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Book Review of The Child Cases: How America's Religious Exemption Laws Harm Children

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The Child Cases: How America's Religious Exemption Laws Harm Children. By Alan Rogers. Amherst: University of Massachusetts Press, 2014. 256 pp. \$24.95.

Parent-state conflicts over religiously motivated childrearing choices are perennially of interest to academics in many university departments. Although the vast majority of cases in which states charge parents with child maltreatment involve parental dysfunction or indifference, those receive far less attention. The religion cases capture attention partly because they raise large philosophical questions, such as “Who has authority to establish values governing a child’s upbringing?” and “Must the state remain agnostic about the truth of religious claims, or may it act on an assumption that some are false?”

One’s thinking about such questions can certainly benefit from a fuller understanding of dissenting parents’ beliefs, family interactions, and struggles with choices they make. With religious medical neglect, we are especially hungry for insight because it is so difficult to make sense of parents’ watching a child wither and die before their eyes. Alan Rogers, professor of history at Boston College, provides substantial backstory on several more prominent criminal prosecutions of parents whose children died because the parents rejected medical care on religious grounds. Rogers also describes the course of litigation, legal arguments both sides made, and the politics

behind legislative attempts to accommodate Christian Scientists and other groups committed to relying only on prayer when members become ill or injured. But it is really the social history, more so than the legal history, that is illuminating. Rogers's extensive excavating of court records and other contemporaneous sources informs a nuanced account of life in the families and communities in which children die of medical neglect.

Before picking up *The Child Cases*, readers will want a clear picture of the prevailing legal regime to help make sense of the narrative. There are both civil and criminal laws pertaining to child neglect. The civil law part of a state's code includes provisions relating to (1) mandatory reporting of child maltreatment (which might or might not include "spiritual treatment practitioners"), (2) judicial authority to order medical care despite parents' religious objection, and (3) child protection agencies' authority to make findings of neglect and petition for court orders protecting children. The criminal portion of a state's code includes provisions making it a crime for a parent to cause serious harm to a child by abuse or neglect, plus more generally applicable provisions criminalizing the killing of another person by act or omission. Whereas civil child-protection proceedings can lead to removal of a child from parental custody or termination of parental rights, a criminal prosecution could lead to incarceration. Rogers focuses on the latter.

The religious exemptions Rogers alludes to in his subtitle are principally in civil child maltreatment laws, but they nevertheless play a role in criminal prosecutions, as explained below. Supreme Court doctrine makes quite clear that parents have no constitutional right to such exemptions. But in 1974, the federal government, at the urging of Christian Scientists, required states, as a condition for receiving new child abuse prevention funding, to include in their civil child maltreatment definitions (i.e., in the third type of civil law provision above) this qualification: "A parent or guardian legitimately practicing his religious beliefs who thereby does not provide specific medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian." All states complied, some adding such a qualification to criminal child neglect laws as well as civil neglect laws. Congress removed this requirement in 1983, but the Church of Christ, Scientist (Christian Science) used its considerable wealth to block efforts at repeal. Rogers also aptly features the countervailing efforts of Rita Swan, a former Church of Christ, Scientist member and founder of Children's Healthcare Is a Legal Duty, Inc., who has worked ceaselessly for over three decades to advocate for children at risk of suffering and death from religious medical neglect, with impressive success in securing repeal of exemptions in a significant number of states.

The cases whose description makes up two-thirds of the book were prosecutions of parents whose children died. They rested on criminal law provisions pertaining to killing another person, provisions not containing a religious exemption. But they arose in states that did have a religious exemption in child neglect provisions (civil and/or criminal). The parents objected that the state's "mixed signals" (religious exemption in some laws but not others) violated their constitutional due process right to fair notice of legal obligations, even though these states also had civil law provisions of the second type listed above, clearly authorizing courts to order medical treatment regardless of parents' beliefs. The ultimate outcomes in these cases were not consistent, with some courts accepting the due process argument but others not, and Rogers explains in detail what happened in each state.

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