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# “Brainwashing” Claims and Minority Religions Outside the United States: Cultural Diffusion of a Questionable Concept in the Legal Arena

*James T. Richardson\**

The use of legal claims based on so-called brainwashing of potential participants by some minority religions has been common in the United States for years, attracting much commentary by scholars.<sup>1</sup> This Article will first summarize the origin of brainwashing ideas as applied to religious groups and will offer critiques of such claims. The Article will then discuss some of the ways such claims have been used within the American legal context, including both criminal and civil actions. Evidence will be presented that such ideas have become an important cultural export, affecting foreign social policy development and specific legal actions around the world.

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1. For explicit discussions of brainwashing-based claims, see Dick Anthony, *Religious Movements and Brainwashing Litigation: Evaluating Key Testimony*, in *IN GODS WE TRUST* 295 (Thomas Robbins & Dick Anthony eds., 2d ed. 1990); Dick Anthony & Thomas Robbins, *Law, Social Sciences and the “Brainwashing” Exception to the First Amendment*, 10 *BEHAV. SCI. & L.* 5 (1992) [hereinafter Anthony & Robbins, *First Amendment*]; James T. Richardson, *Cult/Brainwashing Cases and Freedom of Religion*, 33 *J. CHURCH & ST.* 55 (1991) [hereinafter Richardson, *Freedom of Religion*]; and James T. Richardson, *A Social Psychological Critique of “Brainwashing” Claims About Recruitment to New Religions* [hereinafter Richardson, *Recruitment to New Religions*], in *HANDBOOK OF SECTS AND CULTS IN AMERICA* 75 (Jeffrey K. Hadden & David G. Bromley eds., 1993).

For broader discussions of the legal status of minority religions, which include specific discussions of brainwashing-based legal claims, see Dick Anthony & Thomas Robbins, *Negligence, Coercion, and the Protection of Religious Belief*, 37 *J. CHURCH & ST.* 509 (1995) [hereinafter Anthony & Robbins, *Negligence*]; W. Cole Durham, Jr., *Treatment of Religious Minorities in the United States*, in *EUROPEAN CONSORTIUM FOR CHURCH AND STATE RESEARCH, THE LEGAL STATUS OF RELIGIOUS MINORITIES IN THE COUNTRIES OF THE EUROPEAN UNION* (1994); and James T. Richardson, *Legal Status of New Religions in the United States*, 42 *SOC. COMPASS* 249 (1995) [hereinafter Richardson, *Legal Status of New Religions*].

I. WHY "BRAINWASHING?"<sup>2</sup>

Many relatively well-educated and affluent young people have been involved with new religious movements—sometimes pejoratively called "cults"—over the past two or three decades in America and other Western countries. Controversy has erupted about the meaning of this participation, as parents, friends, political leaders, and others have attempted to understand why this has occurred.

One appealing explanation for participation has been so-called brainwashing, mind control, or thought reform theories.<sup>3</sup> According to those espousing these ideas, youth have not joined the new religions volitionally, but have instead been manipulated into participating by groups using powerful psychotechnology practiced first in Communist societies. This psychotechnology allegedly traps people in new religions, allowing subsequent control of their behavior by the groups' leaders.<sup>4</sup> According to these claims, the techniques were originally developed for use in the Russian purge trials of the 1930s, later refined by the Chinese Communists after their assumption of power in China in 1949, and then supposedly used against POWs during the Korean War of the 1950s. These techniques included physical coercion and, taken together, can be labeled "first generation" brainwashing. Now these techniques are being used, it is claimed, against young people in Western countries by unscrupulous cult leaders.

When questioned about the obvious logical problem of applying these theories to situations lacking physical coercion, proponents have a ready, if problematic, answer. They say that physical coercion has been replaced by "psychological coercion," which they claim is actually more effective than simple physical coercion. According to brainwashing proponents, this "second generation" brainwashing theory incorporates new insights about ma-

2. Much of Parts I and II are taken from Richardson, *Recruitment to New Religions*, *supra* note 1.

3. See THE BRAINWASHING/DEPROGRAMMING CONTROVERSY (David G. Bromley & James T. Richardson eds., 1983).

4. For sympathetic presentations of brainwashing claims, see Richard Delgado, *Religious Totalism: Gentle and Ungentle Persuasion Under the First Amendment*, 51 S. CAL. L. REV. 1, 3 (1977); and Margaret T. Singer, *Coming Out of the Cults*, 12 PSYCHOL. TODAY 72, 72 (1979).

nipulation of individuals.<sup>5</sup> The assumption is that it is not necessary to coerce recruits physically if they can be manipulated by affection, guilt, or other psychological influences. Simple group pressures and emotion-laden tactics are revealed as more effective than the tactics used in the physically coercive Russian, Chinese, and Korean POW situations.

These theories might be thought of as quaint ideas developed for functional reasons by those who have an interest in their being accepted. They plainly are a special type of "account" developed to "explain" why people join the groups and why they stay in them for a time.<sup>6</sup>

Whatever the origin, and no matter that the veracity of such accounts is questionable, these ideas have become commonly accepted among the general public in the United States. For instance, one study found that seventy-eight percent of a randomly drawn sample of 383 individuals from an urban county in a western state said that they believed in brainwashing, and thirty percent agreed that "brainwashing is required to make someone join a religious cult."<sup>7</sup> A similar question asked of a random sample of one thousand New York residents prior to the tax evasion trial of Reverend Moon revealed that forty-three percent agreed that "brainwashing is required to make someone change from organized religion to a cult."<sup>8</sup> Results from a random sample of Oregon residents who were asked about the controversial Rajneesh group centered for a time in Eastern Oregon revealed a similar pattern.<sup>9</sup> Sixty-nine percent of respondents in that poll agreed that members of the group were brainwashed.

These notions about brainwashing and mind control have pervaded our society's institutional structures as well. Such views have influenced actions by governmental entities and cov-

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5. See generally Singer, *supra* note 4. For critiques of Singer's ideas, see Anthony, *supra* note 1; and Richardson, *Freedom of Religion*, *supra* note 1, at 59-65.

6. See James A. Beckford, *Accounting for Conversion*, 29 BRIT. J. SOC. 249 (1978) (applying an "accounts" perspective to conversion stories of Jehovah's Witnesses); James T. Richardson et al., *Problems of Research and Data in the Study of New Religions*, in HANDBOOK OF SECTS AND CULTS IN AMERICA, *supra* note 1, at 213 (critiquing such accounts).

7. John S. DeWitt, *Novel Scientific Evidence and the Juror* (1991) (unpublished Ph.D. dissertation, University of Nevada (Reno)) (on file with author).

8. James T. Richardson, *Public Opinion and the Tax Evasion Trial of Reverend Moon*, 10 BEHAV. SCI. & L. 53 (1992).

9. Carl Latkin, *Seeing Red: A Social-Psychological Analysis of the Rajneeshpuram Conflict*, 53 SOC. ANALYSIS 257, 261 (1992).

erage of new religions by the media.<sup>10</sup> The legal system has also seen a number of efforts to promote brainwashing theories as explanations of why people might participate in new religions.

## II. CRITIQUE OF BRAINWASHING THEORIES

Brainwashing theories serve the interests of those espousing them in a number of ways. Parents can blame the religious groups and their leaders for volitional decisions by their sons and daughters to participate in such groups. Former members can blame the techniques for a decision which the participant later regrets. "Deprogrammers" can use brainwashing theories as a justification for their new "profession" and as a quasi-legal defense if they are apprehended by legal authorities for their deprogrammings, which often involve physical force and kidnaping. Societal leaders can blame the techniques for seducing society's "best and brightest" away from traditional cultural values and institutions. Leaders of competing religious groups, as well as some psychological and psychiatric clinicians, can attack the groups with brainwashing theories to underpin what are basically unfair-competition arguments.<sup>11</sup> The claim that new religions engage in brainwashing thus becomes a powerful, effective "social weapon" for many partisans in the cult controversy, who use such ideas to label the exotic religious groups as deviant or even evil.<sup>12</sup> However, the new "second generation" brainwashing theories have a number of problems, which will be summarized below.

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10. See David G. Bromley & Thomas Robbins, *The Role of Government in Regulating New and Nonconventional Religions*, in *THE ROLE OF GOVERNMENT IN MONITORING AND REGULATING RELIGION IN PUBLIC LIFE* (James E. Wood & Derek Davis eds., 1993); James T. Richardson et al., *Alternative Religions and Economic Individualism*, in *RESEARCH IN THE SOCIAL SCIENTIFIC STUDY OF RELIGION* 39-40 (Monty L. Lynn & David O. Moberg eds., 1989) (noting the media's bias toward sensationalistic reporting of brainwashing techniques); Richardson, *Legal Status of New Religions*, *supra* note 1; B. van Driel & James T. Richardson, *Print Media Coverage of New Religious Movements*, 36 *J. COMM.* 37 (1988).

11. See Brock K. Kilbourne & James T. Richardson, *Psychotherapy and New Religions in a Pluralistic Society*, 39 *AM. PSYCHOL.* 237, 238, 248 (1984).

12. See James T. Richardson et al., *Leaving and Labeling: Voluntary and Coerced Disaffiliation from Religious Social Movements*, 9 *RESEARCH IN SOCIAL MOVEMENTS, CONFLICTS AND CHANGE* 97 (1986); Thomas Robbins et al., *Legitimizing Repression*, in *THE BRAINWASHING/DEPROGRAMMING CONTROVERSY*, *supra* note 3.

### A. *Misrepresentation of Classical Tradition*

Modern brainwashing theories misrepresent earlier scholarly work on the coercive processes developed in Russia, China, and Korea.<sup>13</sup> First, early research by Edgar Schein and by Robert Lifton revealed that, contrary to some recent claims, the techniques were generally rather ineffective at doing more than modifying behavior (obtaining compliance) for the short term.<sup>14</sup> Such theories would thus seem even less useful when trying to explain the long-term changes of behavior and belief, which are implied, if not explicitly alleged, by those propounding brainwashing theories to explain participation in new religions.

Second, the degree of determinism associated with contemporary brainwashing applications usually far exceeds that found in the earlier foundational work of Lifton and of Schein. The "soft determinism" of Lifton and Schein stands in sharp contrast to the "hard determinism" of contemporary proponents of brainwashing theories.<sup>15</sup> The hard determinism approach assumes that through application of sophisticated brainwashing techniques, humans can be turned into robots or "Manchurian Candidates" against their will. Such a perspective does not recognize human beings as the complex and volitional entities they are.

Third, some who produced classic work in this field are not comfortable with their work being applied to modern noncoercive situations. Lifton explicitly disclaims the use of brainwashing theories to attack so-called cults as a legal problem<sup>16</sup> and has

13. See Anthony, *supra* note 1, at 298-303; Anthony & Robbins, *First Amendment*, *supra* note 1.

14. For the classic statements on which contemporary brainwashing theorists claim to depend, see ROBERT J. LIFTON, *THOUGHT REFORM AND THE PSYCHOLOGY OF TOTALISM* (1961); and EDGAR H. SCHEIN ET AL., *COERCIVE PERSUASION* (1961). For specific critiques of modern uses of brainwashing claims, see ALAN W. SCHEFLIN & EDWARD M. OPTON, JR., *THE MIND MANIPULATORS* (1978); Donald T. Lunde & Thomas E. Wilson, *Brainwashing as a Defense in Criminal Liability*, 13 *CRIM. L. BULL.* 341, 343-52 (1977); James T. Richardson & Brock K. Kilbourne, *Classical and Contemporary Applications of Brainwashing Theories: A Comparison and Critique*, in *THE BRAINWASHING/DEPROGRAMMING CONTROVERSY*, *supra* note 3, at 29; and Edgar H. Schein, *Brainwashing and Totalitarianization in Modern Society*, 2 *WORLD POL.* 430 (1959).

15. For a presentation of the "hard determinism" perspective, see Margaret T. Singer & R. Ofshe, *Thought Reform and Programs and the Production of Psychiatric Casualties*, 20 *PSYCHIATRIC ANNALS* 188 (1990). For critiques of the Singer-Ofshe approach, see Anthony, *supra* note 1; Anthony & Robbins, *Negligence*, *supra* note 1; and Richardson & Kilbourne, *supra* note 14.

16. See Robert J. Lifton, *Cult Processes, Religious Totalism, and Civil Liberties*,

stated: "[T]he term [brainwashing] has a far from precise and a questionable usefulness; one may even be tempted to forget about the whole subject and return to more constructive pursuits."<sup>17</sup> The work of Schein and of Lifton both suggest great difficulty in "drawing the line" between acceptable and unacceptable behaviors on the part of those involved in influencing potential subjects for change.<sup>18</sup> Group influence processes operate in all areas of life, which makes singling out one area for special negative attention quite problematic. Such a negative approach cannot be adopted on strictly logical or scientific grounds.

### B. *Limited Research Base of Classical Work*

Even if the classical work fit the modern experience well, the research base on which that work relied was quite limited.<sup>19</sup> Very small samples were used by both Lifton and Shein, samples which were not necessarily representative of the general populations of those societies. Those included in the samples were described, especially in Lifton's work, using an anecdotal reporting style derived from clinical settings. Lifton studied forty subjects but gave detailed information on only eleven of those. Shein's original work was based on a sample of only fifteen American civilians who returned after imprisonment in China.<sup>20</sup>

### C. *Ideological Biases of Brainwashing Theorists*

Contemporary applications of brainwashing theories share an ideological bias against collectivistic solutions to problems of group organization.<sup>21</sup> In the 1950s Americans opposed collectivistic communism; in the 1970s and 1980s many Americans shared a concern about communally oriented new religions. Another problematic element of contemporary applications con-

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in *CULTS, CULTURE, AND THE LAW* 59, 69 (Thomas Robbins et al. eds., 1985) (arguing that the problem of ideological totalitarianism in cults is better addressed educationally than legally).

17. *Id.* at 4.

18. For more discussion of this point, see Anthony & Robbins, *First Amendment*, *supra* note 1.

19. See Anthony, *supra* note 1, at 322; Albert D. Biderman, *The Image of "Brainwashing,"* 29 *PUB. OPINION Q.* 547, 547-50 (1962); Richardson & Kilbourne, *supra* note 14.

20. See Biderman, *supra* note 19, at 548.

21. See Richardson & Kilbourne, *supra* note 14.

cerns related ethnocentrism and even racism. The fact that a number of new religions are from outside Western culture, and were founded and led by foreigners, should not be ignored by those seeking to understand the propensity to apply simplistic brainwashing theories as an explanation of participation in new religions.

#### *D. Predisposing Characteristics Ignored*

Contemporary application of brainwashing theories to recruitment tactics of new religions also ignores important work on predisposing characteristics.<sup>22</sup> Brainwashing techniques supposedly are so successful that they can transform a person's basic beliefs into sharply contrasting beliefs. This aspect of brainwashing theory is appealing to proponents who have difficulty recognizing that an individual might have been attracted to a new and exotic religion for easily understandable reasons, such as predisposing characteristics.

#### *E. Therapeutic Effects of Participation Ignored*

Participation in new religious groups seems to have a generally positive impact on most participants, an often-replicated finding that undercuts brainwashing arguments but is usually ignored by proponents of such theories. Robbins and Anthony list ten therapeutic effects of participation in new religious groups, including reduced neurotic distress, termination of illicit drug use, and increased social compassion.<sup>23</sup> Richardson reviewed a large literature concerning personality effects of participation, concluding: "[P]ersonality assessments of these group members reveal that life in the new religions is often therapeutic instead of harmful."<sup>24</sup>

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22. See Anthony & Robbins, *First Amendment*, *supra* note 1 (pointing out that of the relatively few GPs who stayed in Korea after the War, several were of minority or lower class origins, which may have made them more susceptible to the anti-American message of their Communist captors and that, similarly, many disenfranchised youth in America were thereby more interested in religious beliefs and experiences not normally accepted within American society, thus causing them to be more prone to participate in the new groups).

23. Thomas Robbins & Dick Anthony, *Deprogramming, Brainwashing, and the Medicalization of Deviant Religious Groups*, 29 SOC. PROBS. 283, 290-91 (1992); see also Kilbourne & Richardson, *supra* note 11.

24. See James T. Richardson, *Psychological and Psychiatric Studies in New Religions*, in *ADVANCES IN THE PSYCHOLOGY OF RELIGION* 209, 221 (L.B. Brown ed.,



Psychiatrist Marc Galanter, who has conducted considerable assessment research on participants in prominent new religious groups, has even posited a general "relief effect," a decline in neurotic symptom intensity, brought about by participation in such groups.<sup>25</sup> Galanter's research was motivated by an interest in discovering how participation leads to such consistent positive effects so that other therapists could apply the techniques themselves. Meredith McGuire found that large numbers of ordinary people participate in exotic religious groups and experiences in search of alternatives to modern medicine, and that many apparently think themselves the better for the experience.<sup>26</sup> Brainwashing theorists usually assume that participation in new religions is a negative experience, which is counter to the line of research just cited.

#### F. *Voluntaristic Character of Participation Overlooked*

Brainwashing theorists turn participants' predispositions and interest in exotic religions into susceptibilities and vulnerabilities, adopting an orientation toward recruitment that defines the potential convert in completely passive terms.<sup>27</sup> This view ignores an important aspect of classical work in the brainwashing tradition. Lifton's work clearly shows the voluntaristic character of much of the thought reform that occurred in China.<sup>28</sup> Other scholars discuss the passive orientation of most brainwashing theories and the growing use of "active" (versus passive) paradigms in conversion/recruitment research.<sup>29</sup> Proponents of more activist views of conversion stress the predispositional and volitional character of participation. Such views are derived from

1985); see also James T. Richardson, *Clinical and Personality Assessment of Participants in New Religions*, 5 INT'L J. FOR PSYCHOL. RELIGION 145 (1995) (a more recent lengthy review that reaches the same conclusion).

25. Marc Galanter, *The "Relief Effect": A Sociobiological Model for Neurotic Distress and Large-Group Therapy*, 135 AM. J. PSYCHIATRY 588 (1978); see also B. Kilbourne & James T. Richardson, *A Social Psychological Analysis of Healing*, 7 J. INTEGRATIVE & ECLECTIC PSYCHOTHERAPY 20 (1988).

26. MEREDITH B. MCGUIRE, *RITUAL HEALING IN SUBURBAN AMERICA* 3-4 (1988).

27. See especially the work of Richard Delgado, *Cults and Conversion: The Case for Informed Consent*, 16 GA. L. REV. 533, 546-56 (1982).

28. See LIFTON, *supra* note 14, at 462-72 (discussing people who volunteered to go through the thought reform process).

29. See Richardson & Kilbourne, *supra* note 14; James T. Richardson, *The Active vs. Passive Convert: Paradigm Conflict in Conversion/Recruitment Research*, 24 J. FOR SCI. STUDY RELIGION 163, 167-72 (1985).

research findings that many participants actually seek out the new groups in order to learn about them and experiment with different lifestyles.

#### *G. Large Research Tradition Ignored*

There has been a large amount of research done on recruitment to and participation in the new religious groups and movements,<sup>30</sup> research which brainwashing theorists almost totally ignore. This work applies standard theories from sociology, social psychology, and psychology to explain why youth join such groups. The explanations offered by these researchers seem quite adequate to explain participation, without the "black box" of mystical psychotechnology offered by brainwashing theorists.

#### *H. Lack of Success of New Religions Disregarded*

Another obvious problem with assuming the efficacy of powerful recruitment techniques concerns the size of the new religious groups. Most are quite small: the Unification Church probably never had over 10,000 American members, and can now boast only 2000 to 3000 members in the United States; the Hare Krishna may not have achieved even the size of the Unification Church; most other groups have had similar problematic experiences recruiting large numbers of participants.<sup>31</sup> These histories of meager growth and/or rapid decline raise serious questions about the efficacy of brainwashing explanations of participation. Such powerful techniques should have resulted in much larger groups.

A related problem concerns attrition rates for the new religious groups. As a number of scholars have noted, most participants in the new groups remain for only a short time, and most

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30. For some reviews of this large research tradition, see THOMAS ROBBINS, *CULTS, CONVERTS AND CHARISMA* 63-99 (1988); Arthur L. Greil & David R. Rudy, *What Have We Learned From Process Models of Conversion? An Examination of Ten Case Studies*, 17 *SOC. FOCUS* 305 (1984); and Richardson, *supra* note 29. For some excellent examples of such work, see Max Heirich, *Change of Heart: A Test of Some Widely Held Theories About Religious Conversion*, 85 *AM. J. SOC.* 653 (1977); Thomas Pilarzyk, *Conversion and Alteration Processes in the Youth Culture*, 21 *PAC. SOC. REV.* 379 (1978); and Roger A. Straus, *Religious Conversion as a Personal and Collective Accomplishment*, 40 *SOC. ANALYSIS* 158 (1979).

31. For examples of the size of some controversial groups, see EILEEN BARKER, *THE MAKING OF A MOONIE: CHOICE OR BRAINWASHING?* 65 (1984); E. BURKE ROCHFORD, *HARE KRISHNA IN AMERICA* 278 (1985).

of those who have been recruited simply ignore or rebuff recruiters and continue with their normal lives.<sup>32</sup> Many people leave the groups after relatively short periods.<sup>33</sup> Recruitment techniques as powerful as brainwashing is claimed to be should have led to greater retention, but this is not the case.

### *I. Class Origins of Members Not Properly Recognized*

A related issue concerns the education level and sophistication of participants. It would seem reasonable to assume that those most susceptible to so-called brainwashing would be less well-educated. However, sizable numbers of "America's finest" in terms of education level and relative affluence have participated in the groups, if only for a short time.<sup>34</sup> This finding raises questions about brainwashing theories as adequate explanations of participation. Researchers have found that there are predisposing characteristics, such as youthful idealism, that have provoked interest in the Unificationist message.<sup>35</sup> Such data would seem to refute claims made by brainwashing theorists.

### *J. Brainwashing as Its Own Explanation*

A final critique of brainwashing theories is that they are self-perpetuating by virtue of the "therapy" offered to those who leave new religious groups, especially for those who are forcibly deprogrammed. Those who are "successfully" deprogrammed often accept the views that deprogrammers use to justify their actions and that are promoted to the deprogrammees as reasons for cooperating with the deprogramming. These views usually include a belief in brainwashing theories.<sup>36</sup> One could say that a

32. BARKER, *supra* note 31, at 293-34; Frederick Bird & Bill Reimer, *A Sociological Analysis of New Religions and Para-Religious Movements*, 21 *J. FOR SCI. STUDY RELIGION* 1, 4-6 (1982); Marc Galanter, *Psychological Induction in a Large Group: Findings from a Modern Religious Sect*, 137 *AM. J. PSYCHIATRY* 1574, 1574, 1578-79 (1980).

33. STUART A. WRIGHT, *LEAVING CULTS: THE DYNAMICS OF DEFECTION* (1987); Richardson et al., *supra* note 12; Norman Skonovd, *Leaving the Cultic Religious Milieu*, in *THE BRAINWASHING/DEPROGRAMMING CONTROVERSY*, *supra* note 3, at 91.

34. See, e.g., BARKER, *supra* note 31, at 197-98; JAMES T. RICHARDSON ET AL., *ORGANIZED MIRACLES* 174 (1979); ROCHFORD, *supra* note 31, at 48-50.

35. See BARKER, *supra* note 31, at 205; Brock K. Kilbourne, *Equity or Exploitation: The Case of the Unification Church*, 28 *REV. RELIGIOUS RES.* 143, 147-48 (1986).

36. See WRIGHT, *supra* note 33; James R. Lewis, *Reconstructing the "Cult"*

"successful deprogramming" is one in which the deprogramee comes to accept the view that he was brainwashed and is now being rescued. The social psychological truth that such views are *learned interpretations* or *accounts* undercuts claims by brainwashing theorists.

### III. USE OF BRAINWASHING CLAIMS IN LEGAL CASES IN THE UNITED STATES

The foregoing critique might suggest that legal claims based on such questionable science will always fail and suffer summary judgment in the hands of an informed judiciary.<sup>37</sup> However, this has not always been the case. Indeed, quite to the contrary, a number of legal actions based on such claims have been allowed, and to considerable effect. Although the legal acceptance of brainwashing-based claims has waned in recent years in the United States, such cases were often successful in the past and still may be successful under certain circumstances. The following is a discussion of the history of United States brainwashing cases in both the criminal and civil areas.

#### A. Criminal Cases in the United States

In the criminal area, brainwashing claims have often been used quite overtly as a key part of the defense in cases in which deprogrammers have been charged with kidnapping. Usually these arguments have taken the form of a "choice of evils" or "necessity" defense, in which those involved in the deprogramming have claimed that leaving participants in a new religion was a

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*Experience: Post-Involvement Attitudes as a Function of Mode of Exit and Post-Involvement Socialization*, 46 SOC. ANALYSIS 151 (1986); Trudy Solomon, *Integrating the "Moonie" Experience: A Survey of Ex-members of the Unification Church*, in IN GODS WE TRUST 275 (Thomas Robbins & Dick Anthony eds., 1st ed. 1981).

37. Brainwashing-based cases brought in jurisdictions governed by the so-called Frye Rule (derived from the famous 1923 case, *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)) would seem to be susceptible to summary judgment motions because such claims do not meet the "general acceptance" rule of *Frye*. However, such cases often succeed despite their lack of scientific basis, although there have been some key defeats for such claims. See generally Anthony, *supra* note 1; Anthony & Robbins, *First Amendment*, *supra* note 1; Richardson, *Freedom of Religion*, *supra* note 1. Under recent, more rigorous, criteria established in *Daubert v. Merrell Dow Pharmaceuticals*, 113 S. Ct. 2786 (1993), for the acceptance of scientific evidence, brainwashing-based claims should also be excluded. For a general discussion of *Daubert* criteria applicable to evidence such as brainwashing claims, see James T. Richardson et al., *Problems Applying Daubert to Psychological Syndrome Evidence*, 79 JUDICATURE 10 (1995).

worse evil than the kidnapping and rough behavior typically required to extract them forcibly from the group.<sup>38</sup> Such defenses, if allowed by the court, have facilitated discussions of life inside the groups, as well as of the groups' belief system. The logic seems to be based on the idea that anyone who would accept such strange beliefs or engage in such deprivations must be brainwashed and that no one in their "right mind" would ever espouse such ideas. Such defenses have often, but not always, been successful.<sup>39</sup>

Brainwashing claims have also been explicit in other cases, including a major case in which a federal court in California disallowed such claims. In *United States v. Fishman*,<sup>40</sup> the defendant in a mail fraud case claimed in his explication of an insanity defense that he committed the acts in question while under the influence of "thought reform," a phrase sometimes used synonymously with brainwashing. Fishman's defense was rejected in a ruling containing strong language critical of such claims and disallowing major proponents of such theories from testifying to them in the case.<sup>41</sup>

Other criminal cases involving such theories include those in which the prosecution has made use of implicit, if not explicit, brainwashing theories in efforts to convict major figures in some of the more controversial new religions. Two who have been con-

38. For brief discussions of such defenses, see Anthony & Robbins, *Negligence*, *supra* note 1; Bromley & Robbins, *supra* note 10; and Richardson, *Legal Status of New Religions*, *supra* note 1. See also Note, *Cults, Deprogrammers and the Necessity Defense*, 80 MICH. L. REV. 271, 272-74 (1981).

39. The author was involved as a rebuttal witness for the prosecution in one major case in Denver some years ago in which state kidnapping charges had been brought against deprogrammers who had kidnapped a twenty-nine-year-old member of the Unification Church and kept her for several weeks, traveling across state lines in the process. The jury, after hearing several weeks of testimony about the life and beliefs of the Church, found the defendants not guilty. The use of this type of necessity defense was appealed by the District Attorney, leading to a Colorado Court of Appeals decision precluding its use in future legal actions in Colorado. *People v. Brandyberry*, 812 P.2d 674 (Colo. Ct. App. 1990).

A similar decision was made by the Idaho Supreme Court, who, on interlocutory appeal, reversed a trial court's decision not to grant a motion in limine to bar a necessity defense in a criminal action against deprogrammers. *State v. Howley*, 920 P.2d 391 (Idaho 1996).

40. 743 F. Supp. 713 (N.D. Cal. 1990).

41. For a fuller discussion of this case by someone (Anthony) who played a major role in the case as a consultant and expert for the federal prosecution, see Anthony & Robbins, *First Amendment*, *supra* note 1.

victed of tax-related offenses are the Reverend Moon, leader of the Unification Church, and Tony Alamo, leader of the Alamo Foundation. Brainwashing claims played a major role in both cases, with juries apparently accepting the popular idea that these and other controversial new religions brainwash participants. Such claims were crucial in both cases in convincing jurors that the religions were not legitimate and thus undeserving of usual protections and privileges afforded religious groups and their leaders under the tax laws of the United States. The role of such ideas was most clearly demonstrated in the Moon case, which attracted much national attention and involved a major pre-trial research project conducted by the Unification Church in an effort to determine how to best fight the charges.<sup>42</sup>

### B. *Civil Cases in the United States*

A large number of civil actions have been filed in the United States using brainwashing theories as their major justification.<sup>43</sup> Usually these cases involve a former member of a group filing suit against the group for various torts, including intentional infliction of emotional distress, fraud, false imprisonment, and/or restitution. Although these or similar torts are listed as causes of action, the underlying theory in most of these cases is that the group brainwashed the person into joining the group and then used brainwashing techniques to keep them as a member. These cases are often successful, especially at the trial level, where juries seem quite susceptible to such claims.<sup>44</sup>

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42. See CARLTON SHERWOOD, *INQUISITION: THE PERSECUTION AND PROSECUTION OF THE REVEREND SUN MYUNG MOON* (1991) (discussing why and how the case was brought, including the role played by brainwashing ideas); *CONSTITUTIONAL ISSUES IN THE CASE OF REVEREND MOON* (Herbert W. Richardson ed., 1984) (reprinting a number of the major *amicus* and appellate briefs filed in the case, including some by Larry Tribe, who handled the unsuccessful appeal); Richardson, *supra* note 8 (reporting that potential jurors have strong beliefs in brainwashing ideas and that the Unification Church used such methods).

43. Both the author and Dick Anthony have been involved in a number of such cases as consultants or as expert witnesses. For discussions of some of these cases, see the Richardson and Anthony articles, cited *supra* note 1.

44. Very few former members bring legal actions against the new religious groups, however. For alternative explanations of why people participate in new religious groups, see David G. Bromley & Anson D. Shupe, Jr., "Just a Few Years Seem Like a Lifetime": A Role Theory Approach to Participation in Religious Movements, 2 *RESEARCH IN SOCIAL MOVEMENTS, CONFLICTS AND CHANGE* 159 (1979); and Richardson & Kilbourne, *supra* note 14.

A number of multi-million dollar awards have been made to plaintiffs in these civil suits, usually with the bulk of such awards as punitive damages. Sometimes the awards are reduced by the trial judge or on appeal, but a number of them have been paid; some cases have been settled during the appeal process, and sometimes the judgment has simply been paid after appeals were exhausted.

These suits have raised serious issues of religious freedom for minority religious groups. Some have suggested that filing such suits has been a deliberate tactic of the so-called anticult movement in an attempt to drive such groups out of business.<sup>45</sup> This tactic became popular after it became apparent that a frontal attack seeking direct governmental action against the new religions would not be successful, in part because of difficulties arising from First Amendment protections afforded religious groups in America.<sup>46</sup> The apparent logic behind filing such suits was that if the groups could not be stopped directly, then perhaps they could be put out of business by taking their financial resources. This has very nearly been the case with some groups. For instance, the Hare Krishna lost a multi-million dollar judgment, forcing them to use all their property in California as security for an appeal bond.<sup>47</sup>

Other civil cases that make use of brainwashing theories include suits against deprogrammers for false imprisonment, violation of civil rights, or other claims associated with a deprogramming. When deprogrammers are sued in civil actions, they usu-

45. See James T. Richardson, *Social Control of New Religions: From Brainwashing Claims to Child Sex Abuse Accusations* (1993) (unpublished paper presented at annual meeting of Australian Sociological Association, Sydney) (on file with author) [hereinafter Richardson, *Social Control of New Religions*]; see also James T. Richardson, *Journalistic Bias Toward New Religious Movements in Australia*, 11 J. CONTEMP. RELIGION 289 (1996) (describing a campaign launched in Australia by anticult forces to seek plaintiffs for such suits, so, it was claimed, the American example of using these actions against the groups could be adopted in Australia).

46. Although the direct approach that attempted to get governmental agencies involved in overt control efforts was not an immediate success, in part because of First Amendment protections, over time there has been a dramatic shift toward a more "managerial" style, underpinned in part by an acceptance of brainwashing claims. See Richardson, *Legal Status of New Religions*, *supra* note 1.

47. For a detailed discussion of this case, see Richardson, *Freedom of Religion*, *supra* note 1. For a discussion of the way the case was handled and how close it came to forcing a complete cessation of Hare Krishna activities in California, see Douglas Laycock, *Free Exercise and the Religious Freedom Restoration Act*, 62 FORDHAM L. REV. 883, 888-89 (1994).

ally attempt something similar to the "choice of evils" or "necessity" defense used in criminal actions. In effect, they seek to put the group on trial by describing the alleged exploitation that goes on in the group, claiming that they were doing a favor for the person being deprogrammed by trying to "rescue" them. This is usually done in an effort to explain the motivations of defendants accused of kidnapping, thus avoiding the constitutional protections that might be thought to preclude such discussions of group beliefs and practices.

Such defenses have often been successful, with many jurors accepting these defenses as consistent with the preconceived ideas they bring to the jury box about so-called cults and their recruitment methods.<sup>48</sup> Thus, the deprogrammers usually escape any liability for their actions, which have often involved kidnapping adults off the streets and incarcerating them against their will.

However, in one recent case that has had major repercussions, these defenses were not successful.<sup>49</sup> This case involved deprogrammer Rick Ross as the chief defendant,<sup>50</sup> the well-known Cult Awareness Network ("CAN") was also listed as a defendant. A member of an evangelical Protestant group who was the target of a deprogramming sued Ross, the chief deprogrammer, and CAN, which allegedly conspired with Ross in the deprogramming. A jury found both defendants liable and awarded over five million dollars to the plaintiff. After the verdict, CAN declared bankruptcy and is now effectively out of business itself, with its assets, including its name, in the process of being sold to pay its part of the judgment.<sup>51</sup>

#### IV. "BRAINWASHING" AND CULTURAL DIFFUSION

The term brainwashing nearly always refers to some process of recruitment or resocialization and has a quite negative conno-

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48. For evidence about the influence of misinformation and biases of potential jurors on their verdicts in "cult/brainwashing" cases, see John S. DeWitt et al., *Novel Scientific Evidence and Controversial Cases: A Social Psychological Examination*, PSYCHOL. & L. REV. (forthcoming 1997).

49. *Scott v. Ross*, No. C94-0079C (W.D. Wash. 1995).

50. Ross is perhaps the best known contemporary deprogrammer in the United States.

51. This case has been appealed to the Ninth Circuit Court of Appeals, so its final disposition is not known at this time.



tation. The brainwashing idea has become rather pervasive within the United States, with the term now being used in many different contexts, including the legal one. This brief review has shown that the brainwashing notion has been involved in many different types of actions within the American legal system. Usually the side in a legal dispute presenting brainwashing-based claims wins, especially when to accept the claims means that juries and judges can "send a message" about their displeasure with "cults."<sup>52</sup> Thus, the past two or three decades have seen the development of a very powerful "social weapon" to use against unpopular groups (both political and religious) within America.<sup>53</sup>

Given the usual effectiveness of brainwashing claims, as outlined above, it is no surprise that the idea has become a much exported social and cultural product, with the concept appearing of late in a number of different legal and social/political settings outside the United States.<sup>54</sup> This section will examine a few of the cases in foreign countries involving the idea that new religions brainwash their participants.

#### A. *The European Court of Human Rights*

I will begin with a brief discussion of a major case decided in 1993 by the European Court of Human Rights. This case is important because it represents the only time since the court's inception in the 1950s that it has found a violation of Article 9 of the European Convention on Human Rights, which guarantees freedom of religion (including the right to change one's religion).

52. The term "cult" has become a quite negatively connoted term in the United States, somewhat similar to the term "sect" within the European context. See generally Jane Dillon & James T. Richardson, *The "Cult" Concept: A Politics of Representation Analysis*, 3 SYZYGY: J. ALTERNATIVE RELIGION & CULTURE 185 (1994); James T. Richardson, *Definitions of Cult: From Sociological-Technical to Popular-Negative*, 34 REV. RELIGIOUS RES. 348 (1993).

53. For an excellent discussion of the idea of brainwashing accusations as a "social weapon," see Robbins et al., *supra* note 12.

54. The major vehicle for the spread of brainwashing claims has been the development of anticult movements and groups in a number of other countries around the world, often through "missionary" efforts of American anticult groups such as the Cult Awareness Network. See ANTI-CULT MOVEMENTS IN CROSS-CULTURAL PERSPECTIVE (Anson Shupe & David G. Bromley eds., 1994) (discussing international anticultism). For a related situation involving export of a negatively connoted idea from the United States to other countries, see James T. Richardson, *The Social Construction of Satanism: Understanding an International Social Problem*, AUSTL. J. SOC. ISSUES (forthcoming 1997).

The case, *Kokkinakis v. Greece*,<sup>55</sup> developed when a Greek Jehovah's Witness minister and his wife visited the wife of the local cantor. Mr Kokkinakis and his wife attempted to proselytize the cantor's wife, which violated a Greek law precluding proselytizing activities.<sup>56</sup> The cantor complained, leading to the arrest of Kokkinakis and his wife, with both being charged with violating the criminal statute against proselytizing. Both were found guilty, fined, and sentenced to prison. On appeal, the charges against Mrs. Kokkinakis were dropped, but those against Mr. Kokkinakis were upheld.

The case was then appealed to the European Court of Human Rights in Strasbourg, which is the judicial arm of the Council of Europe. The court has a dismal record of supporting claims that religious freedom has been violated, and prior to *Kokkinakis*, there had never been a ruling that a violation of Article 9 had occurred. The usual tactic had been to dismiss such claims and defer to the Member States on such matters.<sup>57</sup> The court took more than five years to eventually rule in favor of Mr. Kokkinakis, but it did so only on a split vote of six to three, with some strong dissents registered.<sup>58</sup>

Of importance to this examination of the use of brainwashing ideas in legal actions outside the United States is the casual use of the term in the *Kokkinakis* opinions. Both the majority and one dissenting opinion make use of the term, as well as other associated "anticult" terminology such as "unacceptable psychological techniques."<sup>59</sup> The majority opinion included the lan-

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55. 93 Eur. Ct. H.R. (Ser. A) (1993).

56. *Id.* at 260.

57. For a fuller discussion of the *Kokkinakis* case and operations of the European Court of Human Rights, including its propensity to defer to Member States in matters involving religion, see James T. Richardson, *Minority Religions, Religious Freedom, and the New Pan-European Political and Judicial Institutions*, 37 J. CHURCH & ST. 39, 47 (1995).

58. A few of the facts of this case make the split vote rather curious. In spite of the fact that the Jehovah's Witnesses have existed in Greece since 1922 and are recognized as a religious group under other Greek laws, over 4400 Witnesses have been charged with violating the Greek criminal statute against proselytizing since the statute was enacted when democracy was reestablished in 1975. Of these cases, 1233 have been committed for trial and 208 have been found guilty. No other group has been charged with violating this statute in that same time period, a strong indication of discrimination against the Witnesses. For a comment on the unusual nature of Greece's proselytizing law, see Silvio Ferrari, *The Emerging Pattern of Church and State in Western Europe: The Italian Model*, 1995 B.Y.U. L. REV. 421, 425.

59. *Kokkinakis*, 93 Eur. Ct. H.R. at 17, 35-37.

guage, "I would add that there probably are methods of spiritual coercion akin to brainwashing which arguably fall within the ambit of Article 3 of the Convention and should therefore be prohibited by making their use an offense under ordinary criminal law."<sup>60</sup> Some of the judges were apparently upset at the rigorous recruitment tactics of the Witnesses, seeming to assume that such strong efforts at recruitment were unacceptable because they involved brainwashing, thus placing them beyond the pale of protected activities. The appearance of such language in a major written opinion of the Court of Human Rights is evidence that such ideas have gained credence within that forum.<sup>61</sup>

### B. *Brainwashing Cases in Spain*

Spain has seen anticult (or antisect) activity develop over recent years. In the late 1980s, state officials showed considerable animosity toward representatives of one controversial new religious group from the United States, The Family, formerly known as the Children of God. The growing concern about The Family culminated in raids on Family communal homes and the confiscation of children from their parents in attempts to make them wards of the state. It is now clear that this and similar cases around the world were given impetus by the actions of a few former members and other detractors who worked hard to develop concern among law enforcement and legal officials.<sup>62</sup> The focus of this effort to arouse official concern was on child abuse allegations, including sexual abuse. However, discussion of the case within Spain also made reference to how controversial the group was, in part because of its suspect recruitment methods, which were sometimes referred to as "brainwashing." Although resolution of the matter took some time, The Family eventually prevailed and regained custody of their children after it was

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60. *Id.* at 36.

61. Recently the author received some correspondence indicating the development of an anticult group operating in Greece. The correspondence refers to efforts to control groups which do psychological damage to the writers and their families. Such communications suggest that the writers assume such ideas are widely accepted and valid.

62. See Richardson, *Social Control of New Religions*, *supra* note 45 (discussing raids against Family communal homes in Argentina, Australia, Spain, and France, all of which were similarly motivated, and all of which eventually resulted in all charges being dropped and children being returned to Family members).

proved to the satisfaction of authorities that no abuse was occurring within the group.

More recently there has been a case directly involving brainwashing claims in Spain. In February 1996, a decision was handed down resolving a legal dispute concerning a member of the Spanish Society for the Defense of Tradition, Family, and Property ("TFP"), a Spanish branch of a controversial Catholic inspirational group operating in Spain since 1971.<sup>63</sup> The member, Santiago Canals Coma, was a twenty-six-year-old man whose mother decided to extract him from the group through deprogramming after she became convinced that the group had "brainwashed" her son. She apparently developed this belief in brainwashing theory through contact with a number of people opposed to the group, including an antisect group operating in Spain, called Centro de Recuperacion, Orientacion y Asistencia a los Afectados por las Sextas (Center for Recuperation, Orientation, and Assistance to Those Affected by Sects). This group apparently furnished the two deprogrammers who worked on Coma while he was incarcerated against his will in a mental institution.

The case involved a psychiatrist who, without benefit of an examination, made an assessment of Coma as being in a "paranoid state" and recommended internment in a mental institution. Police authorities enforced this recommendation, placing Coma in an institution where he spent twenty-two days before being liberated by a friend he finally managed to contact, who was also an attorney. While there, Coma was drugged, forced to exist with very few clothes, and kept in a locked room. He was visited regularly by deprogrammers, who ordered the hospital staff not to allow him any contact with outsiders.

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63. This saga is described in some detail in SANTIAGO C. COMA, A REBIRTH OF RELIGIOUS PERSECUTION IN SPAIN? (1996). The case is similar to the famous Shapiro case in the United States, which involved the Hare Krishna. The son of a prominent psychiatrist joined the Krishna, and then was kidnapped and placed in a mental institution by court order on the basis of an assessment rendered by a psychiatrist who had spent very little time with the son. Eventually the son was found competent and released, in large part because a number of mental health professionals refused to agree with the original diagnosis and stated in court that the son was quite competent. For a full discussion of the Shapiro case, see James T. Richardson, *Mental Health of Cult Consumers: Legal and Scientific Controversy*, in RELIGION AND MENTAL HEALTH (John F. Schumaker ed., 1992).

After being freed from the mental institution, Coma still had to deal with legal actions filed by his mother, seeking to continue the incarceration and also to have Coma declared mentally incompetent. The case eventually went to trial, and considerable testimony and affidavits were filed by conflicting experts and others, including several family members. On February 9, 1996, Magistrate Maria del Mar Ortega Arias issued a lengthy and strongly worded ruling against Mrs. Coma and in favor of her son.<sup>64</sup> This ruling represents one of the few times outside the United States that brainwashing claims have been explicitly discussed in any detail, and therefore the ruling deserves some attention.

After recounting the facts of the case, Magistrate Arias stated: "[O]n the pretext of a clearly nonexistent mental illness an adult citizen was deprived of liberty solely for his religious beliefs, and an attempt was made to give this the appearance of legality, [which] constitutes a patent abuse of law that this judge wishes to make especially evident."<sup>65</sup> The judge further stated that she must discuss matters usually not included in judgments because

[it is] evident that Mr. Santiago Canals Coma does not suffer from any type of mental illness that would justify his wrongly claimed incapacitation, [and to] guarantee his right to religious freedom, which is enshrined not only in article 16 of the Constitution but also very especially in article 9 of the European Convention on Human Rights.<sup>66</sup>

Later in the opinion, the judge was explicitly critical of the extensive testimony of one leader of an antisect movement in Spain which had circulated literature claiming that TFP engages in "brainwashing of . . . children."<sup>67</sup> The judge also took to task the petitioner (Mr. Coma's mother) who claimed in documents filed with the court that TFP is "a destructive sect that brainwashes its members."<sup>68</sup> The judge cited a letter, written by a

64. Judgment of Feb. 9, 1996, Juzgado de Primera Instancia No. 42 de Barcelona [Court of First Instance No. 42 of Barcelona] (Spain), *translated and reprinted in* COMA, *supra* note 63, app. 8, at 161.

65. COMA, *supra* note 63, at 163 (emphasis omitted).

66. *Id.*

67. *Id.* at 166.

68. *Id.* at 167 (emphasis omitted).

Cardinal Ruiz and entered into evidence by the defendant, Mr. Coma, which refutes the claim "that TFP is a cult, that something like brainwashing exists, or that in TFP there are deviations from the true worship."<sup>69</sup> She also cited another report referring to the "old, worn-out accusation of brainwashing."

The judge then offered her own views and conclusions regarding use of such key terms as brainwashing:<sup>70</sup>

It is also pertinent to cover . . . another term widely used by the petitioner: "brainwashing." The term does not express a scientific concept, but its meanings are many. It has been used at times as a synonym for "mental control," to designate any form of human influence, including hypnosis, psychotherapy, mass media, propaganda, education, behavioral changes, and a constellation of other technical forms for changes in attitude and behavior.

It is necessary to be very cautious about this concept of "brainwashing," since man is a rational being who builds and structures his thought starting from freely accepted truths, on which he normally bases his values, and therefore those convictions can only be changed by appealing to reason. Consequently the concept of "brainwashing" is meaningless, especially juridically: its "indiscriminate" or "careless" use may result in a clear meddling in extremely personal rights of the individual, which nobody may impinge.<sup>71</sup>

This judgment is a strong statement rejecting brainwashing claims in a court ruling outside of the United States. The total rejection of the use of the term "brainwashing" and its attendant ideas does not, of course, mean that the ideas themselves will cease to be used in policy debates about new religions in Spain. Indeed, if the United States experience is any guide, it is clear that negative views of new religious groups and their recruitment practices will continue to be very persistent. However, at least in Spain there is one opinion (admittedly from a lower court) that stands in opposition to the use of such ideas.

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69. *Id.* (emphasis omitted).

70. She also discussed the term "sect" at some length, rejecting its application in the present case, and making critical remarks about its use as a powerful negative label. *Id.* at 168.

71. *Id.* at 168-69 (emphasis omitted).

*C. Argentina Brainwashing Case*

Argentina has also seen the use of brainwashing claims in legal actions against The Family. In 1989, a large number of police, motivated by accusations of child abuse, including sexual abuse, staged a raid on a communal home of The Family in Buenos Aires. Adults in the commune were taken into custody, and children were placed as wards of the state. Some of the police carried machine guns during the raid, which was carried out without any warning but with electronic and print media representatives present.

Investigations by social workers and physicians revealed no evidence of sexual abuse or abuse of any kind. The children passed educational tests with high scores, impressing judicial authorities and teachers administering the tests. Officials of the court who visited the home after the raid went away impressed with the atmosphere of the home and the way the children were being educated. As a result of the testing and investigations, all criminal and civil charges were eventually dropped against the group and its members. The children were returned to their parents and the authorities made positive statements about the group and its child-rearing methods.

However, on September 1, 1993, police in Buenos Aires again raided several residences of The Family, taking 137 children into custody and arresting 21 adults. The raids were apparently instigated by one particular magistrate who had become convinced through the efforts of some former members of the Children Of God from outside the country that great abuses were taking place in Family communal homes. The episode became something of an international incident, as members of The Family throughout the world demonstrated at a large number of Argentine embassies in other countries and otherwise attempted to draw attention to the plight of their imprisoned members. A number of scholars and other professionals also offered support for The Family, writing letters of support and criticism of Argentine officials and visiting Argentina to investigate the situation.

The outcome was similar to that of the earlier episode. On December 13, 1993, the Argentina Court of Appeals of San Martin ordered the dropping of all charges, the release of all imprisoned members of The Family, and the return of all children to

their parents forthwith.<sup>72</sup> The lengthy two-to-one opinion by Justice Horacio Enrique Prack strongly criticized the magistrate and also those from outside Argentina who were promoting such charges against The Family. The opinion also contained an explicit discussion of brainwashing claims, which had been presented by the group's detractors as part of their effort to force the authorities to take action against the group.

In discussing charges against Family members under something called the "servitude offense," which apparently means that a person is forced against his or her will to take part in activities directed by another, the court stated that the District Attorney

thinks that such a submissive attitude is reached through the application of a novel technique known as "thought reform" or "brainwashing", induced by deprivation of sleep, low-protein diets, exhaustive physical labor, long hours listening to "Mo's" recordings, reading and memorizing his letters, singing the groups' songs and participating in indoctrinational meetings, as well as through isolation and a loss of contact with the outside world, depriving the minors of any interchange with other children that they may become excessively dependent upon reaching adolescence so as to begin the practice of prostitution.<sup>73</sup>

The court then systematically discussed these elements, finding that few of them existed, and that those which did exist were relatively harmless in effect.<sup>74</sup> Later in the opinion, in discussing charges of false imprisonment, the court again referred to accusations of brainwashing that were brought against the group in earlier testimony by a few ex-members.<sup>75</sup> The court discussed the claim that false imprisonment can be brought about by

a sort of "psychological conditioning" which is mentioned by the Hon. District Attorney in specific reference to what various ex-members call "brainwashing", accepting as fact that it is possible to modify a person's thoughts at will in order to oblige him/her to absolutely submit and relinquish his/her power of decision, a technique which they claimed they had been victims

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72. Judgment of Dec. 13, 1993, Cámara Federal de Apelaciones [Federal Court of Appeals], slip op. 63-64 (Arg.) (official translation).

73. *Id.* at 44-45.

74. *Id.* at 45-49.

75. *Id.* at 50-51.



of. In fact, it does not seem quite logical to assert that through non-violent means—without resorting to confinement or torture—it is possible to apply various techniques, which could incur serious consequences for the person not in agreement, and succeed in doing so in the sense that the person changes his/her way of thinking and feeling. This is what happens in these fictional accounts, the magical contents of which amuse us as would a story describing automatons directed by remote control.<sup>76</sup>

The court goes on to say:

[I]n spite of efforts made during the Cold War by Communist countries in conflict—according to compiled information—no progress was made in the conversion of captured prisoners, even though they disposed of every means of coercive power. Therefore, this theory [of brainwashing] is not backed up by the scientific community and nowadays is considered as a metaphor to disqualify religious movements considered deviant.<sup>77</sup>

The court was then extremely critical of the Magistrate who accepted such a theory at the trial court level, calling the decision a “judicial absurdity” which would cause “unacceptable consequences” because “it would lead to the inconsistency of having to declare innocent . . . anyone acting in a manipulative manner, in spite of the fact that at the time of the crime he/she was capable of understanding the injustice of his/her actions.”<sup>78</sup>

The court summarized its view of brainwashing and related claims as follows:

[T]o claim that proselytism, even in the case of spreading immoral ideas, has become ideological subversion; that the initial persuading of someone to an exotic way of life, which is protected by the right to religious freedom, has become brainwashing; that missionaries have become subversive agents; that houses of spiritual retreat or monastic seclusion have become prisons; and finally, that mystical adherence to religious devotion has become psychopathic behavior, will undoubtedly bring us back to the time when society was authoritarian and repressed free thinking, limiting and castrating the freely chosen

76. *Id.* at 51.

77. *Id.* at 52 (citation omitted).

78. *Id.*

life style of each individual, simply because he/she preferred one over the other.

The problem of the new religious movements cannot be approached from a medical or criminological viewpoint, because in spite of the fact that we live in a time in which some new cults attract persons with physical and mental pathologies, and even some of their leaders use their charisma for financial ends, the very foundation of our legal system protects personal autonomy, and to impose limitations on the will is not possible, even if an individual is considered by others to be basically wrong. Nobody can be forced to be free.<sup>79</sup>

Justice Prack's strongly worded opinion has caused considerable consternation in Argentine legal circles. Currently the case is on appeal to the Argentina Supreme Court, which seems to be hesitant to deal with the decision. Meanwhile the original Magistrate in the case, in spite of being severely criticized in the appeals court opinion (or perhaps *because of* being so criticized), continues to be active in the case, a development that seems odd to those more used to American legal standards.<sup>80</sup> At present, he is summoning some of the twenty-one Family members charged in the case (who spent four months in prison) for further depositions. Thus, although the appeals court opinion very strongly rejects any criminal charges brought against Family members and also criticizes the ideological basis of the case ("brainwashing"), developments since the decision nearly three years ago indicate that antireligious sentiment and the ideas that underpin that sentiment have not died out in Argentina.

#### D. *Brainwashing Claims in Australia*

In May of 1992, simultaneous predawn raids were made against several communal homes of The Family in Australia, located in Melbourne and in Sydney. A total of 153 children were

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79. *Id.* at 55.

80. This apparently occurred because the Appeals Court sent the case to a provincial court (equivalent to a state court in the United States) for further proceedings, but that provincial court recused itself, which had the effect of automatically sending the case back to the original federal magistrate. That magistrate is under considerable pressure in Argentina, in large part because of his handling of The Family's case. Indeed, on October 7, 1993, a group of 45 lawyers and former judges submitted a petition for his impeachment to the federal Congress in Argentina, and the impeachment matter is pending at the time of this writing.

taken into custody, amidst an immense amount of publicity about accusations of aberrant sexual behavior in the group homes. The raids developed after lengthy investigations and surveillance of The Family homes in the two areas. Officials in Victoria decided to stage the raids when they did apparently because of a planned exposé on The Family, which a popular TV program was planning to air. Officials feared that The Family would flee the area after the program aired. Victoria officials urged New South Wales child care officials to also participate, with less than forty-eight hours notice, by raiding Family homes there. It is noteworthy that in Victoria the television channel knew the timing of the raids and had cameras present, including some in helicopters flying above the homes being raided.

In Sydney (New South Wales) the case was resolved relatively quickly, after a lengthy hearing in which one representative of the Department of Community Services (the "DOCS") spent thirty-one days in the witness box trying to explain and defend why the DOCS had taken the action it did, but with relatively little success. Settlement was achieved after the DOCS agreed to a unique form of mediation with a former High Court judge serving as mediator. The settlement involved a withdrawal by the DOCS of official charges of sexual abuse, coupled with an agreement by The Family to allow some evaluation of the children's home schooling and to ensure the children had some exposure to people and activities outside the group.

In Melbourne (Victoria) the case took much longer to resolve, mainly because the state had refused to furnish legal aid to the group's parents, claiming funds were not available. Efforts had been made by The Family and its attorneys to settle the case similarly to what was done in New South Wales, but such moves were strongly resisted by the Child Services Victoria (the "CSV"), and a court-ordered effort at mediation failed. In the meantime, however, the ninety-three children involved in Melbourne were still technically wards of the state and could not be moved without permission from the court. Eventually the Victorian State Government forced the CSV to settle the case on terms quite similar to those developed in the Sydney case.

These cases resulted in a major embarrassment for most of the child services and police authorities involved in the predawn raids, and resulting legal actions against them by The Family continue even today. It is interesting to note that in a lengthy

official explanation offered by CSV of its action, there is an explicit discussion of Robert J. Lifton's "thought reform" model (called "mind control" in the report) as a part of the justification for the actions taken by authorities.<sup>81</sup>

In the CSV report, under the subtitle "Rigorous Control over Disciples" there is a substantial discussion of the recruitment methods allegedly employed by the group, using Lifton's multi-stage model developed in his studies of how the Chinese Communists managed to gain the allegiance of the Chinese people after the takeover in 1950. The assumption of the CSV report is that this model has direct application to The Family and to other newer religious groups, including the Unification Church and Scientology. No critique is offered or referred to, and there is no explanation of the vastly different circumstances of recruitment in new religions, compared with the reeducation of Chinese under Communism.<sup>82</sup> The official document simply assumes that "mind control" methods are used by The Family, as well as other controversial groups, and that this helps justify the drastic action undertaken by the authorities.

#### *E. Brainwashing Claims in Russia*

There is much activity relevant to the topic of this Article taking place in Russia and other former Communist countries. Efforts to modify the Russian law passed in 1990 guaranteeing religious freedom may sometimes be based on claims that new and foreign religious groups are brainwashing their participants. This section examines one rather explicit example of the role of brainwashing claims to illustrate what can develop in the very volatile circumstances after the fall of Communism.

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81. See Children of God Hearing: Summary of Case on Behalf of Department of Health and Community Services, at 72-75 (Melbourne, Sept. 10, 1993) (available from CSV and on file with author). Lifton's work is often used as a basis for claims that brainwashing, or thought reform, as it is sometimes called, occurs in new religions. See generally LIFTON, *supra* note 14. But for a critique of this usage of Lifton's work, see Anthony, *supra* note 1, at 296; and Richardson & Kilbourne, *supra* note 14.

82. See James T. Richardson et al., *Thought Reform and the Jesus Movement*, 4 YOUTH & SOC'Y 185 (1972) (discussing an explicit application quite germane to the CSV claims of applicability of the Lifton model, namely a study showing the lack of support for applying the model to Jesus Movement groups, of which The Family is a prominent example). See generally BARKER, *supra* note 31; Anthony, *supra* note 1; Gene G. James, *Brainwashing: The Myth and the Actuality*, 61 THOUGHT: A REVIEW OF CULTURE AND IDEA 241 (1986); Richardson & Kilbourne, *supra* note 14.

The situation that will be used as an example concerns the difficulties encountered by the Unification Church in St. Petersburg in its attempts to register with local authorities. When it became known that the Unification Church was attempting to become established in St. Petersburg, a number of individuals and groups took issue with those efforts. One of them, a group calling itself the Committee for the Protection of the Family and Individual, filed suit in a local court. The suit sought the liquidation of an ancillary organization of the Unification Church, an entity known around the world as CARP (Collegiate Association for Research into Principles), and asked for a large amount of compensation for "victims" of CARP.<sup>83</sup> Other groups and governmental officials have since joined the suit, including a group calling itself The Interregional Committee for the Salvation From Totalitarian Sects, as well as the Department of Justice of the St. Petersburg City Council and the Attorney General for the St. Petersburg area. The cases were consolidated, some parties were dropped by the court, and the suit was finally allowed to stand with two plaintiffs, the original committee and the Attorney General.<sup>84</sup>

CARP had been officially registered in St. Petersburg since December of 1991, but came under scrutiny as a part of the growing concern in Russia about the growth of new foreign religious organizations. Attempts by the Unification Church itself to register in St. Petersburg may have provoked the suit. Of interest here are some of the claims made in the pleadings. A major claim concerns the alleged use of "mind control" on CARP participants and the related assertion that the group causes

destruction of the psychological basis of personality, family, and society by imposing various artificial ethical requirements which are alien to the traditional psycho-social characteristics of Russia. Through limiting sleep and food and daily nonstop, monotonous activities, the psychic and physical health of CARP

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83. Questions have been raised by the Unification Church about the standing of the committee to file such an action, but so far the action has been allowed.

84. The case, which has changed name and reference date several times, is now officially called *The Claim of the Committee for the Protection of the Family and Individual for Liquidation of the CARP and Compensation for the Damage of 20,000,000,000 Rubles*, Dec. 10, 1995, St. Petersburg.

members deteriorates and their intellectual development is impaired.<sup>85</sup>

This set of claims sounds quite like other renditions of brainwashing-based ideas that have been spread around the globe in the past decade or so.<sup>86</sup> According to reports on the machinations of this case, discussions of the brainwashing/mind control idea have played a major part in court proceedings and informal discussions surrounding the case. Apparently the possibility for a resolution of the case that rejects such claims for being unscientific (as has happened in some other countries, as previously described) is slim. Instead, according to some observers of this case, the prognosis is grim, even though data to support such claims is weak or nonexistent.<sup>87</sup>

One related development is that the Unification Church has been refused registration in St. Petersburg, even though it has filed required documents and been waiting a considerable time. One reason being given for the delay in processing the registration application is the pending suit against CARP.<sup>88</sup>

## V. CONCLUSION

One obvious conclusion from this selective review of cases around the world is that the brainwashing idea has been successfully exported from the American context. This is most obvious in the several cases discussed involving The Family, in which it is clear that anticult literature and sentiments have influenced efforts of authorities in a number of countries to exert control over newer religious groups. The Argentina Court of Appeals even included quite explicit criticisms of this outside influence in its opinion. The lengthy document produced by authorities in Victoria, Australia reads like an American anticult tract, with

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85. Translated from a report written in 1996 by the attorney for CARP, Galina Krilova (on file with author) (hereinafter CARP Report).

86. There have been visits of some major anticult figures from the United States and Europe to Russia, who have been involved in conferences on what to do about the problems of cults and sects. A future paper will describe some of this background activity relevant to how the idea of brainwashing has been imported into Russia by groups interested in exerting social control over the newer faiths.

87. For a detailed critique of brainwashing claims that explains the lack of scientific support for such claims, see Richardson, *Recruitment to New Religions*, *supra* note 1.

88. See CARP Report, *supra* note 85.

much of the language appearing to be from American anticult sources.

The several major cases around the globe involving The Family appear to share a common source, since the same small number of former members have appeared in the countries discussed, as well as some others, offering information and advice to any authorities who would listen.<sup>89</sup> However, the casual use of the brainwashing concept in the opinions of the European Court of Human Rights, the use of the term in discussions in Russia and other former Communist countries, and its appearance in the Spanish case discussed at length suggest that more than just a few apostates from the Family are spreading the brainwashing idea around the world.

The idea is spreading because some people and organizations have made deliberate efforts to spread this useful tool of social control.<sup>90</sup> It is also spreading because it serves the purposes of authorities in many societies who seek ways to exert control over the development of many different exotic religious and quasi-religious groups. Some of these new groups have been exported from the United States, which makes it quite understandable that the authorities would look to the U.S. experience for some explanation of what is happening and what to do about the perceived problem. Some new religious groups have developed within the other societies, but appear to share some characteris-

89. For a fuller discussion of this apparent network of detractors of The Family, see Richardson, *Recruitment to New Religions*, *supra* note 1. A related case involving custody of one child in England also saw the same small group of former members involved in giving information, offering testimony, and assisting in any other way they could. This case, which was the longest running wardship case in English history, resulted in the child being allowed to remain in the group with its mother, under some conditions, even though the child's grandmother had expended large resources and much effort to get the child out of the group. This case, which involved the author as an expert witness, is noteworthy from the perspective of this Article because the judge, Justice Ward, explicitly rejected brainwashing ideas early in the case:

I am mightily relieved to have been spared the reams of paper and days of evidence that it seemed at one time might be inflicted upon me to resolve questions of brainwashing and mind control. These terms seem more likely to carry emotive weight than scientific backing. The anti-cult movement may believe it. I am most unlikely to have been helped by it at all. The fact is that most of those within the Family remain there because of their faith in what it offers.

*In re ST (A Minor)*, Principal Registry, W 42, at 149-50 (Fam. 1992) (Eng.).

90. For a discussion of this effort in a number of different societies, see ANTI-CULT MOVEMENTS IN CROSS-CULTURAL PERSPECTIVE, *supra* note 54.

tics with other foreign imports, thus suggesting to authorities that ideas applicable to imported groups might have application to home-grown ones as well.

Thus the spread of brainwashing claims around the globe and their use in legal actions is explicable in terms of functional theory. The spread of such ideas serve the purposes of those in the United States who have opposed the spread of new groups, with the adoption of such ideas elsewhere being something of a validity check for their use in the United States. The acceptance of such ideas by authorities elsewhere also is functional, for such ideas can be a very effective "social weapon" in battles by traditional religious organizations to maintain positions of dominance in a society, or to regain such a position, such as in former Communist countries.

The use of brainwashing-based claims is not always successful, of course, as some of the cases described demonstrate. The use of such claims as the basis of legal actions does not work very well when independent judicial authorities do a thorough job of investigating their scientific validity. This happened, for instance, in the case in Spain and in the case in Argentina, although in the latter situation the matter is not yet fully resolved. The case in Australia was resolved on other grounds (lack of evidence of any abuse of the children was determinative), but even then the investigation indirectly undercut claims that "mind control" was being used within The Family.

However, it must be understood that *brainwashing claims work very well to initiate legal actions*, as evidenced by some of the cases just mentioned, even though the eventual outcome rejected such claims. Brainwashing claims thus have been used to justify in part some quite dramatic actions (or inactions) by authorities around the world. It may be months or years before the authorities find out that they cannot substantiate such claims and the situation is rectified. Meanwhile, adults may spend months in prison, as was the case in Argentina, have their children retained by authorities for some time, or be placed in a mental institution for "deprogramming" against their will.

In some situations the claims are not refuted and they may serve as the basis for official actions that limit the religious freedom of individuals and groups. Thus, a new religious group may be refused the right to officially register in a country on the ground that it brainwashes its members, or it may have its rep-



representatives harassed or not allowed entry on such grounds. Such claims have been made quite recently by officials in France and in Germany, for instance, and there is growing concern about developments that limit religious freedom in some former Communist countries, as well.<sup>91</sup> Often those efforts are based in part on claims that the groups practice brainwashing (or one of its popular synonyms).

Thus, it is safe to say that brainwashing claims are playing an important role around the world in efforts to control new religions and to discourage people from participating in them. Such claims fuel popular concern about new religions and serve as a basis for many different types of legal actions. Those using such claims as the basis for legal actions or other bureaucratic control should, however, examine such ideas for scientific validity and face the fact that the claims are often used for ideological purposes; those using such ideas for ideological and political purposes should address the limitations on religious freedom brought about by using such notions.

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91. See, e.g., *POUR EN FINIR AVEC LES SECTES: LE DEBAT SUR LE RAPPORT DE LA COMMISSION PARLIAMENTAIRE* (M. Introvigne & J.G. Melton eds., 1996) (critiquing a recent official French report on sects and claims that *lavage de cerveau* (literally, washing of the brain) occurs in new religions).