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Christian Science and spiritual healing : a religious practice or an alternative therapy ? An analysis of the issues linked to « spiritual healing » cases.

Introduction

Since MBE founded the Church in 1875, the Christian Science faith has played an important role in the field of religious law. The main interest in studying the controversies in which this new religion has been involved lies in its combining two aspects in its doctrine : a therapeutical one and a religious one. The blurring lines of this combination have made this religious movement quite unique.

The Church has long been working directly with law makers to protect their spiritual healing practice. This work on the field has proved quite successful since CS Committees on Publication have, over the last century, managed to get hundreds of laws amended in the group's favor for religious purposes.

The constitutionality of federal or State statutes has therefore almost never been an issue to the Church, contrary to many other NR groups that seek legal recognition for their practice through 1st Amendment claims.

However, as our discussion will show today, such a privileged position has not prevented CS members from legal prosecutions.

The early cases brought to State courts in the 1890s were the starting point of a thirty year long battle to get a legal recognition of their healing alternative as a religious practice.

However, one century later, the upsurge of highly publicized court cases involving the death of children in the late 1980s and 1990s, has drawn considerable attention and aroused serious concerns about the legal toleration of the spiritual healing practice.

While CS parents thought the law clearly allowed them to rely exclusively on spiritual healing, they ignored that the meaning of such accomodative statutes was still to be debated in courts if the child died.

We will point out here some inconsitencies brought about by the ambiguous legal accommodations in favor of the CS Church and see how such inconsistencies force judges in court to redefine the scope of the accomodations in favor of CS.

We will first briefly discuss how the Church got to be one of the very few religious groups that managed to have its spiritual healing system recognized both as a legitimate therapeutical alternative to conventional medicine and as a religious practice. Last, we will see in what ways the much publicized child death cases have shown the limits of the accomodative provisions the Church has been able to get.

I) An Overview of the Church's main tenets

Before we focus on the controversies, a very brief look into the history of the CS faith and its healing practice is useful in understanding the issues being discussed today.

Mary Baker Eddy

The CS faith was founded by Mary Baker Eddy, a woman from New England who was raised in a Congregationalist family. Growing up, she rejected some of her Church's teachings but kept a very intense religous fervor. In 1866, she apparently experienced an overnight healing after she had fell on an icy pavement. MBE had had a long history of chronic illness and she had tried several popular remedies (like the bread and water diet, homeopathy and hydropathy) before she turned on to a « magnetic » healer called Phineas Quimby. Quimby had an considerable influence on MBE but she finally distanced herself from the healer's teachings after his death in 1866, (the year she accidently fell on a pavement) and began to come up with her own ideas about the mental origins of disease and concluded that an extensive study of Jesus teachings in the Bible would help recover from any illness. In 1875, she published the first edition of *Science and Health with Key to the Scriptures*, the founding CS textbook, to be read along with the Bible by SC followers.

Prayer in CS

As MBE mentions in the *Manual of the Church* (1936 : 17), the main purpose of CS is to « reinstate Christianity and its lost element of healing ». She believed that everyone could experience healing after he or she had understood the teachings of Jesus who had himself cured people in his own time. The very concept of prayer as CS members understand it is quite unique. Indeed, contrary to most religious groups that consider prayer a supplication to God whereby they ask Him to intervene as a response to their plea, praying in the Chrisitan Science faith is being in communion with God and understanding man's relation with the Supreme Being (also called Love, Life, Truth, Understanding, Spirit, Principle, Soul, and Mind). Only that understanding allows one to realize that he or she has the power to heal just like Jesus had. Praying is therefore more of a spiritual process than it is a request to God.

CS practitioners

CS spiritual healers are called « practitioners » even though contrary to traditional medical practitioners they use no drugs, perfom no surgery and make no medical diagnoses. Today, there are no official trainings to become a CS practitioner except for a few non compulsory conferences that give members interested in healing other people some general guidlines. (In MBE's time, CS members who wanted to become practitioners had to graduate from the Massachusetts Metaphysical College, 1882-1889).

The practitioners can be called on for help by people from as well as outside the Church when they feel they need to be cured either from a physical illness or when an emotional disruption happens in their lives (loss of a relative, loss of a job, going through a divorce etc...).

Practitioners usually charge around the same amount as medical practitioners do.

II) Early legal controversies

As the CS Church was beginning to open chapters all around the US and practitioners were being called up to treat more and more people , in the late 19th century, the medical profession was in a phase of transition. On the one hand, considerable progress had been made in diagnositc techniques while on the other hand actual treatment procedures were much less advanced.

The national board of doctors in the US, called the American Medical Association, decided to wage a war on what they considered was a new « irregular » sect, just as homeopaths and naturopaths were in their eyes. The medical community had already been trying to get rid of those competing groups that claimed they could heal people and which they considered were threatening their work as doctors. But when it came to CS, the AMA and its former « enemies » joined hand in hand in the legal attempt to outlaw CS spiritual healing practice.

They tried to convince legislators to explicitly ban spiritual healing as an alternative therapy. They insisted that CS practitioners should all be tried on the grounds that they were practicing medecine without a licence.

No laws explicitly prohibiting the spiritual healing practice was eventually passed but many CS practitioners were prosecuted in several States under the terms of their States' Medical Practice Acts, which mentioned that only people who had graduated from a nationally recognized medical school could practice medicine. Therefore, only the financial aspect of the practice was being challenged by the General Attorneys, not the treatment itslef. But the strategy was always the same in courts : have the practitioners' activity labeled « practice of medicine » as it was defined in the law so they would be condemned.

The series of CS practitioners' trials started as soon as 1887 (Shoepflin, 2003) but the most notable cases were those of Ezra Buswell judged in 1894 in Nebraska, and Walter E. Mylod, heard by the Supreme Court of Rhode Island, four years later, in 1898.

State v. Buswell (1894)

The case was heard by the Supreme court of the State of Nebraska after the State had appealed the decision of the Gage County Court, which had failed to indict Buswell. During the trial, the Attorney General argued that Ezra Buswell's activity as a CS practitioner was clearly a practice of medecine because he was being paid for treating sick people. Rather than countering the AG's argument on the definition of the practice of medicine, Buswell's lawyer decided to put forward religious freedom claims under Section 4, Article 1 of the State's Constitution so that the central issue would be a religious one. Heard as a witness, Buswell himself referred to some passages of the Bible to explain his role as a spiritual healer, arguing that he was only following the words of the Scriptures, which is the recognized standard among Christian Scientists.

Shortly after the hearings, the Supreme Court decided the case : it sustained the attorney's exceptions and concluded that Ezra Buswell had been illegaly practicing medicine. The conclusion in itself is not very surprising or exceptional, however, the reasoning that helped the judges reach that conclusion is worth focusing on : as Buswell had himself used the Bible in his plea, the Court considered logical and consistent to judge the case using that same reference and prove the defendant's reasoning wrong :

> The defendant relied upon the teachings of the Bible as his authority as a Christian Scientist. It will not, therefore, be amiss to refer to it in instances applicable to his case. In the right chapter of the Acts of the Apostles, we find an account of Simon, a sorcerer, who had used sorcery, and bewitched the people of Samaria, giving out that himself was a great one.

The Court went on mentioning that Simon had let Peter know that he wanted God to give him the power to heal people. Peter's answer was taken over by the judges and commented upon as follows :

> The language of Peter, « Thy money will perish with thee, because thou hast thought that the gift of God may be purchased with money, » was a most emphatic and authoritative refutation of the idea that this special gift of God could form a proper basis for money transactions.

Relying extensively on this reasoning and the sayings of Biblical characters as the authority of the court, the judges put aside Buswell's religious claim by concluding that :

> There was involved no question of sentiment, nor of religious practice or duty. If the defendant was guilty as charged, neither prentense of worship, nor of the performance of any other duty, should have exonerated him from the punishment with an infraction of the statute involved. […]. The exceptions of the county attorney are sustained. Exceptions sustained.

The reasoning of the court can appear at the very least as a questionable one because it implies that the nature of the actions that are being judged as bad or immoral in the Bible are not religious ones. Hence, Buswell's activities as a spiritual healer were not considered a religious practice only because the Bible said healing does not include any financial compensation.

So Buswell's case shows how the line between religious practice on the one hand and medical practice on the other has not always been clearly drawn in courts and has ironically led the Supreme Court to rely on a religious text to prove that spirtual healing was not a religious practice.

State v. Mylod (1898)

In this case, two CS practitioners, Walter E. Mylod and David Anthony were charged of illegally practicing medicine again under the State's Medical Practice Act, after two policemen pretended they were patients and had reported to the GA that the healers introduced themselves as doctors in the sign on the door of their consulting room.

The main defendant, Walter E. Mylod decided to submitt his case to the State's Supreme Court before the County judges had decided it,on the grounds that Chapter 165 of the State's General Laws, which define who can legally be recognized as a practitioner . He claimed that the law was infringing upon the right of spiritual healers to practice without having to graduated from a medical school. The Rhode Island SC examined Mylod's request but instead of focusing on the consitutionality of the law, it concluded that Mylod's activity was not medicine according to the terms of the law :

> Medicine, in the popular sense, is a remedial substance. The practice of medicine, as ordinarily understood, has relation to the art of preventing, curing or alleviating disease or pain. It rests largely in the sciences of anatomy, physiology and hygiene. It requires a knowledge of disease, its origin, its anatomical and physiological features and its causative relations ; and,*756 further, it requires a knowledge of drugs, their preparation and action. [...].
> Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer […] does not constitute the practice of medicine in the popular sense.

The court's interpretation of the definition of medical practice is quite interesting compared to the Nebraska court's reasoning in the Buswell case because here practicing medicine necessarily involves giving the patients drugs to treat their illnesses. So the court justifies its interpretation and

the fact that the Buswell decision could not be used as a precedent here because the law regulating the practice of medicine in Nebraska had a different phrasing so it could include CS practice as a medical one.

III) CS's successful lobbyism (the Mediacal Practice Acts and CAPTA)

Judge Clifford Smith's strategy (1903)

Despite the fact that the Mylod decision was favorable to the Church in Rhode Island, many Christian Scientists felt they had to protect their practice. One judge, called Clifford Smith, a Christian Scientist himself, encouraged the Church to go for a legislative recognition rather than trying to defend their practice in courts.

In 1903, he wrote a letter to Carol Norton, where he explained that the best option for the Church was to negociate directly with State legislators so they could get accomodations in the laws that were being passed. Judge Clifford was convinced that :

> [The Church's] fight for the protection of human law must, sooner or later, be fought out in legislatures. The protection of human law will come to us through 'the quickened sense of the people ' (S&H 343-13) rather than from any limits which the courts will set for legislation.

Following Judge Clifford's advice, the Committees on Publications of the Church started a successful work on the field, convincing State Representatives and Senators that the Christian Science method of healing should be recognized as a religious alternative to conventional medical treatments.

Within roughly thirty years, virtually all the States (except for Alabama, Iowa and Mississippi) had amended their Medical Practice Acts and accommodations in other laws regulating other aspects of medical care were well under way.

The CAPTA laws

The State legislatures' accomodative policy expanded into a federal one in the 1970s with the enactment of the Child Abuse Prevention and Treatment Act (called the CAPTA laws). According to one news article published in « Newsday » in 1990[1], the accommodations for the Church in this law signed by President Nixon, was suggested by two of the President's closest collaborators : John Ehrlichman (counsel and Assistant to the President for Domestic Affairs) and Harry Robbins Haldeman (then White House Chief of Staff).

1 *Law : Christian Scientists on Trial in Baby's Death*, NEWSDAY, Apr.29, 1990.

The CAPTA laws were ammended several times but the original version passed in 1974, requiresd that a state include a prayer-treatment exemption in its reporting schem in order to receive federal funds. In their definition of « harm or threatened harm to a child's health or welfare », the States had to include the following provision :

> [A] parent or guardian legitimaly practising its religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. *However*, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.[2]

This religious exemption requirement was eventually removed in the 1983 final version of the Act but most States kept the provision in their regulations. A few States even included this exemption to their criminal codes, and specified the accommodation for Christian Scientists by name. For example, Arizona's exemptiopn statute reads :

> Notwithstanding any other provision of this chapter, no child who in good faith is being furnished christian science treatment by a duly accredited practitioner shall, for that reason alone, be considered to be an abused, neglected or dependent child.[3]

With such regulations in favor of their Church, Christian Science parents thought they could use their religion's treatment and call a practitioner for their sick children without fearing to be prosecuted.

However, in the late 1980s and 1990s, a series of well-publicized court cases pointed out the limits of these exemptions and their scope.

IV) Child death cases : manslaughter prosecutions and due process of law issues

In many of the cases that reached Sates' Supreme Courts, the issues raised on trial by the defendants were not only the constitutional right to free exercise of religion but also due process concerns.

One case drew considerable media attention in the late 1980s early 1990s : *Commonwealth of Massachusetts v. Twitchell* (heard by the Massachusetts Supreme Court in 1993).

There were a few other cases that were also well-publicized during that period (*Hermanson v. State*, 570 So.2d 322, 1990, *Walker v. Superior Court*, 47, Cal.3d 112 (1988), *Minnesota v. McKown*, 461 N.W. 2D 63 (1991), etc...). In all those cases, Christian Science parents who had relied on their faith's spiritual healing treatment were prosecuted after their child died from his illness. All the States where the cases were brought to court had exemptions in their manslaughter and child abuse and neglect statutes, so the main issue debated on trial was the scope of these exemptions.

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2 Chil Abuse and Neglect Prevention and Treatment Program, 39 Fed. Reg. 43, 937 (1974).

3 ARIZ. REV. STAT. ANN. && 8-531.01, 8-546(B).

We're limiting our analysis to the Twitchell case today not only because it examplifies this ambiguity in many regards but also because the trial had a considerable symbolic significance to it since took place in Boston, the birthplace of the Church.

In 1986, David and Ginger Twitchell were arrested after their two year old son died of a bowel obstruction that could have been cured with « modern medical procedures », according to the doctors that testified during the trial. Despite the exemption included in the Massachusetts child abuse and neglect statute, the Twitchells were indicted for manslaughter. The Twitchells appealed the lower court's decision to the Massachusetts Supreme Court. They used the State's law as well as a 1975 state attorney general's opinion stating that the statute prevented parents from facing criminal prosecution for failure to provide their child with medical care because of religious reasons. However, the court upheld the State's prosecutions based on the fact :

> There is no mixed signal from the coexistence of the spiritual treatment provision and the common law definition of involuntary manslaughter. Cf. United Sates v. Cardfiff, 334 U.S. 174, 176, 97 L. Ed. 200, 73 S. Ct. 189 (1952). The spiritual treatment provision protects against criminal charges of neglect and wilful failure to provideproper medical care and says nothing about protection against criminal charges based on wanton or reckless conduct.[4]

So according to the judges, it was clear that the law defining involuntary manslaughter and the exemption included in the child abuse and neglect statute were to be construed seperately. As a result, the defendants could face manslaughter charges under the law that considered « wanton or reckless conduct » as a proper basis for such prosecutions.

However, the attorney general's 1975 opinion on the exemption was the main argument of the defendants (In May 1975, the attorney general adressed a number of topics to the deputy director of the Office of Children) . Indeed, the Twitchells said they had relied on this document to make sure they would be protected from any legal action from the State since the opinion seemed to make it clear that the parents would not be prosecuted should the child die. The defendants therefore argued that they had lacked « fair notice », and that this would be a denial of due process of law. Quoting the AG's opinion, the Court agreed that :

> [...]an answer that says that children may receive needed services « notwithstanding the inability to prosecute parents in such cases » (id), and issues no caveat concerning homicide charges, invites a conclusion that parents who fail to provide medical services to children on the basis of religious beliefs are not subject to criminal prosecution in any

4 Commonwealth v. Twitchell 416. Mass. 114 ; 617 N.E.2d 609, 1993.

circumstances.[5]

The attorney general's opinion was therefore considered as misleading, because in its phrasing it led the denfendants to have a misconstrued approach of the law. Hence, the decision of the judges, who decided to overturn the lower court's judgment :

> Although it has long been held that « ignorance of the law is no defense » (Commonwealth v. Everson, 140 Mass. 292, 295, 2 N.E. 839 [1885]), there is substantial justification for treating as a defense the belief that conduct is not a violation of law when a defendant has reasonably relied on an official statement of the law, later determined to be wrong, contained in an official interpretation of the public official who is charged by law with the responsibility for the interpretation or enforcement of the law defining the offense.[6]

Even though the Twitchells had won their case, the decision was not a big victory because the State's Assembly simply removed the exemption (Section 1, Chapter 273 of the Massachusetts criminal code) in 1986, well before the trial took place. Ironically, the legal victory in this case actually seems to have entailed a step back in the legislative field, the repeal of the accommodative section of the statute.

Conclusion

As we have seen in the first part of this presentation, the legal battle in the early days of the Church's history has allowed Christian Scientists to get a legal recognition of their religious practice. But the fact that this practice has a medical (in the sense therapeutical) dimension to it has made any accomodative statute quite ambiguous as far as the scope of these accomodations goes. From the Twitchell case as for the other cases mentionned in this study, it seems that spiritual healing has been allowed to CS parents as a legitimate religious practice and/or therapeutical choice for their children only as long as the treatment is succesful and the child does not die.

The line between the will to let the Church's members decide to rely exclusively on their faith's healing practice and the obligation of the State to make sure that its citizens take care of their children and don't put them in danger is far from being obvious.

It appears that religious accomodations are a very sensitive issue because many aspects that regulate

5 Commonwealth v. Twitchell 416. Mass. 114 ; 617 N.E.2d 609, 1993.

6 Ibid.

one's religious life often collide with common law regulations, especially when it comes to health.
Again, the specificity of the Christian Science faith is also to be taken into account here : since President Obama introduced the healthcare reform in 2010 (*Patient for Protection and Affordable Care Act*, also known as *Obamacare*), the Church has been working on two possible amendments for Csists : one option would be to exclude Csists from the application of this law (i.e. they would seek an exemption) or they suggest the law could include a provision that would mention CS treatment by a practitioner as a « regular » treatment that would be reimbursed by health insurance companies.
Anyways, the Church hasn't offically come up with any definite suggestions for such an amendment but it will be interesting to see which of the two possibilities will be validated by legislators in Washington. If the second option was to be passed, it would definitely give CS faith treatment not a religious recognition but a therapeutical one on the federal level.