

**The Rescue of Children from the FLDS Compound in Texas: Why the Arguments
Claiming Due Process Violations and Religious Freedom Infringement Have No Merit
By MARCI HAMILTON**

Recently, Texas authorities entered the Yearning for Zion (YFZ) Ranch, which is one of the Fundamentalist Latter Day Saints (FLDS) compounds, with a warrant based on calls from a person who alleged that she was an underage girl being subjected to physical and sexual abuse, including rape, at the Ranch. Once the authorities entered, though, they discovered pregnant underage girls, girls with more than one child, papers indicating that rampant polygamy was occurring at YFZ, and even a document involving cyanide poisoning. The authorities then intelligently made the decision that they had to remove all of the children from a situation that posed obvious and serious danger to them.

Lawyers for the FLDS members – who reside not only at YFZ but also at compounds located in Arizona, Utah, South Dakota, and Bountiful, British Columbia, Canada -- have been arguing in the press that the entry and removal of the children constituted a "massive" violation of due process. Others have argued that the authorities' actions represent the unfair targeting of one religion.

Each of these arguments is singularly misguided.

The Due Process Argument: Whether or Not the Caller Was Legitimate, the Important Point is the Lack of Any Government Misconduct and the Serious Evidence of Crimes to Children

There are now allegations that the calls to the authorities spurring the raid were placed by a woman who was not within the YFZ compound. Even if proven, however, this claim would not affect the validity of the authorities' actions. Absent clear evidence that the state fabricated the call or misled the judge who granted the initial search warrant, neither of which seems remotely plausible, the entry cannot be faulted on constitutional grounds. Once the authorities were inside, the evidence of criminal behavior was so plainly apparent that further investigation was more than warranted.

No self-respecting child protective agency could have departed from that compound without taking all of the children away as well. The authorities revealed this week that 31 out of the 53 underage YFZ girls have been pregnant and/or are pregnant now. Imminent risk of harm, the legal standard that bound the authorities, was apparent, and indeed, a decision to leave the children in that setting would have opened up the state to liability. The key point here is that children were being abused, and were very likely to be abused in the future, and, worse, this was occurring in an atmosphere where the adults seemed incapable of apprehending the depth of the criminal behavior they were committing.

It is just as though the state had entered a drug den on the basis of reports about one child's abuse, and discovered a bevy of children in a position likely to lead to neglect and

mistreatment. In such a hypothetical, surely no one would contest the appropriateness of removing children from that setting. The religious cloak here does not forestall the proper operation of the child protective authorities.

Despite the large number of children who were taken, what happened in Eldorado is really no different than any other situation where the state investigates alleged abuse, substantiates a risk of harm, and takes action to protect all those children who might be subject to such harm. Arguments that children should not be separated from their mothers simply have no purchase in a circumstance where it is apparent that the mothers are incapable or unwilling to protect their children from sexual or other abuse.

Before criticizing the Texas authorities who have witnessed the operation of the FLDS firsthand, one must stop to think with a clear head about what was going on in this compound. This is a conspiracy of adults to commit systematic child sex abuse, where the men and the women force their girls to be "married" to much older men in order to have their many children, and where they groom their boys to be the next generation of abusers, and then abandon some of their own boys in order to keep the numbers favorable for the abusing men.

A Sect In Deep Denial of Its Crimes Cannot Be Trusted with Its Children

What is most striking here is that not a single adult from the ranch or the sect has been willing to admit to the obvious cycle of severe child sexual abuse. One of the most chilling statements I have ever witnessed – and I have focused specifically upon the arena of organizational child abuse, including within the Catholic Church – was that of the mother who would not answer a reporter's question whether girls were married off to much older men, but rather asserted that whatever happened there happened out of "love."

There is widespread knowledge about the practices of the FLDS, which has been practicing polygamy and child sex abuse for over a century. This organization traces its roots back to the founder of Mormonism, Joseph Smith, who mandated polygamy in the mid-Nineteenth Century. (Importantly, the mainstream Church of Jesus Christ Latter-Day Saints, or Mormon Church, publicly renounced the practice at the end of the Nineteenth Century and again at the start of the Twentieth. Thus, it would be a grave error to confuse FLDS with LDS or Mormonism.)

The recent Utah trial of the FLDS prophet Warren Jeffs documented the practice of elders arranging and encouraging the sexual abuse of underage girls. (Jeffs, as readers may recall, was ultimately apprehended for his brazen Mann Act violations, consisting of transporting girls across state and international boundaries to be delivered to FLDS men, after the FBI finally placed him on its Ten Most Wanted List.) So did the earlier trial of Tom Green in Utah. Moreover, numerous well-documented publications have detailed terrifying and illegal behaviors including Carolyn Jessops' *Escape*, her account of escaping the sect; Andrea Emmitt Moore's account of ten fundamentalist polygamist sects, *God's Brothel*; and Jon Krakauer's *Under the Banner of Heaven* – among others. I wrote about the FLDS

in my book *God vs. the Gavel: Religion and the Rule of Law*, and have been writing columns on the FLDS such as this one for years.

And if the already disseminated knowledge about the FLDS is not enough, we have reports this week alleging an FLDS baby graveyard with 200 graves between the Arizona and Utah compounds. Advocates are telling us that these graves are the result of brutal abuse of young children to obtain their obedience, and likely medical neglect and the genetic deformities that result from generations of inbreeding.

Yet, many have argued there was a violation of due process as though the authorities are required to be intentionally ignorant about the communities within their jurisdiction. FLDS lawyers have been floating to the press and public the bizarre notion that authorities were required to enter the compound with a mental blank slate, as though they knew absolutely nothing about the FLDS. It is a position that defies common sense. While authorities need probable cause for a particular raid, they do not have to act stupid once they are inside a criminal organization, whether it is a religious group, the mob, or a drug cartel. Indeed, it is law enforcement's obligation to be informed about likely criminal conduct in their jurisdiction. That includes orchestrated child abuse.

Why Texas Authorities Deserve Credit for Good Judgment—and the ACLU for Bad

You have to give the Texas authorities credit for putting the interests of the children first. In contrast, Utah and the FBI have focused on one man at a time, an approach that appears to have done next to nothing to stop the entrenched cycle of abuse within the system. In contrast, the authorities in Arizona, Utah, and South Dakota, where other FLDS compounds are situated, have made it very clear that they would never follow the Texas authorities' lead of taking all of the children away from obvious danger.

Indeed, the Utah Attorney General was actually peeved that Texas would make such a bold move, because it had the capacity to undermine his increasingly friendly relations with the FLDS in Utah, while the Arizona Attorney General sent out a general press release essentially telling the citizens of Arizona not to expect any dramatic rescue of children obviously at high risk of abuse, because Arizona law just does not permit it. The latter has yet to explain precisely why he believes children at imminent risk of harm cannot be brought to safety in that state (and if he believes that is the law, surely he should call for a change in it!). In South Dakota, the authorities say they are awaiting some triggering event that will permit them to check on the girls and women.

It really is remarkable – American law enforcement routinely infiltrates criminal organizations where the issues are drugs and money, but when the issue is widespread child abuse, they "have to" sit on their hands until somehow, some way one of those on the inside of a cult invites them inside. If any court finds that the rescue of the FLDS children -- in light of the evidence gathered on the basis of a good faith warrant during the raid and the evidence now piling up -- is a due process violation, then it will be a giant step backward for the civil rights of children everywhere. Let's hope we won't see that erroneous ruling ever made.

Predictably, the ACLU has chosen to take the side in opposition to the children, publicly wringing its hands over the process as it applies to the adults. It is one of the most underexamined phenomena in the American civil rights movement that the organization that has considered itself such a champion of individual rights has had such a consistently insensitive attitude toward the bodily suffering of children. We are in the midst of a civil rights movement for children, yet the ACLU is woefully lagging behind.

Free Exercise: An Even Weaker Argument than Due Process, For Belief Is No Defense to Crime

The even weaker argument circulating, once again encouraged by the FLDS lawyers, is that the rescue somehow violated the FLDS's right to the freedom of religion. There are two underlying theories, neither of which has much traction – for good reason, because both should be quickly dismissed as totally unconvincing.

First, the FLDS argue that they have been "targeted" in violation of the First Amendment. The argument takes a First Amendment concept and grossly misapplies it. While it is true that the government cannot choose a particular religion to be treated differently from other religious (or similarly-situated secular) organizations, the government is not prohibited from stopping criminal conduct even if the only ones engaging in the behavior are religious or if the conduct is restricted to the property of a religious organization. In short, a government may not discriminate against a group, but the Constitution does not force authorities to willfully close their eyes to criminal conduct.

This raid was about child abuse, and as I explain above, it is not really any different than authorities entering a drug den or a private home where there are credible accounts of abuse. The child protective services universe is sufficiently stable by now that whoever is sexually abusing a child can be made to stop. It is the best interest of the child that determines government action. That is obviously what is happening in this case, and the attempts to misleadingly shift the focus to the religious identity of the perpetrators is not justified by either law or basic decency. There is simply no religious defense to criminal behavior. That this behavior was so heinous makes using the cover of religion for it all the more appalling.

Second, the FLDS argue that the government simply cannot interfere with a religious enclave and that they should have autonomy from the government's interference. This latter theory has been touted by more mainstream religious organizations in recent years, especially those battling clergy abuse, but courts have not had much patience with the notion that autonomy includes within it a right to be free to abuse children. I would hope that the mainstream religious organizations that have been pushing "church autonomy" are having second thoughts as they watch this particular group embrace their vision to justify systemic and systematic child sexual abuse.

Finally, there are those who would argue that the age of sex and marriage is merely "cultural," and, therefore, the government has no business interfering with this sort of religious group. That is one of those arguments that is hopelessly behind the times, as it

treats children as property rather than persons. It was not long ago that they were, in essence, nothing but property. The Texas authorities give one hope that they are moving surely and steadily into the category of persons -- persons who have civil rights that protect their bodily integrity against adults who would use their position of power to take what these children cannot freely give.

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