

# To Keep Them Out of Harm's Way?

## Temporary Conservatorships and Religious Sects

It is possible that he might be guided in some good path, and kept out of harm's way . . . . But what will be his comparative worth as a human being? It really is of importance, not only what men do, but also what manner of men they are that do it. . . . Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.

John Stuart Mill, *On Liberty*<sup>1</sup>

A young woman is in her first year of college, living away from home. Without warning to her parents, she leaves school and joins the Unification Church of Reverend Moon. She abandons her career goals and begins to spend her time selling candy and proselytizing on the streets for the church. Her parents are horrified and go to court to seek a temporary conservatorship.<sup>2</sup>

In recent years, many cases similar to this have come before courts throughout the nation. They have been widely discussed.<sup>3</sup> Parents have used broadly-worded state conservatorship statutes to claim that their offspring have been under the mind control of the sects.<sup>4</sup> Many judges have been sympathetic to the parents' plight and have granted temporary conservatorships.<sup>5</sup>

---

1. J. MILL, ON LIBERTY 56 (D. Spitz ed. 1975) (1st ed. 1859).

2. Reporter's Transcript, vol. 1, at 16-30, *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1977) [hereinafter cited as *Katz* Transcript] (testimony of Raymond Underwood concerning his daughter Barbara Underwood).

3. T. PATRICK, LET OUR CHILDREN GO! (1976); TRANSCRIPT OF MAJOR PRESENTATIONS AT ACLU CONFERENCE ON RELIGIOUS DEPROGRAMMING 4-6 (1977); Collier, *Bringing Home the Moonies: The Brain Snatch*, NEW TIMES, June 10, 1977, at 25; *Is Deprogramming Legal?*, NEWSWEEK, Feb. 21, 1977, at 44; *Religious Cults: Newest Magnet for Youth*, U.S. NEWS & WORLD REP., June 14, 1976, at 52; Robbins, *Even a Moonie Has Civil Rights*, 224 THE NATION 238-42; Interview with Henrietta Cramton, Director of Citizens Freedom Foundation, in Los Angeles (July 23, 1977); Interview with Dennis Donovan, attorney, in Los Angeles (July 23, 1977) (Mr. Donovan has obtained several conservatorships sought by parents in Southern California).

4. See authorities cited in notes 12-13 *infra* and accompanying text.

5. See literature cited in note 3 *supra*. Other reports of conservatorships are: Cohen, *Basic 'Moonie' Case Issue Was One of Citizenship*, Wash. Post, Oct. 10, 1976, § B, at 1, col. 1 (conservatorship over Carl Keut Trimble, 22, a Unification Church member); Johnson, *Tussle for a Mind: Girl's Mother vs. Hare Krishna*, Wash. Post, March 31, 1977, § B, at 1, col. 1 (conservatorship over Donna Seidenberg, 23, a member of the Hare Krishna sect).

This Comment argues that such conservatorships should not be granted. The Comment does not ignore the deep feelings of parents that their offspring are being deceived into a nonsensical, even wicked, life. Yet, there is no basis in past cases or social science studies for the parents' claim of mind control.

Courts have rejected mind control claims in contract, will, and criminal cases, because they believed themselves unable to distinguish in principle between legitimate persuasion and mind control. And, indeed, social science does not provide guidelines to distinguish the techniques used by religious sects to attract members from those used by many other established religious, social, and political groups. Nor are there criteria for distinguishing "mind control" from voluntary commitment to the sects. Thus, granting conservatorships endangers individual choice and social diversity.

## I

### THE BASIS OF PARENTS' CLAIM FOR CONSERVATORSHIPS

Statutes exist in every state authorizing court-appointed conservatorships for persons judged to be experiencing mental difficulties.<sup>6</sup> In general, the statutes are worded broadly, referring to a person unable to care for himself because of "imperfection or deterioration of mentality"<sup>7</sup> or "physical or mental incapacity,"<sup>8</sup> or one "liable to become the victim of designing persons."<sup>9</sup> Despite the differences in wording, courts have employed similar standards in determining whether conservatorships should be granted. They have not required a finding of insanity. Rather, they have looked to whether the potential conservatee has been unable to provide for basic needs such as food, shelter, and clothing, or whether the person is vulnerable to swindling by others.<sup>10</sup>

---

6. See AMERICAN BAR FOUNDATION, *THE MENTALLY DISABLED AND THE LAW* 266-72 (rev. ed. S. Brakel & R. Rock 1971) (state by state list of conservatorship statutes as of 1971) [hereinafter cited as BRAKEL & ROCK].

7. See, e.g., ILL. ANN. STAT. ch. 3, § 112 (Smith-Hurd Supp. 1978): "An 'incompetent' under this Act includes any person who because of insanity, mental illness, mental retardation, old age, physical incapacity, or imperfection or deterioration of mentality, is incapable of managing his person or estate . . . ."

8. See, e.g., FLA. STAT. ANN. § 744.102 (West Supp. 1978): "An 'incompetent' is a person who, because of minority, senility, lunacy, insanity, imbecility, idiocy, drunkenness, excessive use of drugs, or other physical or mental incapacity, is incapable of either managing his property or caring for himself, or both."

Similar guidelines appear in ARK. STAT. ANN. § 57-601 (1977) and in IND. CODE ANN. § 29-1-18-1 (Burns Supp. 1976).

9. See, e.g., 20 PA. CONS. STAT. ANN. § 5501 (Purdon 1975): "Incompetent means a person who, because of infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety . . . is liable to . . . become the victim of designing persons . . . ."

10. BRAKEL & ROCK, *supra* note 6, at 252; Horstman, *Protective Services for the Elderly: The Limits of Parens Patriae*, 40 MO. L. REV. 215, 215-16, 226-30 (1975); Comment, *The Disguised*

The conservator must care for and support the conservatee. The conservator also usually is given considerable authority to limit the conservatee's activities.<sup>11</sup>

Parents of sect members have proceeded under the conservatorship statutes, claiming that their offspring are being mentally controlled by the sect. They, and a number of psychiatrists, argue that constant communal activity, the sect's control over information, and appeals to individuals' needs for friendship and esteem, allow the sect to create a psychological hold over its members. Specifically, the claim of mind control is based on pressures that the sect employs in recruiting new members, and more importantly, in managing the isolated world in which members live. For example, Unification Church<sup>12</sup> recruiters often approach persons on the street—especially persons who appear lonely or depressed—and speak to them about a loving communal group. The recruiters invite prospective members to a church house for dinner; prospective members are then told how much they are loved and needed, and are made to feel part of a special group whose mission is to save the world.

Church members live, work, and study together. They generally spend eight or more hours a day selling products or proselytizing for the church, and other hours studying the *Divine Principles* of Reverend Moon, a work which the church holds out as a "sacred science" explaining the meaning of life and the laws of social development. Church leaders discourage reading and discussing other literature. If a member reveals any intent to leave, other members immediately tell the wavering member that he is loved and valued.<sup>13</sup>

---

*Oppression of Involuntary Guardianship: Have the Elderly Freedom to Spend?*, 73 YALE L.J. 676, 678-80 (1964).

11. Fraser, *Guardianship of the Person*, 45 IOWA L. REV. 239, 247-60 (1960); Horstman, *supra* note 10, at 231-34; Comment, *Limitations on Individual Rights in California Incompetency Proceedings*, 7 U.C.D. L. REV. 457, 461-62 (1974); *see also* CAL. PROB. CODE 1851 (West Supp. 1977), which gives the conservator "care, custody and control of the conservatee."

12. *See generally* R. ENROTH, *YOUTH, BRAINWASHING, AND THE EXTREMIST CULTS* (1977); T. PATRICK, *LET OUR CHILDREN GO!* (1976); F. SONTAG, *SUN MYUNG MOON AND THE UNIFICATION CHURCH* 44-69 (1977); C. STONER & J. PARKE, *ALL GOD'S CHILDREN: THE CULT EXPERIENCE—SALVATION OR SLAVERY* (1977). *See also* Adler, *Rescuing David from the Moonies*, *ESQUIRE*, June 6, 1978, at 23; Andres, *Giving Mind and Body to Sun Myung Moon*, *Daily Californian*, Apr. 4, 1977, at 5, col. 1; Donohoe, *A Weekend with the Moonies*, 105 *INTELLECT* 338 (1977); Harayda, *I Was a Robot for Sun Myung Moon*, *GLAMOUR*, Apr. 1976, at 216; Kraft, *Moon's Youthful Army 'Marching As to War,'* *Evening Chronicle* (Allentown, Pa.), May 27, 1976, at 1, col. 1; Rasmussen, *The Moon Treatment*, *HARPER'S WEEKLY*, December 1, 1975, at 3; Smith, *The Battle for Mind Control*, *S.F. Chronicle*, Apr. 15, 1977, at 1, col. 1; Interview with Jerry Feldman, former Unification Church member, in San Francisco (Aug. 5, 1977); Interview with Alan Scheflin, Professor of Law at the University of Santa Clara, in San Francisco (May 27, 1977); Interview with Margaret Singer, Psychology lecturer at the University of California, Berkeley, in Berkeley (Aug. 5, 1977); Interview with Judith Stanley, former Unification Church member, in San Leandro, Cal. (Aug. 4, 1977).

13. This Comment focuses on the Unification Church, the largest of the religious sects. The

## II

## PREVIOUS CASES INVOLVING MIND CONTROL

Traditional cases involving conservatorships generally do not involve mind control claims. Conservatorships have been used almost exclusively for older persons who have shown signs of senility or a mental defect, and consequently have been unable to provide for physical needs or have suddenly begun to dissipate their estates.<sup>14</sup> Until recently, there were no reported cases of conservatorships sought for persons influenced by a religious group. Similarly, conservatorships have not been sought for persons under the influence of a political or social group, or a persuasive individual.<sup>15</sup>

The recent conservatorship cases involving the religious sects have shed little light on mind control. In nearly all the cases, the conservatorships have been granted in ex parte hearings, without written decisions.<sup>16</sup>

In the two cases in which conservatorships have been contested, the courts have not addressed adequately the mind control issue. In

---

major features of the Unification Church are similar to those of the other religious sects, including the Divine Light Mission, the Hare Krishna, and the Church of Scientology. Because the techniques used by these sects so clearly parallel those of the Unification Church, the conclusions reached regarding the use of conservatorships over church members should apply to the other sects as well. However, it does appear that two very small (yet highly publicized) sects, the Children of God and Love Israel, may use tactics that are more extreme. Among other things, they reportedly use dangerous drugs, live in highly unsanitary conditions, mistreat their young, and sexually abuse women members. R. ENROTH, *supra* note 12; C. STONER & J. PARKE, *supra* note 12. If this is the case, these sects should be distinguished from the Unification Church and analogous sects, and the arguments that follow do not apply to them.

14. See, e.g., *Estate of Hubbard*, 97 Cal. App. 2d 321, 217 P.2d 744 (2d Dist. 1950) (conservatorship granted over an older woman, an alcoholic, whose daughter wanted to put her in a sanitarium for cure); *Guardianship of Peterson*, 84 Cal. App. 2d 541, 191 P.2d 98 (1st Dist. 1948) (conservatorship granted over elderly woman who, due to hardening of the arteries and senility, had become irrational, forgetful, and unable to care for herself); *Matter of Coburn*, 165 Cal. 202, 131 P. 352 (1913) (conservatorship granted over old man whose memory had become impaired and who had begun to dissipate his estate and make bizarre business deals).

15. See Horstman, *supra* note 10, at 217; Comment, *supra* note 11, at 468-72; Comment, *supra* note 10, at 681.

16. Most state statutes provide that after a petition has been filed for a conservatorship, the court immediately can appoint a temporary conservator pending hearings on the petition. Moreover, the temporary conservator can be appointed without notice to the proposed conservatee. In many cases, after filing a petition, parents have been granted a temporary conservatorship of up to 30 days, in an ex parte hearing. During the conservatorship they have either succeeded in convincing their offspring to leave the church or have voluntarily relinquished control, and withdrawn their petition. Interview with Ralph Baker, attorney, in Oakland (Jan. 13, 1978) (Baker opposed the *Katz* conservatorships); Interview with Gerald Batchelder, attorney, in Oakland (Jan. 6, 1978) (Batchelder also opposed the *Katz* conservatorships); Interview with Dennis Donovan, attorney, in Palos Verdes, Cal. (July 23, 1977) (Donovan has obtained several conservatorships sought by parents in Southern California); Interview with Wayne Howard, attorney, in Phoenix (Aug. 17, 1977) (Howard has represented more than 50 parents in conservatorship hearings); Interview with Eric Schupp, attorney, in Essex Junction, Va. (Jan. 13, 1978) (Schupp has obtained conservatorships in Vermont and Massachusetts).

*Helander v. Salonen*,<sup>17</sup> the parents charged that the Unification Church employed psychological methods, including promises of love and fellowship, constant communal activity, and control of information, which effectively deprived their daughter of the ability "to make a choice with respect to the manner in which she exercises her right to liberty." The court denied the conservatorship, holding that the church employed no techniques "substantially different" from those employed by other religious organizations in proselytizing, and that there was no evidence of mind control.<sup>18</sup> The court failed to explain, however, what techniques of proselytizing would be "substantially different," and thus impermissible.

In *Katz v. Superior Court*,<sup>19</sup> parents of five young Unification Church members (including the young woman mentioned in the introduction to this Comment) sought temporary conservatorships. The trial court granted the conservatorships,<sup>20</sup> but the court of appeal reversed. The appellate court held that the statutory guideline for conservatorships in California—"unable properly to care for himself or his property"—referred only to an inability to care for needs of health, food, clothing, and shelter. Yet, the court did not explain why this should be so. It did not discuss the mind control claims made by the parents or explain why the statute should not be read more broadly.

Greater consideration of mind control claims can be found in contract, will, and criminal cases. In these cases, courts have faced situations in which one person has gained an advantage over another by preying on the other's need for esteem, friendship, and affection. The courts have rejected mind control claims except in instances in which the person allegedly controlled was aged or infirm. Even then, courts have required that the influence be exerted by a family member or person acting in a fiduciary capacity. Absent these special circumstances, courts have perceived themselves unable to distinguish in a principled manner among various nonphysical forms of influence.<sup>21</sup>

---

17. HC7-75 (Super. Ct. D.C. 1975). The parents sought custody under D.C. Code § 16-1901 (1973), which provides that a person may apply by petition for a writ of habeas corpus to free another "committed, detained, confined, or restricted from his lawful liberty," and in the same hearing obtain custody of that person.

18. *Id.* at 13-14.

19. 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

20. *In re Katz*, No. 216-828 (Cal. Super. Ct., S.F., filed March 17, 1977) (conservatorship permitted because parents only wanted the best for their children), *rev'd sub nom.* *Katz v. Superior Court*, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

21. The contract cases hinge on the "undue influence" doctrine, which is a basis for rescinding a contract. Undue influence is often described in terms of mind control. Williston defines the doctrine as "the dominion acquired by one person over the mind of another, which prevents the latter from exercising his discretion, and which destroys his free agency." 13 S. WILLISTON, *CONTRACTS* § 1625 (3d ed. 1970). And in *Lyle v. Bentley*, 406 F.2d 325, 328 (5th Cir. 1969), the court explained that "[U]ndue influence must be such as to substitute the will of the person exercising the influence for that of the contractor." Despite this broad language, the doc-

In two other types of cases, courts have faced purported mind control not only through flattery and affection, but also through isolation

trine traditionally has been limited to transactions entered into by persons in weakened mental conditions, whose infirmities have been exploited by family, attorneys, or physicians. In *Buchmayer v. Buchmayer*, 68 Cal. App. 2d 462, 157 P.2d 9 (2d Dist. 1945), for example, a 76-year-old man in weakened mental condition transferred property to his 45-year-old wife after she browbeat him and threatened him with fabricated criminal charges. The court used the doctrine of undue influence to rescind the transfer.

Where the person has not been infirm, courts have rejected an undue influence claim. Courts have done so even when great influence has been exerted through appeals to the person's need for self-esteem or friendship. In *Scurry v. Cook*, 206 Ga. 876, 59 S.E.2d 371 (1950), a businessman sought to void a transfer of property he had made to a young female clerk, claiming undue influence because the clerk "worked on his sympathies with flattery and affection until his free agency was destroyed." The court rejected the claim, holding that this influence by flattery and affection could not be distinguished from the many forms of influence exercised daily. So, too, in *Lyle v. Bentley*, 406 F.2d 325, the court held that influence by friendship and affection used by a young woman over an older man did not constitute "undue influence" because persons constantly use such influence over others. The court emphasized that it was not empowered to impose its own "moral standards or familial preferences upon litigants and to derive from them a test of undue influence." *Id.* at 330. See generally *Federman v. Stanwyck*, 108 N.E.2d 339 (Ct. App. Ohio 1951); Note, *Use of Non-Confidential Relationship Undue Influence in Contract Rescission*, 49 NOTRE DAME LAW. 631 (1974).

In the field of wills, a similar undue influence doctrine exists, defined also in terms of mental domination. See *Estate of Ricks*, 160 Cal. 467, 480, 117 P. 539, 544 (1911), in which the court said: "Undue influence consists in the exercise of acts or conduct by which the mind of the testator is subjugated to the will of the person operating on it . . . ."

Like its counterpart in contracts, the doctrine of undue influence in wills has been employed almost exclusively in cases involving older persons in weakened mental condition, who have been subjected to great pressures from others—nearly always a family member, attorney, physician, or financial agent. See, e.g., *Estate of Hettermann*, 48 Cal. App. 2d 263, 119 P.2d 788 (2d Dist. 1941) (undue influence found where a young wife threatened divorce and even suicide unless her older and mentally weakened husband altered his will). Probate courts have rejected claims of undue influence where considerable psychological pressures have been exerted, but where the party has not been infirm. See *MacMillan v. Knost*, 126 F.2d 235 (D.C. Cir. 1942). There, the testatrix was a seventy-six year old widow, who left her estate to a man half her age. He had visited her and had been kind to her in her later years. The immediate family sued to invalidate the will on the claim of undue influence. The court rejected this argument, explaining that influence by friendship and affection is so very common that to find it improper would require striking down most wills. See generally T. ATKINSON, WILLS 256-60 (2d ed. 1953); 1 W. PAGE, LAW OF WILLS § 15 (4th ed. W. Bowe & D. Parker 1960); Green, *Fraud, Undue Influence and Mental Incompetency*, 43 COLUM. L. REV. 176 (1943).

In the criminal law, mind control was relevant in several old cases. In *People v. Royal*, 53 Cal. 62 (1878), the defendant was charged with raping a 16-year-old girl, even though she had consented to intercourse, because he had so "overpowered" her mind and will that she was powerless to resist. In *Louis v. State*, 24 Ala. App. 120, 130 So. 904 (1930), the defendant was charged with robbery because he had so charmed a woman as to put her under a spell, and then influenced her to part with her money. In each case, the defendant was acquitted. As in the contract and will cases, the courts reasoned that where there was no force or threat of force, the influence exercised through words could not be distinguished from everyday, unobjectionable forms of influence.

Inability to distinguish forms of influence has led other criminal courts to reject a hypnotism defense. From the early 1900's, legal commentators have been concerned about a person committing an illegal act under hypnotic suggestion. While there has been sentiment that a hypnotized person should not be held responsible for his acts, there has been an accompanying realization of the difficulty of distinguishing hypnotic suggestion from more common forms of influence, and a fear that recognition of a hypnosis defense might lead some persons contemplating crimes to think

and indoctrination. One type involves American prisoners of war charged with collaboration after the Korean War. The former prisoners advanced mind control as a defense, arguing that prison camp isolation and Marxist indoctrination placed them under their captors' psychological control. The defense was rejected by the courts, mainly because mind control was not a disease or defect recognized by any psychiatric text, and because the courts had no guidelines to distinguish it from other forms of persuasion to which soldiers often were exposed.<sup>22</sup>

A second type of case raising mind control involves a charge of false imprisonment. In *People v. Murphy*,<sup>23</sup> the leaders of the Hare Krishna sect in New York were charged with falsely imprisoning two sect members. The district attorney acknowledged that the alleged victims were not physically restrained from leaving, but claimed that they were psychologically restrained, because they were under the group's mind control. He cited in support of his mind control claim the group's isolation and constant communal activity, promises of love and friendship, and promise of an ultimate religious doctrine. Here again, the court rejected mind control because there was no legal precedent for it, and in any event, no criteria for the court to apply.<sup>24</sup>

Thus, past cases indicate that courts have believed themselves unable to distinguish in principle between various forms of influence. Yet, it is not clear that they are unable to do so. None of the past cases seriously considers social science studies on influence. Such studies may yield principled criteria for distinguishing nonphysical forms of influence. We now turn to these studies.

---

that they could feign hypnosis. Hypnosis has never been recognized as a defense, although it has been mentioned as a defense in dictum. See Ladd, *Legal Aspects of Hypnotism*, 11 YALE L.J. 173 (1902); Note, *Hypnotism, Suggestibility and the Law*, 31 NEB. L. REV. 575 (1952); Note, *Hypnotism and the Law*, 14 VAND. L. REV. 1509 (1961).

22. See *United States v. Batchelor*, 19 C.M.R. 452 (C.M. 1955), *aff'd*, 7 U.S.C.M.A. 354, 22 C.M.R. 144 (1956); *United States v. Fleming*, 19 C.M.R. 438 (C.M. 1955), *aff'd*, 7 U.S.C.M.A. 543, 23 C.M.R. 7 (1957); *United States v. Olson*, 20 C.M.R. 461 (C.M. 1955), *aff'd*, 7 U.S.C.M.A. 460, 22 C.M.R. 250 (1957). See also Note, *Misconduct in the Prison Camp: A Survey of the Law and an Analysis of the Korean Cases*, 56 COLUM. L. REV. 709, 768-71 (1956).

23. No. 2114176 (N.Y. Sup. Ct., Queens County, 1975).

24. Another recent case involving a charge of mind control against a sect is *Schuppin v. Unification Church*, 435 F. Supp. 603 (D. Vt. 1977). In *Schuppin*, parents sued the Church alleging that mind control alienated their daughter's affections. The court did not discuss mind control in detail, finding the parents' claim unfounded. The sole evidence was the testimony of a psychiatrist who claimed that the daughter was "presently incompetent to make important decisions in the manner of a normal person." 435 F. Supp. at 606. The psychiatrist had never met the daughter; he based his testimony only on examinations of other former church members, conversations with the parents, and tape recordings of telephone conversations between the daughter and parents.

## III

## MIND CONTROL AND THE SOCIAL SCIENCES

*A. The Influence Techniques of the Sects Are Not Distinguishable from Those Used by Other Groups*

Social scientists have recognized in theory the ability of a group to influence an individual by nonphysical means, at least as much as by physical force.<sup>25</sup> Yet, there has been little success in measuring the degree of that influence.

Two social scientists, Robert Lifton and Edgar Schein, have formulated models of a "brainwashing" or "mind control" process.<sup>26</sup> These models are based on studies of the Communist Chinese "reeducation centers" of the early 1950's. They indicate a process by which a group induces certain beliefs in individuals and obtains from them total commitment to the group. The models outline the group's techniques and behavioral characteristics of the converted individuals.

The models of Lifton and Schein are similar. They begin with an authority that claims to possess a "sacred science," like Marxism, that explains the meaning of life and laws of social development. The authority discourages all questioning of this "sacred science" and limits information received by group members. The group engages in constant communal activity, and often lives in isolation. Members display complete faith in the "sacred science" and are totally committed to the group.

Conservatorship proponents emphasize how accurately the models describe religious sects' activities.<sup>27</sup> The Unification Church, for example, promises members the messiah: Reverend Moon. His text, the *Divine Principles*, is represented as divinely inspired, giving life meaning. The church discourages independent thought and limits information received by members. Church members work, study, and live together. They unquestioningly follow the *Divine Principles* and orders of church leaders, and expend all their thoughts and efforts for the church.<sup>28</sup>

---

25. See generally S. ASCH, SOCIAL PSYCHOLOGY 562-617 (1952); Crutchfield, *Conformity and Character*, 10 THE AM. PSYCHOLOGIST 191-98 (1955); M. SHERIF, THE PSYCHOLOGY OF SOCIAL NORMS 89-112 (1936); K. LEWIN, RESOLVING SOCIAL CONFLICTS: SELECTED PAPERS ON GROUP DYNAMICS 56-68 (1948). See also C. Rose, Brainwashing (1976) (unpublished paper in Yale Law School Library); A. Meltsner, Groups, Conformity and Coercive Persuasion (1967) (unpublished paper in U.C. Berkeley Library); Price, The Group Basis of Attitudes and Attitude Change (1969) (unpublished paper in U.C. Berkeley Library).

26. R. LIFTON, THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM (1961); E. SCHEIN, COERCIVE PERSUASION (1961).

27. F. SONTAG, *supra* note 12, at 69; C. STONER & J. PARKE, *supra* note 12, at 162-72.

28. See accounts of church life in literature cited at note 12 *supra*.



Yet, as even Lifton and Schein have acknowledged, a number of groups today fit the models, particularly Catholic religious orders and Marxist political groups. These groups each claim an authority which lends unique insight into the spirit or history. Dissent and questioning are discouraged. In Marxist groups, information is controlled both by issuing party publications and characterizing other news sources as reactionary. Though members usually do not live together, communal activity promotes group solidarity. In Catholic orders, members usually do live together. Superiors control the information received and tightly order all aspects of life. In both Catholic and Marxist groups, members display a complete faith in their group's doctrine. They ignore outside critics and dedicate their lives to the group.<sup>29</sup>

Other groups today also use the techniques described in the models. Members of these groups often display unquestioning faith and commitment. These include Jehovah's Witnesses and Mormons, and to an extent, military groups and even college fraternities.<sup>30</sup>

---

29. On Catholic orders, see L. COSER, *GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT* 119-25 (1974); H. EBAUGH, *OUT OF THE CLOISTER* (1977); J. ELLIS, *AMERICAN CATHOLICISM* (1956); J. FICHTER, *RELIGION AS AN OCCUPATION* (1961).

A vivid account of convent life, including its isolation and rigid ordering of daily affairs, is provided by Ebaugh. In the following passage, she relates a new member's life:

The postulant was then allowed one last good-bye to her parents in the parlor, usually with the directress of postulants present. From that moment on, all interaction with family and friends would be highly regulated. . . . Thereafter the recruit was allowed to see her family one afternoon a month in the convent parlor or on the convent grounds. After one year in the order she was allowed a week's visit at home. However, she could not sleep in the home of her family but had to visit during the day and return to a local convent for the night. . . .

Every six months or so, each member itemized her clothing needs. The list had to be approved by the superior before each item was purchased or sewn by members assigned to that duty.

The postulant was allowed no money of her own, since personal funds involved individual choice and a sense of self-reliance. From entry to death the person might not experience exchange of money for goods. In effect she was exchanging her entire self and services in return for having all needs provided by the order.

H. EBAUGH, *supra* at 22.

Ebaugh, a sociologist, states that the religious order's social control closely follows Lifton's model. *Id.* at 20.

On Marxist groups, see L. COSER, *supra* at 126-35; R. CROSSMAN, *THE GOD THAT FAILED* (1949); T. DRAPER, *THE ROOTS OF AMERICAN COMMUNISM* (1957); B. GITLOW, *THE WHOLE OF THEIR LIVES* (1948); Wright, *With Black Radicals in Chicago*, 24 *DISSENT* 156 (1977).

Coser notes the absolute certainty of Trotskyist leader James P. Cannon, who wrote: "When the history of this epoch is written, they'll discover that the only really moral people were the Trotskyists." L. COSER, *supra* at 104. And Coser notes the equal certainty of a rival sect, which said: "We are part of the stream of history. We are confident of our future because we believe we have the correct understanding and tactic. . . ."

30. See generally S. WALLACE, *TOTAL INSTITUTIONS* (1971).

Most Mormon males are expected to go on two-year "missions" to various parts of the world. In the field, they generally do not date, and are discouraged from going to the movies or reading any books except the scriptures. Mormon missionaries sometimes proselytize as many as seventy to eighty hours per week.

On the military, see S. HUNTINGTON, *THE SOLDIER AND THE STATE* (1957); M. JANOWITZ,

In short, the Lifton and Schein models identify a phenomenon—the sect—that cuts itself off from society and pursues another set of values with certainty and dedication. But this phenomenon is not limited to the Unification Church or other new religious groups. It has existed throughout history and exists in significant number today.<sup>31</sup> The Lifton and Schein models do not provide a set of administrable criteria that the courts could use to grant conservatorships over members of the new religions, while refusing conservatorships over members of established religious, social, and political groups.

*B. There Are No Guidelines to Distinguish "Mind Control" from Voluntary Commitment to a Sect*

"Mind control" implies that a person uncritically follows a group or individual. Such devotion fulfills the human need for order, certainty, and purpose, and it frees one from the difficulties and disappointments of decisions and independent thought.<sup>32</sup> Persons may voluntarily adopt such a mental state.

The difficulty of distinguishing "mind control" from voluntary commitment is recognized by Professor Richard Delgado.<sup>33</sup> He argues, however, that "mind control" can be identified by certain behavioral characteristics, which he terms the "cult indoctrinee syndrome." These include: (1) sudden, drastic, alteration of the individual's values, including abandonment of previous academic and career goals; (2) stereotyped sect responses to all questions; (3) lack of emotion and spirit; (4) physical changes including weight loss and deterioration in appearance, and (5) possible pathological symptoms, including delusional thinking and other types of thought disorders. Professor Delgado claims that this syndrome is common to members of the new religious sects.<sup>34</sup>

Professor Delgado bases his claim on testimony on religious sect activity taken at legislative hearings in California, Washington, D.C., and Vermont.<sup>35</sup> But this testimony consists mainly of charges by par-

---

THE PROFESSIONAL SOLDIER (1960). The military isolates its members from their former surroundings, and to an extent, directs their appearances, participation in outside groups, information flow, and schedules.

31. The phenomenon of the sect has also been captured in literature. See, e.g., A. KOESTLER, DARKNESS AT NOON (1941); F. DOSTOEVSKI, THE POSSESSED (1936).

32. See Howe, *Some Romance*, N.Y. REV. OF BOOKS, April 6, 1978, at 12-13 (the growth of the Unification Church and Hare Krishna is attributable to the same cause as the growth of other orthodox religious groups and Marxist political groups: a yearning for "wholeness"—the feeling of using more of one's moral energies than routine life allows; a subordination of ego to purpose, individual personality to collective structure).

33. Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1 (1977).

34. *Id.* at 70-73.

35. See *California Senate Select Comm. on Children and Youth, Hearing on the Impact of*

ents and deprogrammers who strongly oppose the sects' lifestyle.

Extensive testimony by sect members was presented at the *Katz* conservatorship trial. The behavior and comments there of five proposed conservatees lend little support to Delgado's claim.<sup>36</sup> For example, each of the proposed conservatees appeared physically healthy and lively. They did not give mechanical answers. Rather, each explained the lack of meaning and friendship felt before joining the church, and how these values were found after joining. Each also testified about discussing the group with family or friends before joining (none joined right off the street).<sup>37</sup> And though they spoke in utopian terms of world peace and brotherhood, this was the only speech that could conceivably be labeled "delusional thinking."

In addition, many persons who do not belong to sects nevertheless behave in the manner of a "cult indoctrinee." Persons sometimes change associations and goals, follow a group with little questioning, or experience sudden weight loss. Courts cannot adequately distinguish allegedly "brainwashed" sect members from persons voluntarily joining a group or changing lifestyle.<sup>38</sup>

---

*Cults on Today's Youth* (1974); NATIONAL AD HOC COMMITTEE, A DAY OF AFFIRMATION AND PROTEST, April 20, 1976 (transcript of meeting in Washington, D.C., of parents requesting the government to investigate the activities of the Unification Church); VERMONT SENATE COMM. FOR THE INVESTIGATION OF ALLEGED DECEPTIVE, FRAUDULENT AND CRIMINAL PRACTICES OF VARIOUS ORGANIZATIONS IN THE STATE, REPORT (Aug. 18, 1976) [hereinafter cited as VERMONT REPORT].

36. See *Katz* Transcript, *supra* note 2.

37. Delgado also claims that the sects' influence might be distinguished from that exercised by other groups, because the sects use deception and sudden conversions, and prey on the confused and lonely. Delgado, *supra* note 33, at 64-67. However, the testimony of the five Unification Church members at the *Katz* trial suggests otherwise.

Delgado claims that sect proselytizers deceive potential recruits by not disclosing their sect association; in initial encounters, Unification Church recruiters often speak only of a loving, communal group. Church officials say this is necessary because the media has portrayed the church unfavorably. In any event, potential recruits often learn that they are associating with the Unification Church during their first visit to a church house, and certainly soon after further association with the church. Each of the proposed conservatees at the *Katz* trial testified that, before joining, he or she knew of the required commitment to the group and discussed it with family or friends. Moreover, members take no vows, accept no financial obligations, and can leave the church at any time.

The sects, Delgado claims, take in persons from the streets without allowing them time for reflection, in contrast to the practice of established religious orders. However, none of the five proposed conservatees in *Katz* joined off the street, and several of the conversions occurred over a period of months.

The *Katz* trial does indicate that the sects attract the confused and lonely. Each of the proposed conservatees testified to joining the church at a time of searching for fellowship. Yet, any unconventional group in a society recruits almost by definition from persons dissatisfied with the established order. Several of the proposed conservatees testified that church membership ended drug use, profligacy, and promiscuity.

38. Several psychiatrists have suggested criteria similar to Delgado's "cult indoctrinee syndrome" which, they claim, identifies mind control victims. However, many persons who are not sect members meet the same criteria.

For example, Dr. John Clarke testified at the Vermont hearings that sect members tend to

Conservatorships for sect members supposedly help unwitting victims return to normal lives. But it is impossible to determine reliably whether an individual is a mind control victim or a voluntary adherent to a sect.<sup>39</sup> Conservatorships, therefore, imperil individual choice and social diversity.<sup>40</sup>

---

reject their past and sever ties with family and friends, view life as a cosmic struggle between good and evil, look to the sect for resolution of the struggle, and accept sect doctrine uncritically. VERMONT REPORT, *supra* note 35. Yet, this certainty, faith in the group, apocalyptic outlook, and rejection of the past, is common to members of other religious and political groups, particularly Catholic orders and Marxist sects. See notes 29-32 *supra* and accompanying text.

At the *Katz* trial, Stanford psychiatrist Samuel Benson examined the five proposed conservatees and noted the following symptoms:

- (1) lack of concern for personal goals;
- (2) paranoia about past personal relationships;
- (3) short attention span; and
- (4) uncritical acceptance of church doctrine.

Benson explained that the symptoms were the result of "coercive persuasion," a "systematic, ritualistic procedure" by which persons were put under the mind control of others and assumed the identity desired by their manipulators. *Katz* Transcript, *supra* note 2, at 149-217.

Benson presented this sinister-sounding theory of "coercive persuasion" without supporting evidence. He did not explain how he knew that "coercive persuasion" rather than mere influence caused the symptoms. Nor did he attempt to distinguish the many young persons who sometimes display short attention spans, faith in a group or individual, or lack of concern for past and future goals. Further, Dr. Benson did not connect the described symptoms to any recognized psychiatric disorder. *Id.* See also S. Benson, Brainwashing Techniques and Results Achieved (May 15, 1977) (speech at Walnut Creek Psychiatric Hospital).

39. That "drawing a line" may be difficult does not diminish the need to draw a line in some instances. This is so with the insanity defense in criminal law. The point at which sanity ends and insanity begins is not clear.

But the insanity defense is inextricably intertwined with the tradition that only the culpable should be punished. Attempting to draw the line between sanity and insanity is necessary to avoid punishing the irresponsible. See Goldstein & Katz, *Abolish the "Insanity Defense"—Why Not?*, 72 YALE L.J. 853 (1963); H. FINGARETTE, *THE MEANING OF CRIMINAL INSANITY* (1972).

There does not seem to be a similarly compelling reason justifying deciding which sect members should be placed under conservatorships. Imposing a conservatorship on a voluntary adherent to a sect violates treasured individual freedom.

40. An argument based on the United States Constitution also may support the thesis that conservatorships should not be granted over members of religious sects. The first amendment protects religious freedom from interference by the federal government. The first amendment applies to the states through the fourteenth amendment. The constitutional analysis suggests that courts may not constitutionally grant conservatorships over members of religious sects, because conservatorships interfere with religious freedom. This analysis is inapplicable, however, unless "state action" is present. The United States Supreme Court in *Shelley v. Kraemer*, 348 U.S. 1 (1948), found state action in the mere court *enforcement* of a racially restrictive private covenant. But more recent cases hold that there is no state action when a private party obtains a conservatorship order from a court. *Baer v. Baer*, 450 F. Supp. 481 (N.D. Cal. 1978). Cf. *Brown v. Dunne*, 409 F.2d 341 (7th Cir. 1969). If "resort . . . to the courts of the state does not supply . . . state action," *Phillips v. Bridge Structural & Ornamental Iron Workers Local 118*, 556 F.2d 939, 940 (9th Cir. 1977), the constitutional argument founders. See *Skolnick v. Martin*, 317 F.2d 855 (7th Cir.), *cert. denied*, 375 U.S. 908 (1963). But this Comment's policy argument for denying conservatorships remains in any event.

Assuming that state action is found, sect members should be protected from conservatorships if:

- (1) the sect is a "religion," and
- (2) there is no compelling state interest to restrict sect activities.

## CONCLUSION: THE DANGER OF USING THE LAW TO KEEP PERSONS OUT OF HARM'S WAY

Parents have invested much effort and emotion in raising their children and remain concerned about their children's welfare. It is appealing, therefore, to argue that parents should be entitled to a short

The Supreme Court has held a belief to be "religious" if it occupies a place in the life of its possessor equivalent to that filled by the traditional belief in God. The belief must be more than a political or sociological opinion; it must be part of a world view and impose obligations on the believer. *Gillette v. United States*, 401 U.S. 437 (1971); *Welsh v. United States*, 398 U.S. 333 (1970); *United States v. Seeger*, 380 U.S. 163 (1965); Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1063-65 (1978).

The practices of the sects should qualify under this standard. *But cf.* Delgado, *supra* note 33, at 42-45. The Unification Church, for example, has a body of near-Christian moral doctrine, collected in the *Divine Principles*. No one doubts the sincerity of church members for whom conservatorships are sought. These members study the church doctrine and pray daily, and lead a puritan lifestyle. Members eat and dress simply, and abstain from premarital sex. The church as a whole does engage in political activities, and some of its leaders may be wealthy, but the church's primary focus is on religious study and proselytizing. A court will not question a group's sincerity unless religion appears to be only a facade for political and economic activity. *See United States v. Seeger*, 380 U.S. at 165-66; *Washington Ethical Soc'y v. District of Columbia*, 249 F.2d 127 (D.C. Cir. 1957). In any event, for conservatorship purposes, it is the sincerity of the proposed conservatee that is important—not that of church leaders—since it is the conservatee's religious freedom that will be limited. There is no evidence that the typical Unification Church member has any political or economic motivation. *See* accounts of Church life cited in note 12 *supra*; *see also* F. SONTAG, *supra* note 12, at 44-53; C. STONER & J. PARKE, *supra* note 12, at 74-82.

In considering whether a belief is "religious" for first amendment purposes, the courts may not inquire into the sensibility of the belief. In *United States v. Ballard*, 332 U.S. 78 (1944), the Court held that courts could not consider the truth or falsity of doctrine, even of a person who solicited funds claiming that he had talked with Jesus, had been selected as a divine messenger, and could heal persons with incurable diseases. The Court emphasized that religious beliefs were not susceptible of proof, and that religious experiences which were meaningful to some might be incomprehensible to others. *See also* *Founding Church of Scientology v. United States*, 409 F.2d 1146 (D.C. Cir.), *cert. denied*, 396 U.S. 963 (1969).

Once a practice has been found to be "religious" for first amendment purposes, a compelling state interest is required before the practice can be restricted. Courts refuse to interfere with most religious practices. *But cf.* *Cleveland v. United States*, 329 U.S. 14 (1946) (polygamy illegal despite religious custom); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (use of child labor in religious proselytizing held illegal); *Leary v. United States*, 383 F.2d 851 (5th Cir. 1967) (religious use of dangerous drugs illegal), *rev'd on other grounds*, 395 U.S. 6 (1969).

In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Court allowed the Amish—in violation of a state statute—to withdraw their children from public schools after the eighth grade. The Court said that while the group's rejection of intellectual and scientific accomplishments, self-distinction and competition differed from the majority view, the Court could not assume the majority was right. In the Middle Ages certain religious groups isolated themselves from accepted social practices and preserved ideas since recognized as important ideas of Western civilization. *Id.* at 223-24; *see also* *Sherbert v. Verner*, 374 U.S. 398 (1963); *Torcaso v. Watkins*, 367 U.S. 488 (1961); *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *People v. Woody*, 61 Cal. 2d 716, 394 P.2d 813, 40 Cal. Rptr. 69 (1964).

Professor Delgado has suggested that a compelling state interest to limit sect activities exists because of several harms caused by the sects, including "self-mutilative behavior," "guilt," "suicide," "maturational arrest," and "harm to the family as an institution." Delgado, *supra* note 33, at 10-36.

But the "self-mutilative behavior" is in fact only reported fasting and loss of sleep; the "guilt"

period of custody to try to return their offspring to their previous mental state.

From the view of the young person, however, even a short conservatorship significantly limits the individual's right to choose a lifestyle and religion. A conservatorship makes the individual feel that an attempt at independence and nonconformity has failed—that the individual continues to be treated as a child. Some conservatorships have caused the conservatee to renounce the sect. But in other cases, the conservatee has returned to the sect feeling that independence and self-respect have been violated.

Temporary conservatorships for sect members are dangerous precedent from society's standpoint, because they threaten the freedom of members of other unconventional religious and political groups. Granting conservatorships over members of the Unification Church and the other new religious sects makes conservatorships available for young persons in many other religious, social, and political groups that exercise similar techniques of influence.

Might it be possible to shape the law to allow parents and wise persons to help keep young persons out of harm's way? No. Not even the wisest judge knows the lifestyle best suited for each individual. Further, persons mature only by directing their own lives.<sup>41</sup> It is through choice and judgment—and even mistake and failure—that

---

is the bad feelings of some former members for their behavior while in the sects; and the "suicide" is a single instance by a former Unification Church member. *Id.* at 16-17.

By "maturational arrest," Delgado means regression into an unthinking, uncritical, childlike state. Sect members do act this way, but they may do so voluntarily. See notes 35-38 *supra*, and accompanying text.

On "harm to the family," Delgado notes that the sects encourage members to sever family ties. This does seem to be the case. See note 12 *supra*. Yet, many other religious orders and political groups also have encouraged their recruits to sever family ties. There is no reason why this practice should violate a compelling state interest.

(Two very small religious sects, the Children of God and Love Israel, live much differently from the others. These sects reportedly use dangerous drugs, live in highly unsanitary conditions, and mistreat their young. See, e.g., R. ENROTH, *supra* note 12, at 87-96; C. STONER & J. PARKE, *supra* note 12, at 106-07. If these sects in fact engage in these practices, then the state has a strong interest in intervening. But conservatorships still are not needed. The state already has the means to intervene through existing laws on drugs, sanitation, and parental responsibility.)

Cases therefore recognize the importance of diverse lifestyles and outlooks resulting from alternative religious practices. It is true that the new religious sects' practices conflict with social norms. But it does not follow that these ideas cannot be valuable to some persons—the charges of charlatanism and corruption made against the Unification Church resemble charges made against the Mormons, Christian Scientists, and Jehovah's Witnesses in their early years. See S. AHLSTROM, *A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE* (1972). These groups now are accepted American institutions.

41. Even an individual who rejects a sect's views may benefit from the sect's existence. Exposure to, and consideration of, a sect's ideas may improve that individual's appreciation of his own beliefs. See interviews with Jerry Feldman and Judith Stanley, *supra* note 12.

persons gain an understanding of their meaning and purposes. Conservatorships interfere with that maturation process, and therefore, should not be granted over members of the new religious sects.

*Michael S. Bernick\**

---

\* A.B. 1974, Harvard College; B. Phil. 1976, Oxford University (Balliol College); third-year student, Boalt Hall School of Law.

