

The Constitutionality of Teaching Alternative Forms of Spiritual Practices in Public Schools, including Eastern and New Age Practices

While it would be inappropriate for The Rutherford Institute to provide you with legal advice under these circumstances, the Institute is pleased to provide you with the following information.

Overview

The teaching of religion in public schools remains a controversy which evolves in response to the ever-changing spiritual interests of society. As these interests broaden, they continue to challenge traditional religious thought. In recent years, heightened interests in spirituality have expanded the belief spectrum, introducing modern doctrines such as the New Age movement. The ancient Eastern practices of Yoga and T'ai-chi have experienced a revival, supporting a societal emphasis on stress release and balanced living. Some of these various beliefs and practices have even found their way into the public school system, which has led to the question of whether such instruction violates the First Amendment's prohibition against the establishment of religion.¹

At the outset, when confronted with such a question, a court must decide whether the beliefs or practices being taught constitute a religion or religious activity. A public school, as a governmental entity, can teach *about* religion, but the school cannot promote religion by actually indoctrinating its students. The test introduced by the United States Supreme Court in Lemon v. Kurtzman² remains the most common mechanism employed by courts when evaluating whether a public school has violated the Establishment Clause of the United States Constitution. As discussed below, the Lemon test states that a government practice does not violate the Establishment Clause if it meets three criteria. The following discussion analyzes the religiosity of these various doctrines and their constitutional presence in the public classroom.

What is religion?

A determination of whether the U.S. Constitution prohibits the teaching of New Age concepts and Eastern practices hinges upon whether such beliefs may properly be termed as religious in nature. If these doctrines are defined as religious, then the instruction of their practices in public schools may present an Establishment Clause issue.

Although the original definition of religion as interpreted by the U.S. Supreme Court

required a belief in God,³ a mere affirmation of faith in a supreme being has been held as sufficient for religion status.⁴ The U.S. Court of Appeals for the Third Circuit (covering Delaware, New Jersey and Pennsylvania) affirmed a U.S. district court's recognition of religion in Malnak v. Maharishi Mahesh Yogi⁵ to include philosophies that posit the existence of a supreme being without functioning as a religion in the sense of having clergy and houses of worship.⁶ According to this standard, the Malnak appellate court concluded that Science of Creative Intelligence--Transcendental Meditation (SCI/TM) was, in fact, a religion,⁷ and its teaching in the New Jersey public high schools was unconstitutional.⁸

The application of this theistic formulation to other doctrines and beliefs may prove helpful in discerning whether a certain faith manifests religious qualities. For example, Yoga, a form of meditation rooted in Hinduism and Buddhism,⁹ assumes the existence of God.¹⁰ Individuals practicing Yoga learn to control mental activities and end attachment to material objects through analysis and reflection, thereby attaining spiritual autonomy with Ultimate Reality, or God.¹¹ Tai-chi, a Chinese philosophy closely associated with Taoism,¹² focuses on one's search for the chi, or the eternal source and cause of all reality--the Divine.¹³ Through relaxation-conditioning exercises, one controls the movement of the chi to achieve physical longevity and spiritual power.¹⁴ Therefore, Yoga and Tai-chi may be categorized as religious due to their belief in an ultimate being.

The New Age movement, however, may find difficulty in its classification as a religion, specifically because of its varied beliefs. For example, as author Michael D'Antonio writes in his book Heaven on Earth,¹⁵ the New Age is a very flexible and amorphous, spontaneous movement. . . . A typical believer. . . create[s] his own personal way of thinking about himself and the world around him.¹⁶ No precise doctrine exists, especially in reference to a supreme being; therefore, the New Age appears to be an anything goes philosophy.¹⁷ The categorization of the New Age as a non-religion, however, is a hasty conclusion; this question of fact demands the court's discretion.

In sum, in the application of the theistic standard, the Eastern practices, such as Yoga and Tai-chi, may fall under a religious heading. Depending on the particular New Age philosophy being espoused, however, a court may or may not recognize the New Age as an established faith.

If a certain faith is classified as a religion, is the teaching of that doctrine in the public schools considered a violation of the Establishment Clause?

As stated in the introduction, potential Establishment Clause violations are most commonly evaluated by the three-part test enunciated by the U.S. Supreme Court in Lemon v. Kurtzman.¹⁸ In Lemon, the Court dictated the following analysis:

1. the statute [or action] must have a secular legislative purpose;

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2. the principal or primary effect must be one that neither advances nor inhibits religion; and
3. the statute [or action] must not foster an excessive government entanglement with religion.¹⁹

Therefore, the teaching of the religion in the classroom must satisfy these prongs in order to survive a constitutional challenge; inability to fulfill one criterion causes the entire test to fail.²⁰

The determination of whether the teaching of the religion in the school assumes a secular purpose turns on the intent of such instruction--whether [the] government's actual purpose is to endorse or disapprove of religion.²¹ The Malnak court used the Lemon test in its evaluation of SCI/TM. Although the public school in Malnak argued that the teaching of SCI/TM, a Hindu practice, was implemented in an effort to reduce stress among the students, the court held that governmental entities seeking to effect a secular goal by the propagation of a religious concept violate the Establishment Clause.²² Public schools, therefore, cannot introduce a course or practice closely connected to a religious belief even though they may have a nonsectarian motivation, i.e. teaching relaxation and stress release through Yoga or Tai-chi.

According to the second prong of the Lemon test, the primary effect of teaching religion in the classroom can neither be to advance nor inhibit religion. In our examples of Yoga and Tai-chi, this ideal balance is unattainable. Yoga exercises cannot be presented as merely an exercise, since physical [Y]oga, according to its classical definition, is inherently incapable of being separated from Eastern religious metaphysics.²³ A French scholar in the study of Yoga states that "the sole purpose of the physical practices of . . . Yoga is to suppress physical obstacles on the Spiritual or Royal path of Raja yoga."²⁴ Thus, a public school practicing Yoga, a religious ritual, violates the Establishment Clause because this action advances religion. A similar fate falls on the teaching of Tai-chi in the classroom. The practice of controlling the universe of energy inside the individual is merely a modern combination of the Hindu version of universal energy and the Tao tradition of ch'i.²⁵ This close association with well-established faiths identifies the use of Tai-chi in the classroom as a promotion of religion.

Finally, one must consider any unnecessary commingling between religion and the government if the religion is taught in the public school system. The Malnak court held that the federal and state aid given to the New Jersey public schools to help in the establishment of the SCI/TM programs clearly constitutes an excessive entanglement in religion.²⁶ Similarly, the allotment and use of federal/state funds to the teaching of Yoga and Tai-chi in the public classroom could be construed as an excessive entanglement of church and state

and should be avoided.

Conclusion

A public school must remain cautious when implementing a program in its curriculum which teaches a religion and/or its practices. Although the school may have a benign purpose behind the introduction of these courses, the effect may result in an Establishment Clause violation. The teaching of such exercises as Yoga and Tai-chi in the public classroom would likely fail under the Lemon test of secular purpose, primary effect, and excessive entanglement. One should also approach New Age concepts carefully because although their doctrine is somewhat amorphous, a court's discretion could easily view these beliefs as religious .

If you desire more information, please feel free to contact The Rutherford Institute. Our mailing address is Post Box 7482, Charlottesville, VA 22906-7482. Our telephone number is (804) 978-388

ENDNOTES

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1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. Const. Amend. I.
 2. 403 U.S. 602, 612-13 (1971).
 3. Davis v. Beason, 33 U.S. 333, 342 (1890).
 4. Engel v. Vitale, 370 U.S. 421 (1963).
 5. 592 F.2d 197 (3d Cir. 1979).
 6. Malnak v. Maharishi Mahesh Yogi, 592 F.2d 197 (3d Cir. 1979) (citing the district court decision, 440 F. Supp. 1284 (D.N.J. 1977)). The concurring opinion by Circuit Judge Adams offered a non-theistic formula for discerning the religious status of a particular doctrine. He posed three indicia that are basic to our traditional religions and that are themselves related to the values that undergird the first amendment. @ Id. at 208. Yet, he warned that this model should not be thought of as a final test for religion. @ Id. at 210. Adams stated the following criteria: (1) content of the religion is consistent with the assertion that it is, or is not, a religion; (2) the element of comprehensiveness is present in the belief system of the supposed religion; and (3) the particular faith maintains formal or external signs that may be analogized to accepted religions. Id. at 208-209. Adams concluded that under this standard, SCI/TM was a religion. Id. at 213-14. These three prongs are now the law in the Third Circuit under Africa v. Pennsylvania,

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662 F.2d 1025 (3d Cir. 1981).

7. Id. at 199.
8. Id. at 200.
9. Geddes MacGregor, Dictionary of Religion and Philosophy 672 (1991).
10. 12 The New Encyclopedia Britannica 846 (15th ed. 1992).
11. Sachindra Kumar Majumdar, Introduction to Yoga: Principles and Practices 13 (1964).
12. Sophia Delza, T=ai-Chi Ch=uan: Body and Mind in Harmony vi (1985).
13. Id. at ix.
14. Id. at 1-11.
15. Michael D=Antonio, Heaven on Earth (1992).
16. Id. at 17-18.
17. Alvarado v. City of San Jose, 9 F.3d 1223, 1230 (9th Cir. 1996).
18. Lemon, 403 U.S. at 612-13.
19. Id. (citations omitted).
20. Wallace v. Jaffree, 472 U.S. 38, 56 (1985).
21. Id.
22. Malnak, 440 F. Supp. at 1315, 592 F.2d at 199.
23. David Fetcho, Hatha Yoga: Simple Physical Exercise? (SCP, Inc. 1982).
24. Alain Danielou, Yoga: The Method of Re-Integration 17 (1955).
25. Paul C. Reisser, New Age Medicine 44-45, 54 (1983).
26. Malnak, 440 F. Supp. at 1312.