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THE ROLE OF GOVERNMENT IN CASES OF FAITH BASED CHILD MEDICAL NEGLECT

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Abstract

In the United States, parental rights have been defined by a strong liberal conception of individual rights, giving parents huge leeway in determining how their children are raised. In this paper, I examine one extreme example of parental rights gone wrong: faith based child medical neglect, a phenomenon that occurs when parents turn to faith healing for their children instead of standard medical care, resulting in the child’s death. First, I show how liberal theory has failed to address key questions regarding the limits of both parental and child rights as they apply to faith healing. Then I apply the republican concepts of civic virtue and non-arbitrary intervention to provide a framework that clearly lays out the limitations on both child and parental rights, as well as determining the specific circumstances under which the government may intervene in cases of faith healing.
On Easter Sunday 2008, 11-year-old Kara Neumann died of diabetic ketoacidosis, a treatable condition that occurred when her blood glucose levels grew lethally high. Kara's death was tragic not just because of her young age, but also because it was preventable: an injection of insulin could have saved her life even mere hours before her death. At the autopsy, the medical examiner found no evidence that Kara’s diabetes would have prevented her from living a full and healthy life had she survived and learned to manage it. Kara never got the treatment she needed because her parents were members of an online church called Unleavened Bread Ministries, a fundamentalist Christian organization that requires its members to rely exclusively on faith healing. When Kara began exhibiting the signs and symptoms of diabetes, her parents began praying for her. As her condition worsened, her parents sent out requests to others in their ministry to pray for Kara as well. Standard medical care did not arrive until too late, when an out of state relative grew worried and called an ambulance (Mathuna and Lang 2008).

Kara Neumann’s case is not unique. In a groundbreaking 1998 study, researchers Rita Swan and Seth Asser identified 174 child victims of faith based medical neglect in the United States between 1975 and 1995. This number is likely low: since no reliable interstate database of child neglect cases exists, Swan and Asser were reliant on the public record — cases that were not reported to the public or did not go to trial were missed (Asser and Swan 1998, 626). Surprisingly, of the cases that went to trial, no clear legal pattern emerged: parents were convicted of homicide, manslaughter, abuse, or neglect in some state courts and exonerated in others. In the 18 states whose Religious Freedom Restoration Acts allow parents to use their religious belief as a positive defense in court when a child dies, prosecutors have been discouraged from bringing child abuse or neglect charges at all (Hughes 2004, 254).
outcry following unprosecuted cases encouraged lawmakers to make changes, further complicating the patchwork of laws and exemptions that vary from state to state and in turn lead to increasingly inconsistent charges and conviction rates for parents in cases of faith based child medical neglect. Examining conviction rates over time shows the convoluted legal reality: prior to 1980, every parent convicted of homicide who used a religious defense saw their conviction overturned on appeal. Since then, the Florida, Indiana, and Wisconsin State Supreme Courts have both upheld and overturned parental convictions (Hughes 2004, 257). Though the Neumanns attempted to appeal their conviction to the United States Supreme Court, no case of faith based child neglect has yet been heard there (Chemerinsky and Goodwin 2016, 4). The lack of a consistent legal outcome in such cases clearly shows that there is no nationwide consensus on the role of the government when faith based child medical neglect occurs.

With dozens of children dying of treatable illnesses every year and inconsistent punishments being handed down to parents, there is a clear need to determine the role of the government in preventing and reacting to faith based child medical neglect. To that end, I answer the following question: How has liberal theory failed to provide a solution to the problem of faith based child medical neglect and how can republican theory provide better answers to courts, lawmakers, and citizens?

In pursuit of these answers, I first provide a basic overview of the beliefs of faith healers, explaining why these religious sects turn to faith healing and why they also reject conventional medicine. I then illustrate how the liberal political tradition in which our current laws are based is insufficient to address faith based child medical neglect and must be replaced as the basis for understanding the protective role of government. Finally, I argue for a fresh examination of the
role of government through the lens of republicanism, which provides far more tools than liberalism for addressing these questions.

**How believers justify faith healing**

With dozens of distinct faith healing sects in the United States, it is impossible to give a detailed account of the specific theology of each. Instead I divide faith healers into two groups: Christian Scientists and others. There are three fundamental questions answered in this section. First, why do these sects believe in faith healing? Second, why do believers in faith healing also reject standard medicine? Third, how do believers react when faith healing fails and a child dies? To answer these questions, I use the framework established by Dr. Courtney Campbell in his research of faith healing sects and supplement it with arguments from several of the sects themselves (Campbell 2010, 6).

First, why do these sects believe in faith healing? There are three arguments that are most commonly used. The first is legalistic: adherents believe that they have an obligation to follow every command in the Bible and thus faith healing is compelled by religious law. This is the logic employed by Unleavened Bread Ministries (the online church to which Kara Neumann’s parents belonged, also known as UBM) which stems from Matthew 8:17: “This was to fulfill what was spoken through the prophet Isaiah: ‘He took up our infirmities and bore our diseases’” (Suggs 1992, 1275). This verse, which UBM and others regard as “the Real Good News” is interpreted by many sects as a biblical mandate for faith healing. This logic is

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1 For a first hand account of growing up Christian Scientist, see “Suffering Children and the Christian Science Church” (Fraser 1995).
supplemented by the second argument for faith healing: exemplary witness, which views faith healing as a divine gift from god that must be used. Finally, there is the consequentialist argument, which acknowledges the fact that faith healing may not work but still views it as a better option than seeking medical care that may be painful or result in unnecessary death anyway. Christian Scientists often use this argument, citing cases of hospital acquired infections and botched surgeries as reasons to choose faith healing (Campbell 2010, 12).

The second fundamental question — why faith healing sects eschew standard medical care — also has several answers that vary by sect. For instance, Christian Scientists believe that illness and disease occur when people fail to fully accept the divine Christian reality. If this is that case, the only way to heal the sick is to expand their knowledge in faith, which medicine cannot do (Campbell 2010, 11). Like Christian Scientists, most faith healing sects argue against standard medical care primarily because they reject the germ theory of disease. By faith healers’ logic, diseases and illnesses are caused by demons or sins, not germs, and religion alone can address the root cause of illness. This logic does leave faith healing sects open to some medical care like dental work, glasses, and treatment for injury, as these practices are not based in germ theory. Many sects also don’t consider these practices to be a form of healing, but rather merely restoring function. The final argument against medical care, and the one most deeply held by Unleavened Bread Ministries and sects like it, is that seeking medical treatment from mortal men takes certain tasks out of god’s hands (such as determining when life should begin and end) and thus violates god’s sovereignty (Campbell 2010, 14).

Finally, what happens when faith healing fails to prevent death, especially in the case of a child? Generally faith healers react in one of three ways. First, healers may rely on the
Theodicy of Sin, which holds that failed faith healing is the fault of the victim or their caretakers for being sinful and requiring God to punish them. This theodicy is based on four assumptions: first, disease has a spiritual, not physical root; second, human actions bring on disease and death; third, disease is fully within god’s divine realm and fourth, both disease and death are retributive justice for sins. The second response — the Theodicy of Faith — is one of the most common responses and is often used by both Cristian Scientists, Unleavened Bread Ministries, and similar sects (Campbell 2010, 17). Under the Theodicy of Faith, believers blame the community, parents, or child for not having enough faith to save the victim. Somewhat less common as a response is the Theodicy of Inscrutability and Submission, which assumes the child must have died for a reason, though humans cannot possibly understand the reason. Finally there is the most compassionate response: Theodicy of Eschatological Consolation, which focuses on the positive outcome — that the deceased has received eternal glory and salvation — rather than dwelling on the death itself (19).

These beliefs have permeated public life and have had a tremendous impact on policy. Between 1974 and 1983, the Church of Christ, Scientist (more commonly knows as Christian Scientists) successfully lobbied the Department of Health, Education, and Welfare to require that states pass religious exemptions to child neglect laws in order to receive funding under the Federal Child Abuse Prevention and Treatment Act. As a result, forty-nine states (excluding Nebraska but including Washington, D.C.) had religious exemptions to their child abuse and neglect laws that allowed parents to defend themselves against child abuse charges as long as they could prove they had done what they believed to be in the best interest of their child (Chemerinsky and Goodwin 2016, 20).
How liberal theory has failed

As the theory most strongly associated with founding of the United States, liberal theory has been the base of the complicated labyrinth of contradictory rights and laws that contribute to faith based child medical neglect. In this section, I explain why liberal theory is the root cause of faith based child medical neglect and why is it not merely a misinterpretation of liberal theory that has lead to the crisis.

Liberal theory, in the simplest possible terms, is best understood as a theory based in the concepts of individual liberty and equality — to a liberal thinker, individual liberty is sacrosanct. In America, the core tenets of liberalism are enumerated within the Constitution at large and the Bill of Rights in particular. Two of these principles included in the Constitution lead to a fundamental question at the core of faith based child neglect.

First is the Fourteenth Amendment’s Equal Protection Clause, which holds that all American citizens have equal rights (Sinopoli 1987, 332). Second, enumerated rights are never given relative weight. No clause of the Constitution answers the question fundamental to faith based child neglect: what happens when a parent’s right to religious expression is at odds with a child’s right to life? No clear doctrine exists in the United States that clearly delineates the degree to which a parent’s religious rights allow them to interfere with the rights of their children.

To most people living in the United States, the immediate reaction to this question may be visceral, not Constitutional: surely the right to life is more important than the right to religious
expression. However, such logic provides an insufficient answer. This question — if two equal citizens’ individual rights are at odds with one another, who wins? — reveals a major flaw in liberal theory and only a theory-based answer can address it. Even if every American agreed that the right to life should be given greater weight than the right to religious expression, it would have no bearing on the constitutional paradox.

This flaw in liberal theory has certainly been exposed before, and liberal scholars have responded with proposed solutions. The most famous of these by far is the harm principle, taken from the writings of John Stuart Mill. The harm principle has two components that both aim to directly address the boundaries of individual rights. First, under the harm principle an individual’s rights end at the exact moment the expression of rights harms another citizen. Second, the government has the right to intervene only when a citizen has been harmed by someone else (Harcourt 1999,110).

While the harm principle appears to be a convincing solution to faith based child medical neglect, it is insufficient for two reasons. First, the harm principle lacks an enumerated definition of the term “harm.” While most scholars would define “harm” as a physical, mental, or emotional phenomenon, faith healers are likely to define it in terms of eternal salvation. Faith healers, like many Christians, tend to focus on the implication their actions have on the afterlife rather than on the earthly life (Campbell 2010, 6). The Theodicy of Eschatological Consolation — which holds that faith healing deaths have lead to the positive outcome of eternal salvation — provides a solid logical foundation for this interpretation of harm.

Differences in the interpretations of “harm” matter a great deal in cases of faith based child medical neglect because they provide a built-in defense for prosecuted parents. In essence,
the lack of a definition functions as a loophole. Further, liberal theory does not provide a promising venue for closing this loophole — adding the definition “harm” to the law does not address the problem at a deep enough level, as the law can be changed or overturned. Amending the Constitution to include the harm principle is theoretically a workable solution, though so extremely unlikely in modern political climates that it must be disregarded as implausible.

Even if the Constitution could be amended to include the harm principle, the solution would still be insufficient: under the harm principle the government can only intervene after harm has been done, which significantly restricts the government’s ability to prevent faith based child medical neglect. Under the harm principle, the government would be forced to wait before intervening in child medical neglect until standards of harm have been met. Depending on the threshold set for an action to constitute “harm,” this restriction could cause the government to sit idly by while a child’s condition deteriorates, decreasing the chance of a full recovery with each passing day. Together, these failures indicate not only that liberalism has not yet adequately addressed faith based child medical neglect, but that it is systematically unable to do so.

Overview of the key tenets of republican theory

Though liberal theory is the best known foundation of American government, core concepts of republicanism were central to the framing of individual rights and the role of government. Prominent republican scholar Cass Sunstein argues the Founders are best described as “liberal republicans” (Sunstein 1988, 1). Republican theory, like liberal theory, is very much
focused on freedom and citizenship. Where republicanism and liberalism differ, however, is in their respective conceptions of those values.

Within republicanism, freedom is generally defined as non-domination. For a society to be free under the republican definition, no citizen, group, or government can be able to impose their arbitrary will on another citizen or group (Skinner 2003, 12). This concept is central to republican thought and is best explained by key republican thinker Philip Pettit. To illustrate the difference between non-interference (a non-republican ideal that Pettit argues is too weak a standard) and non-domination (a republican ideal), Pettit imagines two people: a slave with a malevolent master and one with a benevolent master. The first slave’s malevolent master imposes his arbitrary will on the slave frequently, interfering in the slave’s life without just cause. This slave is both interfered with and dominated, and is not free under either measure. The second slave’s benevolent master never interferes with him, even though he could. This slave is free by the standard of non-interference, but not by the republican standard of domination. In republican thought, it doesn’t matter whether the master does interfere, it matters if he can (Pettit 1997, 22).

Defining the concept of non-domination is only one part of understanding republican freedom. The definition of arbitrary will is just as important as that of domination. The most basic definition of the term arbitrary (unpredictability) is insufficient — merely being unpredictable does not qualify as being arbitrary because predictable action can still be arbitrary (consider the slave from the earlier example — if he pays close attention he can come to predict the master’s behavior, but that does not make him suddenly free). Instead, we turn to back to Pettit and accept his definition of the arbitrary: actions are arbitrary when they do not account for
the “welfare and worldview” of those they impact (Pettit 1997, 56). Applied to the case of the slave, this definition is clear: if the slave has no say in his master’s commands, his worldview is not being accounted for and his freedom has been compromised. If the master works the slave too hard or causes him harm, he has failed to account for the slave’s wellbeing and the slave is not free.

After freedom as non-domination, the second key point of republican theory is the concept of civic virtue. In the republican context, civic virtue refers to the traits or actions an individual must take in order to be a good citizen (Skinner 2002). One of the biggest divisions between republican thinkers is whether civic virtue ought to describe actions or traits. For example, Richard Sinopoli defines civic virtue in terms of traits: civic virtue is “a disposition among citizens to engage in activities which support and maintain a just political order” (1987, 344). A larger coalition views civic virtue as a form of action: Paul Brest advocates active participation within a democracy (1988, 1627), while Cass Sunstein cautions against using a trait-based approach to civic virtue: “modern republicans invoke civic virtue primarily in order to promote deliberation in the service of social justice, not to elevate the character of the citizenry” (1988, 1549). The second definition — civic virtue as actions — is more widely accepted and is what I use throughout the next section.

The last piece of the civic virtue puzzle is scope: how widely ought the term be defined? While cornerstone republicans like Cass and Pettit have typically accepted relatively narrow definitions of civic virtue, a new movement is pushing for a broader conception. Notably, Paul Weithman criticizes republicans who settle for low expectations of republican citizens, arguing that republicans must have high standards for their citizens. He challenges republicans not to shy
away from strong standards for fear of moralizing, arguing that civic virtue must support both the
good of the republic and the good of the people (2004, 291).

**Faith Based Child Medical Neglect under Republican Theory**

In this section, I examine how republicanism helps shape a stronger response to faith based child medical neglect than liberalism. First I apply the republican conceptions of freedom to the family structure. Second, I examine the role of civic virtue on parenthood.

When freedom as non-domination is applied to family relationships, it a stark reality rapidly comes clear: children in America do not enjoy freedom as non-donation. By creating a system in which parents can make decisions for their children without any check on parental power or system of redress for children, the republic has condoned a system by which children do not have the basic freedom championed by republican theory. Children are not full citizens and do not have the freedom guaranteed to citizens in a republic. In the United States, a parent can impose their arbitrary will on a child just as easily as the master could impose his will on a slave in Pettit’s analogy. In the case of faith healing, this allows religious parents to impose their will on their children, even to the point of the child’s death. Clearly such a system is at odds with the fundamental goals of a republic and ought of be replaced by an institution that does not allow for parents to dominate their children, just as the government is not allowed to dominate its citizens.

If we grant that children should be free from the domination of their parents, then we can make a strong case against forced faith healing as long as we can show that forcing faith healing
on a child meets the republican standard of imposing arbitrary will. Recall Philip Pettit’s definition of arbitrary: ignoring the “welfare and worldview” of the affected person (in this case, the child). If the right to one’s own worldview is central to the conception of freedom, it holds that parents cannot impose their own religious worldview on their child, as doing so would infringe upon the child’s own right to a worldview. A parent cannot, then, force their child to chose faith healing such a practice is not in agreement with the child’s worldview.

Similarly, if the right to welfare is central to freedom, then parents cannot harm their children without violating the child’s freedom. On this point, however, we run into the same problem as we had with Mill’s harm principle: what if the parent and the child both agree that death by faith healing does not constitute a harm? In this case — and this case only, in which parent and child both agree on faith healing — republican theory would seem to fail victim to the same problems as liberal theory. Unlike liberal theory, however, republicanism provides solutions that close the harm loophole.

In instances where a child agrees to undergo faith healing and thus cannot be said to have lost their welfare or worldview, we turn to civic virtue as the primary argument against faith healing. Though most theorists have chosen limited definitions of civic virtue, I argue that the definition of civic virtue ought to be expanded to include parenthood. Parenthood is vital for the advancement of the republic; without the next generation of citizens the republic will soon fail. However, merely having offspring is not sufficient for parents to be considered civically virtuous. Parents must not merely provide the next generation of individuals, they must provide the next generations of citizens. Thus the civic virtue of parents is to be judged not by their ability to produce infants, but rather by their ability to produce civically virtuous adults. Parents
must make a good faith effort to keep their children alive, intact, and engaged in the republic from birth to adulthood, since losing a child is not just a loss for the family but also for the community who has lost a potential new citizen. Further, if a parent failed to make a good faith effort to allow their child to grow up to become a civically virtuous adult, they would have deprived their child of the opportunity to develop their worldview, which would once again infringe upon the child’s right to freedom by non-domination.

Of course, these arguments are unlikely to change the behavior of faith healing religious sects in the United States. Few practitioners of faith healing are likely to value the civic virtue or freedom over their faith if they do not put even the life of their child above it. When faced with the choice between earthly and eternal punishment, faith healing parents tend to be willing to accept earthly punishment because they see themselves as martyrs destined for eternal salvation (Campbell 2010, 4). To effectively prevent deaths by faith based child medical neglect, we must turn to government intervention. Here again, republican theory provides ample framework for the boundaries and restriction on the right of the state to intervene. Republicanism requires the state to ensure its citizens are free — and in doing so, protect them from domination. While the state is prohibited from dominating its citizens itself, intervention in these cases does not meet the standard of domination, as such actions are not arbitrary. Government intervention to save a child from faith based medical neglect certainly accounts for the welfare of the child and protects the child’s right to a worldview independent from those of their parents. Thus Pettit’s standards for arbitrary action are not met and the action is justified.

Conclusion
In a country with a constantly changing political climate and an ever-evolving conception of the role of government, establishing a clear, consistent, and unchanging answer to core questions of child welfare is absolutely vital. Decisions about the role of government in protecting the rights and lives of children must be drawn from the nation’s core theoretical values, not simply lobbied into ever-changing state laws by whatever interest group happens to hold the ear of the President. To ensure the survival of the republic, it is necessary that we safeguard the next generation of citizens by protecting them from domination and ensuring their rights to their worldview, welfare, and freedom are never encroached or threatened by the actions of their parents.
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