ability to protect themselves or the authority to make decisions for themselves. In fact, their lives rest in the hands of their parents (to a great extent). I fully appreciate the parents' interest in dictating a lifestyle to their children. This child will go through life with their name, their life-blood and their influence. It is only natural to want your child to adopt the same values and beliefs you have adopted. But I don't believe a child should have to die as part of the indoctrination. States have always made it a point to protect our children, and have in the process set out guidelines for parents to follow.[143] Parents abuse their freedom when they fail to provide adequate medical care to children.[144] This failure not only entitles the state to intervene on the child's behalf, but it demands it.[145] Many scholars feel a parents' motivations for not providing medical care are completely irrelevant.[146] What matters to these people are the rights and well-being of the child, end of story.[147]

Again, this state interest in protecting its youth will invariably be deemed sufficient for the "compelling interest" component of the strict scrutiny analysis. So long as the state's means of achieving the interest are only as restrictive as necessary, the Scientists will not have a winnable free exercise claim.

C. Are There Less Restrictive Means of Achieving This Compelling Interest?

Unfortunately for Scientists, the *Walker* court held that no less restrictive means of protecting the children exist than prosecuting these parents.[148] The *Walker* defendants argued that children could be just as well protected with civil proceedings, such as removing children from the home of parents who are not providing adequate medical care.[149] While unpopular with the particular parents, such an approach would certainly be less restrictive than placing other Scientists in jail or on probation.[150] However, the California Supreme Court rebutted this

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[140]Leclair, *supra* note 2, at 99-100.

[141]*Id.* at 100.

[142]Cochise County Juvenile Action, 650 P.2d 459, 463 (Ariz. 1982).

[143]Massie, *supra* note 97, at 774.

[144]*Id.*

[145]*Id.*

[146]*Id.*

[147]*Id.* at 775.

[148]*Walker*, 763 P.2d at 871.

[149]*Id.* at 870.

[150]*Id.*

argument.[151] The main reason was simple. Courts can only remove children from unsafe homes if the child is still alive.[152] And under most circumstances, the state will never even know that the child was in danger until the child has already died.[153] Until the child's death when the parents contact the appropriate authorities, these faith-healing sessions are invariably conducted in private.[154] With this knowledge, the court held that the only avenue remaining for the state was to conduct prosecutions after the fact.[155] The rationale is that if the courts can't help the endangered child, they can at least try to deter future Scientists from putting other children into similar situations. If the courts cannot identify those children presently needing help, not much can be done for them.[156] However, protection can be provided to other children not presently in danger, but who could be the next year. Those children are the subjects of state interest when prosecuting these cases.

VI. DUE PROCESS ARGUMENTS AND SCIENTISTS

A. What Are These Due Process Claims?

Failing to avoid conviction on free exercise grounds, Scientists next tend to argue a due process claim.[157] Basically, this argument involves the spiritual healing exemptions found in most states' child neglect statutes.[158] Literally read, many of these statutes would seem to provide immunity to parents whose children died as a result of faith-healing.[159] For instance, Oklahoma's statute on child endangerment provided:

> Unless otherwise provided for by law, any parent . . . who willfully omits, without lawful excuse, to perform any duty imposed upon such parent . . . to furnish necessary food, clothing, shelter, or medical attention . . . is guilty of a misdemeanor. *Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease.*[160]

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[151] *Id.* at 871.

[152] *Id.*

[153] *Walker*, 763 P.2d at 871.

[154] *Id.*

[155] *Id.*

[156] Rosato, *supra* note 91, at 76.

[157] *Walker*, 763 P.2d at 856; People v. Rippberger, 1686, 283 Cal. Rptr. 111, 122 (1991); State v. McKown, 475 N.W.2d 63, 67 (Minn. 1991).

[158] Plastine, *supra* note 21, at 154-55.

[159] *Id.* at 155.

[160] OKLA. STAT. tit. 21 § 852 (1983) (the statute was later amended after it was realized that the statute, as written, provided a defense to these Scientists).

It is understandable how Scientists could read the above statute and then be a little surprised when they are later indicted. On its face the statute seems to provide protection to Scientists, so long as they were acting in good faith with their religion. But, as it turns out, this level of protection is not necessarily present.

There are three primary due process problems brought about by these child-neglect exemptions. First, many times the manslaughter prosecutions use an underlying violation, like child neglect or endangerment, as their foundation for conviction. The child neglect is the proof prosecutors need to convict for the manslaughter charge. Well, if an exemption exists for the underlying "neglect", then supposedly no violation took place. If no violation took place, then presumably prosecutors should not be able to use the parent's behavior as evidence in the manslaughter trials, and convictions should become non-existent. Second, Scientists oftentimes argue that if manslaughter statutes use as a foundation an underlying violation, then the underlying violation's exemption should also be incorporated into the manslaughter statute, regardless of whether or not it explicitly provides one.[161] The third problem, as noted by Jennifer Rosato, is that "even if the faith healing exemption is not actually incorporated into the manslaughter or homicide statute, due process may bar the parents' prosecution because they were not adequately notified of the exemption's limited scope."[162] In other words, the confusion caused by the inconsistent statutes prevents the Scientists from recognizing the potential liability attaching to their actions. At times these arguments have worked, but generally speaking appellate courts still tend to be reluctant to reverse convictions.[163]

B. Can a Manslaughter Prosecution Exist if No Underlying Crime Was Committed?

As outlined above, the first due process problem involves whether or not these manslaughter prosecutions can even exist if no underlying crime was committed. This was the question presented in *State v. Lockhart*, an Oklahoma case in which the defendants were acquitted.[164] The Oklahoma Supreme Court's reasoning in the state's appeal was simple: the manslaughter charge was based upon the child endangerment statute quoted earlier.[165] The court held that the child endangerment statute was clear and unambiguous.[166] An exemption was provided for parents who used faith-healing instead of medical treatment.[167] Because no conviction could arise under the child endangerment statute, there was no underlying violation upon which the manslaughter prosecution could be premised.[168]

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[161]Rosato, *supra* note 91, at 64.

[162]*Id.*

[163]Massie, *supra* note 97, at 729.

[164]State v. Lockhart, 664 P.2d 1059, 1060 (Okla. 1983).

[165]*Id.*

[166]*Id.*

[167]*Id.*

[168]*Id.*

This argument appears to make a great deal of sense, but courts have routinely circumvented these underlying statutes.[169] Either through striking down the exemptions in the underlying statutes or by substantially limiting their application to make them useless to Scientists, many courts have gone out of their way to get around this technicality.[170] The California Supreme Court provides an example of this with its decision in *Walker v. Superior Court*.[171] The *Walker* court ruled that the manslaughter prosecution could go forth because the existing faith-healing exemption only applied to misdemeanor child neglect.[172] The Walkers were being prosecuted for involuntary manslaughter and *felony* child neglect.[173] By limiting the child neglect exemption to only misdemeanor violations, the underlying violation for felony child neglect still existed and could still form the foundation for the manslaughter conviction.[174]

C. Are Child-Neglect Exemptions Incorporated into Manslaughter Statutes?

Several Scientists have also argued that faith healing exemptions present in child-neglect statutes are incorporated into the manslaughter statutes.[175] Incorporation is very difficult to show, however.[176] A court will only construe the two statutes together if it is "natural and reasonable" to believe the legislators intended the statutes to be construed together.[177] When determining if a child-neglect exemption for faith-healing applies to a manslaughter charge, the court will generally consider whether the statutes refer to one another, whether the purposes of each are similar, and if the statutes were both passed during the same year.[178] As can be imagined these criteria are rarely met, if ever.[179]

The California case of *Walker v. Superior Court* also addressed this issue. Laurie Walker asserted as a defense that California's Penal Code section 270 provided her with immunity from the manslaughter charge.[180] Section 270 was California's misdemeanor child endangerment statute. The 1872 statute provided that "[e]very parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor."[181] In 1976, the statute was

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[169]Plastine, *supra* note 21, at 155.

[170]*Id.*

[171]*Walker*, 763 P.2d at 862.

[172]*Id.* at 857.

[173]*Id.* at 862.

[174]Plastine, *supra* note 21, at 156.

[175]Rosato, *supra* note 91, at 64.

[176]*Id.* at 65.

[177]*Id.*

[178]*Id.*

[179]*Id.*

[180]*Walker*, 763 P.2d at 856.

[181]*Id. See also* Pen. Code § 270 (1st ed. 1872).

amended to specify that faith-healing constituted medical attendance.[182] Walker claimed that she was exempted from manslaughter charges because the child endangerment statute gave Scientists the authority to treat children with faith-healing instead of doctors.[183]

The *Walker* court disagreed with her on this point as well.[184] The court reasoned that the two statutes, the manslaughter and child endangerment ones, had completely different purposes in mind.[185] This difference in purpose prevented a parallel exemption in the manslaughter statute from existing.[186] The purpose of the manslaughter statute was punishment of neglectful parents, while section 270 was enacted to "secure support of the child and to protect the public from the burden of supporting a child who has a parent able to support him."[187] Section 270 was designed for fiscal purposes, not retributive ones.[188] As such, Walker could escape liability for endangering her child, but not if the child died.

There are four common problems that are going to basically preclude Scientists from establishing incorporation of these exemptions.[189] First, the child neglect/endangerment statutes very rarely refer to the manslaughter statutes.[190] Second, these statutes typically have different purposes in mind.[191] Manslaughter statutes are written to protect society from dangerous persons, whereas child-neglect statutes are written to protect children from irresponsible or neglectful parents.[192] A third problem Scientists might encounter deals with the fact that these statutes rarely get drafted during the same legislative session.[193] Courts are much more likely to construe the statutes together if they were enacted during the same year.[194] Finally, courts will probably find it very hard to believe that legislators provided exemptions for manslaughter convictions.[195] Most likely, legislators who really wanted to provide an "out" for someone charged with allowing another's death would explicitly say so, and not leave it up to incorporation.

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[182]*Walker*, 763 P.2d at 856. *See also* Stats. 1976, ch. 673, § 1, p. 1661.

[183]*Walker*, 763 P.2d at 856.

[184]*Id*. at 860.

[185]*Id*.

[186]*Id*. at 859.

[187]*Id*. at 860.

[188]*Walker*, 763 P.2d at 860.

[189]Rosato, *supra* note 91, at 65.

[190]*Id.*

[191]*Id.at* 66.

[192]*Id.*

[193]*Id.*

[194]Rosato, *supra* note 91, at 66.

[195]*Id.*

D. Are Scientists Provided With Fair Notice as to the Criminality of Their Actions?

The final due process argument Scientists assert is that constructive, or fair, notice was lacking. "Laws must be readily comprehensible to the ordinary person so that he may know when his conduct constitutes an offense."[196] Constructive notice is lacking when people of common intelligence need to guess at a statute's meaning or disagree in their interpretations of it.[197] If a person does not receive constructive notice that his or her actions are subject to criminal liability, then that person has a legitimate due process claim against the government.[198] Scientists typically argue that the child-neglect exemptions gave them the impression that their use of faith-healing was legal in all contexts.[199] They are then surprised when they discover the exemption they relied on expired upon the child's death. Should Scientists escape punishment when they relied on another statute's clear exemption? The courts are divided.

Commonwealth v. Twitchell raised this issue in the state of Massachusetts.[200] There the defendants relied on a statute providing that "[a] child shall not be deemed to be neglected or lack proper physical care for the sole reason that he is being provided remedial treatment by spiritual means alone."[201] After they provided faith-healing to their son, he died, and they were subsequently charged with involuntary manslaughter. The Twitchells argued that their rights to due process would be violated if the exemption were not extended to cover their actions because they lacked "fair warning" that the use of faith-healing could result in a prosecution.[202]

The Massachusetts Supreme Court found it irrelevant that the defendants had relied on the child-neglect exemption.[203] What mattered to the court was the very clear line drawn between manslaughter statutes and child-neglect statutes.[204] The court found no "mixed signal" from the coexistence of the statutes.[205] According to the court, "[t]he spiritual treatment provision protects against criminal charges of neglect and of willful failure to provide proper medical care and says nothing about protection against criminal charges based on wanton or reckless conduct."[206] The court went on to hold that losing the protection of an exemption at some unknown point does not in and of itself create a fair notice problem.[207] Although the

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[196]Scheiderer, *supra* note 89, at 1441 (citing Winters v. New York, 333 U.S. 507 (1948)).

[197]Rosato, *supra* note 91, at 70.

[198]Scheiderer, *supra* note 89, at 1441.

[199]*Id.*

[200]Commonwealth v. Twitchell, 617 N.E.2d 609, 609 (Mass. 1993).

[201]*Id.* at 612 n.4.

[202]*Id.* at 616.

[203]*Id.* at 617.

[204]*Id.*

[205]*Twitchell*, 617 N.E.2d at 617.

[206]*Id.*

[207]*Id.*

Twitchells had lost the protection of the exemption without their knowledge, the Massachusetts Supreme Court still did not feel they were denied fair notice of the criminal nature of their acts.

However, the very fact that the defendants relied on the exemption, as common people, indicates that there was confusion and various interpretations of the statute. Basic logic dictates that if the defendants read it differently than both the judges and prosecutor, it must not be a completely unambiguous statute. And if confusion existed over its scope, as it did, then a fair notice claim should be recognized. At least the next two courts "got it right."

State v. McKown was a Minnesota case in which the defendants relied on an exemption to the child-neglect statute stating that parents would satisfy the "health care" requirements if they depended upon faith-healing for the treatment or cure of disease.[208] The McKowns argued that this statute misled them to believe that they were protected in their actions.[209] They argued that they did not receive fair notice that punishment could attach to actions taken which are specifically permitted under the exemption.[210] The Minnesota Supreme Court agreed with the defendants.[211] The court ruled that the child-neglect statute "expressly provided respondents the right to 'depend on' Christian Science healing methods so long as they did so in good faith."[212] Because the Scientists had been authorized to rely on their faith-healing techniques, it would be a violation of their due process to convict them.[213]

The Florida Supreme Court in *Hermanson v. State* held similarly.[214] The Hermansons were also under the impression that their use of faith-healing was protected conduct.[215] They were surprised to find out that their protection expired when their child passed away.[216] The court understood their confusion, noting that even the lower courts were a little confused by the exemption.[217] The court stated that one of the purposes of due process was to display to everyone exactly when one's conduct becomes criminal.[218] The court held that "[b]y authorizing conduct in one statute, but declaring that same conduct criminal under another statute, the state trapped the Hermansons, who had no fair warning that the state would consider their conduct criminal."[219] How could the Hermansons have been expected to realize the criminality of their behavior? Even the lower courts could not figure out the

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[208]MINN. STAT. § 609.378 (1988).

[209]State v. McKown, 475 N.W.2d 63, 67 (Minn. 1991).

[210]*Id.*

[211]*Id.* at 68-69.

[212]*Id.* at 68.

[213]*Id.* at 68-69.

[214]Hermanson v. State, 604 So. 2d 775, 782 (Fla. 1992).

[215]*Id.* at 781.

[216]*Id.*

[217]*Id.*

[218]*Id.* at 782.

[219]*Hermanson*, 604 So.2d at 782.

interrelationship of the child-neglect and manslaughter statutes, and yet the state presumed that the Hermansons would realize their conduct was potentially punishable. The *McKown* and *Hermanson* courts reached more sensible conclusions in my opinion.

VII. PUBLIC POLICY CONCERNS WITH PROSECUTIONS

A. Are There Any?

If a Christian Scientist is on trial and he or she hasn't convinced the judge of either the free exercise or due process argument, then he or she might as well pack a toothbrush because the next stop will be at jail. There is one more argument that can be made against these prosecutions, though. It is an argument which will be of no value to a Scientist already on trial, but which could be beneficial to future Scientists. Many people have concerns with these prosecutions on public policy grounds. Some feel that Scientists cannot be deterred from these acts because of their faith, so nothing is gained by using up jail space on them. Others don't want to pursue prosecutions because they feel the Scientists are already grieving.[220] These people have adopted the philosophy that the child's death was the worst punishment the parent could have received, and they should be released from liability on those grounds. I will examine briefly each one of these public policy concerns.

B. Lack of Deterrence

Some commentators have argued that Scientists will not be deterred by prosecutions of fellow Scientists.[221] Let's not forget that these are parents who literally watched their children die while exercising their faith. These critics argue that anyone who holds their faith so sacredly as to allow their child to die surely is not going to be influenced by a prison or probation sentence.[222] And until researching the issue, I would have completely agreed with these scholars. In the beginning, I thought these Scientists were so devoted to faith-healing that nothing could shake them from their beliefs, not even jail time. But it turns out that historically they are willing to alter their beliefs to fit within the confines of the law.

For instance, in Great Britain and Canada all children by law must be treated with conventional medicine.[223] The Scientists began allowing all members in those countries to use medical treatment in order to avoid mass prosecution.[224] Now, I understand that mass prosecution is a compelling influence, but the Scientist faith survived the change. The church adapted to the changing law and stayed afloat, kept members, and remained true to its faith.

One example of this survival is the British case of *Regina v. Downes* from 1875.[225] Although this was a case involving faith-healing by "Peculiar People" as

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[220]Abraham, *supra* note 14, at 959.

[221]J. Nelson Thomas, *Prosecuting Religious Parents for Homicide: Compounding a Tragedy?*, 1 VA. J. SOC. POL'Y & L. 409, 427 (1994).

[222]Thomas, *supra* note 221, at 427.

[223]Merrick, *supra* note 6, at 327.

[224]*Id.*

[225]Monopoli, *supra* note 18, at 327. *See also* L.R. 1 Q.B. 25 (1875).

opposed to Scientists, the Scientist church was deeply impacted by the court's decision.[226] In *Regina*, a father was prosecuted for the deaths of his wife and newborn.[227] He had not provided either with formal medical care and both died.[228] The British court convicted him under legislation that had just recently been passed.[229] The British government, upset at an acquittal of two faith-healers seven years earlier in *Regina v. Wagstaffe*, had amended the existing manslaughter laws to make faith-healing alone a crime.[230] In response to Downes' conviction, the Scientist church began allowing families to use obstetricians and anesthesia in order to stay in compliance with the law.[231]

Today's Scientist church leaders have expressed a willingness to change, if need be.[232] However, they of course do not want to, and earnestly believe that they are following God's commands in acting as they do. But they also recognize that parents should be able to take their children to a medical doctor if they desire.[233] One church leader was even quoted as saying "Christian Scientists first and always obey the law."[234] So the question isn't so much whether Scientists can alter their faith to fit within the law, but whether society should make them alter it.

C. Have the Parents Already Suffered Enough?

Both the shortest and strongest argument against these prosecutions is the fact that the parents have already suffered a tremendous loss with their child's death. I don't feel comfortable in pursuing prosecutions because these parents truly felt they were doing what was right. They honestly did not feel that doctors would be able to help their child as well as prayer. It would be like asking a non-Scientist to rely on faith-healing, even though you thought medicine would work better. These were loving parents. These were caring parents. I can promise each of you that they hurt more for the lost child than society does. I don't see the benefit in subjecting them to further penalty. Deterrence is a worthwhile objective, and I fully appreciate the lost deterrent effect not prosecuting could have on other children, but I know I'll never bring charges as a District Attorney. I couldn't put the parents through it.

VIII. CONCLUSION

The beliefs of Christian Scientists are a growing concern to many Americans. It is understandable. Children have died as a result of Scientists' faith-healing techniques, and as long as those techniques continue to be used more children will

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[226]Monopoli, *supra* note 18, at 327.

[227]Merrick, *supra* note 6, at 329.

[228]*Id.*

[229]*Id.*

[230]*Id.*

[231]*Id.*

[232]Schneider, *supra* note 8, at 88.

[233]*Id.*

[234]*Id.*

likely die. But Scientists are still fighting to hold on to their religion, and the right to exercise it freely.

While courts will properly hold their free exercise claims, even when coupled with right to parent claims, as being insufficient when compared with the state's interest in protecting children, Scientists do have other options. Scientists have often been acquitted from involuntary manslaughter prosecutions on the basis of due process. Confused over the extent of faith-healing exemptions written into child-neglect statutes, many Scientists rely to their detriment on those exemptions until their child passes. Some courts have been sympathetic (again properly) to Scientists in these circumstances, while other courts have been unable to look past the deceased child.

The final consideration is whether these prosecutions should happen in the first place. While Scientists could likely be deterred from these acts, and would probably alter their religious practices to fit within the confines of the law, it just doesn't feel right to many of us to bring charges in these cases. The parents have suffered enough. They've lost their child. Everybody needs to move on.