

CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION
FOR THE STATE OF NEW YORK
SUITE 3303
551 FIFTH AVENUE
NEW YORK, NEW YORK 10017

November 25, 1964

To: Temporary Commission on Revision
of the Penal Law and Criminal Code

Re: Section 495 Penal Code

This memorandum is submitted in support of the request by the Christian Science Church that present Sec. 495 of the Penal Code or its equivalent be re-instated in the Commission's new Draft Penal Code.

Our basic reason for requesting the inclusion of Sec. 495 in the re-codified law is that failure to include the section means a removal of the religious rights of Christian Scientists. Overzealous social workers and/or prosecutors could subject them to unbearable harassment or prosecution.

Church History

Christian Science was first introduced in Massachusetts in 1866 by Mary Baker Eddy. Today the Christian Science Church circles the globe with active congregations in many, many countries. There are 159 Christian Science churches and societies in the State of New York.

The Christian Science Church is composed of responsible individuals -- mature, hard-working and law-abiding. Members come from various walks of life and hold varying political views and interests. Each member is free to form his own political attitude. The Church, as such, has no political bias and never engages in political activity or partisan support of any political party or group. In legislative matters, it seeks only to protect the religious rights of its members through responsible representations to government officials, such as in this case. In Christian Science, healing through prayer is an irreparable part of its religious practice.

Christian Scientists, in quietly living and practicing the precepts of their religion, have proved the efficacy and practicality of their method of healing, without endangering their own health or that of the public. They are generally held in high regard by their fellow citizens, and their Church has the respect of those who are acquainted with it.

It is indeed rare that a Christian Science case comes to public notice, so effective is this method of healing. Occasionally, however, public authorities have undertaken to deprive Christian Science parents of their right to rely on Christian Science healing for their children by threatening to force the parents to provide medical treatment or to be relieved of their parental authority by judicial action.

Legislative History and Status

The growth of the church has created an increasing demand for freedom to rely upon Christian Science in the prevention and treatment of disease. However, the old Penal Code of New York State technically defined a neglected child to include one to whom medical treatment and care was not provided. This was the reason for the original unanimous passage of Sec. 495 in 1945, since without it the legal situation would have worked a considerable hardship on New York Christian Scientists who rely completely on Christian Science treatment for themselves and their children.

The Legislature decided that the most logical way out of this impasse regarding Christian Science was to amend the Penal Code to make it clear that parents who, in good faith, rely upon Christian Science for healing are not, for this reason alone, to be considered neglectful of their children, or of other dependent relatives. Such action established no precedent, but is in keeping with similar legislation enacted in other jurisdictions.

The purposes behind the present recodification as contained in the second section of the Act creating the Temporary Commission on Revision of the Penal Law and the Criminal Code (effective July 1, 1961) do not include any purpose which would justify the exclusion of this section; nor do any of the reports of the Commission give any reason for dropping it. Therefore, we ask whether the Commission is not taking away the rights of the members of our church without authority and without reason, since this section is by no means "outmoded" or "unnecessary," conditions required by the enabling act before dropping substantial provision of law.

The background and reason for the act in question are most clearly set out in the report made by the Association of the Bar of the City of New York, after the bill was introduced in the legislature, but before it became law. The report states:

"The instant bill, introduced at the request of the Christian Science Church, would add a new section to be Section 495, to the end of Article 44 (Children) of the Penal Law, setting up as a rule of construction of that Article, that it 'shall not... (quotes Sec. 495, Penal Code).

"The various sections of Article 44 set forth a number of crimes which may be committed against children or by parents who may neglect or otherwise contribute to the delinquency of children.

"Religious freedom is a part of our national fabric, having originally been guaranteed in the Bill of Rights (U. S. Constitution Amendment I; New York Constitution, Art. I, Section 11).

"It is difficult to understand how any statute or article could be construed in such a way as to affect or interfere with the right of a parent or person standing in parental relationship to provide treatment for a minor in accordance with any religion. However, there have been a number of instances, none however resulting in conviction, of investigation and prosecution of persons merely for having attempted to rear their children according to their own faith. The reference to the treatment of ill children is in consonance with the pertinent sections in the Education Law (Sections 577-c and 1262, subdivision 1 (8) relating to medical practice).

"In its present form, as amended since its original introduction, the bill has been found to be unobjectionable by the State Departments of Health and Social Welfare. It does not interfere with parental obligation to provide those things which we deem necessary that parents provide for their children.

"The amendment is desirable in that it will put an overzealous prosecutor or enforcement officer on notice that it is the policy of the state not to interfere with such practices when they are carried on in accordance with our statutes." 89 Assoc. of the Bar of the City of New York Reports 55.

As the report points out, there is a very real need for the protection of citizens and parents of this state who are also Christian Scientists. Mere goodwill and intelligent enforcement of the law cannot be relied on; legislative protection is needed for the members of this church. The situation has not changed since 1945, when the section was originally enacted by unanimous vote of the Legislature; therefore, this section needs to remain on the statute books of this State.

In our nation, as in our state, it is generally recognized that the chief responsibility for choosing and obtaining needed health services rests with the family. Not only are criminal sanctions completely inappropriate means to restrict First Amendment rights or to cure any "clear and present danger" to the commonwealth, but criminal convictions for the conscientious and responsible efforts of parents to care for their children are certainly of no help to the individual or to society and will only tend to weaken one of the strongholds of a free society, the family unit.

Christian Science as a Healing Method

As noted above, the basis for our request is primarily religious. We ask that our church members be allowed the free exercise of the tenets of our religion, which include healing by spiritual means alone, without being subject to criminal prosecution. As startling as this idea may seem at first glance, experience has dictated the necessity for specific legislative protection.

We feel it is important that the distinction between our method of healing and the beliefs of others who reject medical methods without providing any effective alternative method of healing be understood. The cardinal point is that Christian Scientists have a healing system of proven effectiveness and there can be no question of neglect so far as Christian Scientists are concerned when they and their children are relying on Christian Science treatment. Christian Scientists love their children and have no desire to make martyrs of them or of themselves. They endeavor to provide for their children the most intelligent, scientific, and practical healing method known to them. Their reliance on and utilization of Christian Science, is not based on faith alone but on actual experience in applying Christian Science with good results. Christian Scientists, therefore, do not seek to avoid providing treatment for their children, but provide for them a method of healing which they have come to trust through practical first-hand experience.

Christian Scientists seek to achieve the same ends as do those who rely on medicine but in a different way, and they ask to be judged on the same basis as is the medical profes-

sion. The effectiveness of Christian Science healing is and has been documented over the years by many thousands of instances in which patients given up by medical doctors have been restored to health; the fact that many hundreds of insurance companies accord recognition to Christian Science healing; and also the fact that in many countries of the world this system of healing is recognized by being exempted from the regular statutes which apply to medical systems. Authenticated healings are regularly published in the Christian Science Sentinel (weekly) and The Christian Science Journal (monthly).

Christian Scientists are entitled to practice their religion and live their lives without being branded as neglectful parents when in fact they are providing their children with care which has been proven to them to be the most effective in maintaining health and healing disease.

Christian Science Healing

The healing ministry of Christian Science is carried on by Christian Science practitioners. These practitioners are church members who have met the requirements of the Church for accreditation and listing in the card directory of The Christian Science Journal, the official organ of the Church, as eligible to engage in the full-time public practice of Christian Science healing. There are qualified practitioners practicing throughout New York. The healing work of these practitioners has been thoroughly established over many years. It is recognized by governments and leading private commercial insurance companies. In the appendix may be found documentary evidence of the recognition of Christian Science practitioners and nurses by the United States Department of Health, Education, and Welfare under Public Law 86-778, the Kerr-Mills Medical Aid to the Aged Act whereby Christian Science practitioners and nurses, in lieu of medical doctors and nurses, may be reimbursed for services rendered to recipients of welfare benefits. Also given in the appendix is documentary evidence of recognition of Christian Science practitioners and nurses in group health insurance programs for employees of the United States government, the Commonwealth of Massachusetts, special programs of low-cost (non-profit) health insurance for persons over 65 in Connecticut and Massachusetts, and other similar evidence.

Christian Science treatment has been proven effective in healing all types of diseases and ailments, organic as well as functional. A study of the radio programs produced by The Mother Church during the period June 1958 through May 1960 in the series "How Christian Science Heals" shows that of 105 programs broadcast, 69 included experiences given by persons who were healed of various conditions all involving a competent medical diagnosis. The conditions healed included six cases of broken bones, four cases of abnormal growths, three each of burns (second and third degree), deafness, alcoholism, defective vision, and tuberculosis of the lungs; also two each of asthma, cancer, fibroid tumor, heart disease, hernia, limbs to be amputated, nervous breakdown, pneumonia, tuberculosis of the bone, and stomach ulcers; one each of amoebic dysentery, blood disease, Bright's disease, chemical burns, stomach catarrh, cerebral hemorrhage and paralysis, digestive disorder, infected feet, gallstones, softened hip bone, jaundice, torn ankle ligament, knee injury, mauling by lion, pelvic deformity, peritonitis, poliomyelitis, spine disorder and paralysis, sciatica, typhoid fever, ulcerated colitis, undulant fever, narcotic addiction, and one case given as "organic condition." Verified testimonies of healing are regularly published in the periodicals of The Christian Science Publishing Society. Attached are the texts of three radio programs in the series "How Christian Science Heals" as printed in the

Christian Science Sentinel, in which healings of children through Christian Science treatment alone are related.

Free Exercise of Religion, Including Healing

It has been stated that a democratic society moves forward only at the average pace of the individuals comprising that society. Religion, we submit, constitutes the free exercise of man's conscience and intelligence, and his means to individual self-discipline and progress. This right has been held important enough to warrant inclusion in our federal constitution and in the New York State Constitution. The latter states:

"The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed in this state to all mankind...." (Art. I, Sec. 3)

In the exercise of the Christian Science religion, healing is basic, as has been recognized by the courts of this state in upholding the rights of Christian Scientists to practice their religion:

"Healing would seem to be not only the prominent work of the church and all its members, but the one distinctive belief around which the church organization is founded and sustained." (People v. Cole, supra at 110)

Although healing is not as basic to all religions as it is to Christian Science, still

"This nation is founded upon the cardinal principle that freedom of religious belief belongs to those whose beliefs are disapproved as well as those whose tenets are approved." (People v. Dale, 1944, 47 NYS 2d 702, 707)

As pointed out in Lewis v. Spaulding (released time program):

"Historically and inherently the people of our country are predominantly a religious people.... The State derives no power to favor religious believers or to disfavor non-believers. The State must be neutral.... Fundamental is the right of the parent to rear his child in a particular religious faith, or to rear his child as a non-believer if he so elects." (85/NY52d 682, 689-690, 193 Misc. 66)

We might point out further that a Christian Science child is not in fact a "neglected child" under the meaning of current statutes, nor indeed in any situation when his parents and a Christian Science practitioner are making every consistent and meaningful effort to give him the best and most effective care they know. That this care is effective has been recognized by a large number of interested third parties such as private insurance companies and the United States government (see appendix attached). As we have noted, the form of this recognition has come through insurance companies which have granted policies recognizing Christian Science treatment as an acceptable method for treating sickness or injury, and through the Federal Civil Service Commission recognition and inclusion of Christian Science benefits in its government-wide indemnity plan for Federal employees. The recognition of Christian Science as a healing system by private, profit-making corporations is, we feel, strong testimony in favor of the efficacy of our system of healing, and hence, supports Christian Scientists in their right to use it for themselves and their children.

Every state in the Union recognizes the right of Christian Scientists to practice their religion which includes healing of the sick through prayer, and through prayer alone. The relevant portions of the New York Education Law are referred to in the report cited above. See further, People v. Cole (1916) 219 NY 98, 113 NE 790, People v. Vogelgesang (1917) 221 NY 290, 116 NE 977). In the former case Chief Justice Bartlett stated (concurring opinion), "But I would go farther. I deny the power of the Legislature to make it a crime to treat disease by prayer." (at 112)

Summary

Finally, the practical proofs, along with the approval of the bill by the State Departments of Health and Social Welfare, only supplement the fact that a basic policy decision was made by the unanimous vote of the New York State Legislature of 1945 that religious freedom must be protected in this area. We do not see that the Commission has the authority to reopen that question now.

Although the courts of this country have been the primary guardians of the rule that no law shall be made which prohibits the free exercise of religion (through the First and Fourteenth Amendments to the Constitution), the responsibility here falls on the legislature of this state. The Christian Science Church is an American institution, one of the major religions founded in this country. The church has contributed to the way of life in this country, not only through its newspaper, The Christian Science Monitor, but through the daily efforts of its members to maintain the moral and spiritual standards of a free and responsible society. We feel that our religion deserves the respect and protection of the laws of this state.

In putting these facts before you, it is not our wish to publicize our religion, or its teachings, but merely to provide essential information upon which can be determined the propriety of the Christian Science amendment to the Penal Code of New York whereby Christian Scientists may practice their religion free from any medical requirements for themselves and their children.

We think that logically, the section should be included as Sec. 265.10-3 in the wording discussed in our letter of June 30, and that the section should also be listed as a transfer section to Sec. 312 (d) of the Family Court Act since the old Article 44 is now split between the new Penal Law and the Family Court Act. The wording we recommend is as follows:

"Nothing in this article shall require that an ill child who, in good faith, is under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for that reason alone, be deemed a neglected child."

(The reference to communicable disease regulations in the original section has been omitted because we felt it was not appropriate in this part of the Code. We will be glad to reinstate it if the Commission so desires.)

In conclusion, we ask for retention of Sec. 495, or its equivalent because

1. Christian Science healing has been demonstrated as a safe and effective therapeutic system throughout the world for nearly a century;
2. The Christian Science Church is well organized and established throughout the world with a sizable following of respectable, law-abiding citizens in New York, capable of benefiting from the amendment within the framework of existing law and without abusing it;
3. Retention of the Section would enhance and promote freedom of religion, long cherished and honored in our country;
4. Retention of the Section would have no harmful effect on others or interfere in any manner with the proper regulation and control of neglect cases, since Christian Science treatment is a recognized and legitimate method of healing;
5. Retention of the Section would establish no precedent, but would be in keeping with the wide acknowledgment of Christian Science healing in other states and countries as well as existing recognition in the state.

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