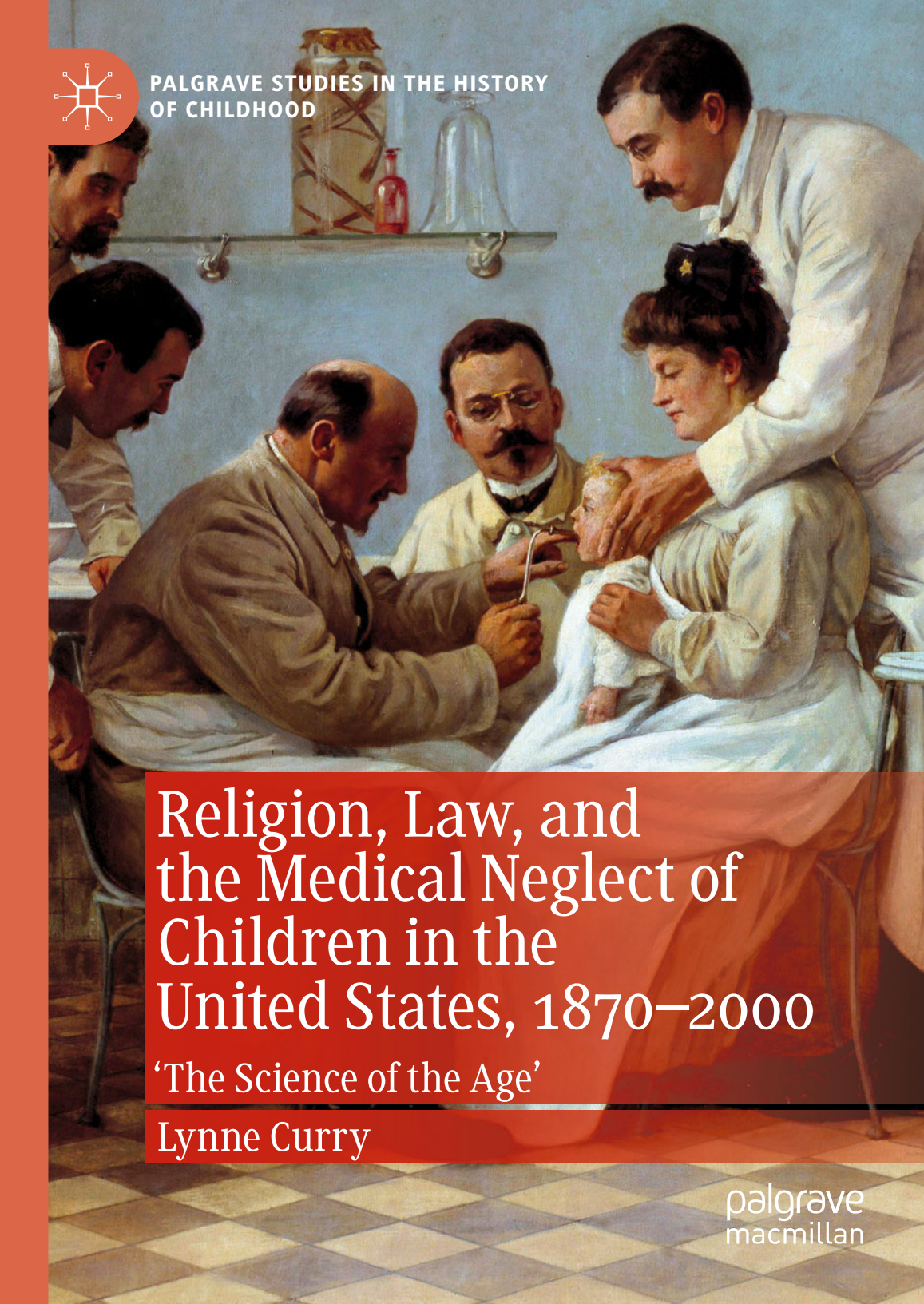




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A historical painting depicting a medical examination of a child in a hospital setting. A woman in a white dress sits in a chair, holding a young child. A doctor in a white coat stands behind her, examining the child's head. Another doctor in a brown coat sits on a stool, using a stethoscope on the child's chest. A third doctor in a white coat stands to the left, observing. The background shows a shelf with medical supplies like a glass jar and a bottle. The floor is checkered.

Religion, Law, and the Medical Neglect of Children in the United States, 1870–2000

‘The Science of the Age’

Lynne Curry

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For Brandon

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CHAPTER 1

Introduction

In the early twentieth century, controversies erupted when the children of parents who rejected scientific medicine as a tenet of their faith died of medically treatable conditions. Criminal trials brought parents' decisions in caring for their little ones under the glare of public scrutiny, and the fraught discourses that surrounded them shifted concerns about children's physical welfare beyond the walls of the private household. Throughout the remainder of the century, medical neglect cases rendered the bodies of children into sites of contention as broader medical and legal developments converged, and indeed collided, to produce these periodic controversies. This book examines religious-based medical neglect as a historical phenomenon that reflects changing social constructions of childhood in the United States.

By the last decades of the nineteenth century, an evolving understanding of children as distinct beings with particularized needs for physical care had begun to inform a broad spectrum of thinking well beyond the medical school lecture hall. The specialty of pediatrics emerged in the 1880s and evolved over the following decades in tandem with a vigorous child welfare movement that brought unprecedented public attention to matters concerning children's physical well-being. As medical historians Alexandra Minna Stern and Howard Markel have noted, campaigns to improve children's health rendered infant and childhood mortality rates into gauges

by which to measure the nation's social progress. The new laboratory sciences, particularly bacteriology, revolutionized the theory and practice of public health and held out the promise that a range of deadly childhood diseases could be conquered if responsible adults became informed about, and assiduously followed, the precepts of scientific medicine. Advocates of the "new public health" urged modifications in children's immediate environments while physicians urged parents, particularly mothers, to monitor their children's bodies closely, remaining alert to any signs indicating possible dangers and seeking out the services of trained and licensed medical practitioners should a child's illness require professional intervention. Among the most dramatic developments of the era was the identification of *Corynebacterium diphtheriae* as the cause of diphtheria in 1884 by bacteriologists Edwin Klebs and Friedrich Löffler, followed by the discovery of diphtheria antitoxin by Emil von Behring in 1901. These breakthroughs occurring in German laboratories came at a time when diphtheria was a leading cause of death for American children under the age of fourteen. Historian Evelyn Maxine Hammonds has argued that the success of early twentieth-century campaigns to control the childhood scourge of diphtheria marked a critical moment in securing broader social authority for practitioners of scientific medicine in the United States. Not surprisingly, then, some of the earliest religious-based medical neglect controversies involved parents' refusal to secure diphtheria antitoxin for their children who were infected with the disease.¹

An increasingly medicalized view of children's welfare also found its way into American law, as courts and legislatures re-examined adults' duties in light of changing understandings of children's needs for physical care. Legal scholar David S. Tanenhaus has argued that the decades following the Civil War saw courts and lawmakers struggling to balance a notion of children as autonomous actors endowed with rights of their own with their status as vulnerable and dependent beings whose very survival depended upon the protection of the state. Long-established legal doctrines had obligated adults to provide the life-sustaining necessities of food, clothing, and shelter to the children living under their care. A fourth category of necessity was "physic," a general and rather vague reference to the treatment of illness and injury. Throughout much of the nineteenth century parents had enjoyed an array of choices in meeting this obligation, as a variety of medical sects flourished and folk healing wisdom, supplemented with instructions from popular domestic advice manuals, informed adults' decisions in caring for children's health. In the century's last decades, however, the

term “medical attendance” began to replace the archaic “physic” in both statutory language and legal discourse, and courts began to hold adults to more exacting standards in providing for children’s physical care. At the same time, states were raising their education and training requirements for licensing the practice of medicine and, in many cases, prohibiting alternative practitioners such as homeopaths, hydropaths, and botanical healers from advertising themselves as medical doctors. Thus by the end of the nineteenth century, the legal requirement to provide medical attendance to a sick or injured child came to mean securing the services of licensed “regular” or mainstream physicians. Failure to provide professional medical attendance for conditions now regarded as treatable became defined as neglect within newly enacted child endangerment statutes. A few states went further, pursuing charges of manslaughter against parents whose children died of preventable causes without receiving medical attention. But, while scientific medicine held out great promise for saving children’s lives, it could offer no hard-and-fast guarantees and, as tragic incidents in which children died due to contaminated smallpox vaccines and diphtheria antitoxin made clear, its use could cause harm as well as healing. Parents who rejected mainstream medicine pointed to the ongoing uncertainties of science in arguing that their choices placed neither their children’s health nor their lives at risk. Christian Scientists in particular insisted that they did not, in fact, neglect their sick and injured children because they employed the services of metaphysical healers who were trained and certified by their church. Given the ambiguities of scientific medicine, courts struggled to establish bright-line standards for determining adults’ legal obligations in providing medical care to children.²

Despite the optimism that medical advances inspired, many Americans remained wary of treading too far on the prerogatives that parents had traditionally enjoyed to raise their children as they saw fit. The emergence and rapid growth of new healing religions in the last half of the nineteenth century reflected an underlying uneasiness toward the growing presence of science in American life. Historian T. J. Jackson Lears has argued that antimodernist movements in this period represented a reaction against the rapid acceleration of industrial and urban growth that followed the Civil War. In the 1870s the influential Chicago-based evangelist Dwight L. Moody preached that the precepts of modern science, especially Darwinism’s depiction of evolutionary change as the result of indiscriminate natural selection rather than the guiding hand of a loving God, alienated traditional communities and debased the values of modern life. Biographer

Stephen Gottschalk posited that the founder of Christian Science, Mary Baker Eddy, envisioned the church she established in 1879 as the vanguard of a counter-revolution against the “scientific materialism” that had begun to permeate American society. For Eddy, the belief that human beings were both physical and mortal had been reversed by the resurrection of Jesus, an eternal and unchanging truth that had been revealed in scripture but subsequently forgotten by Christians through the ages. The metaphysical healing system upon which Christian Science was founded sought to demonstrate that physical illness, and even death itself, was merely illusory. Stories of successful cures, widely circulated in the *Christian Science Journal*, enabled Eddy’s church to become the fastest-growing of the new healing religions, attracting adherents throughout the United States. John Alexander Dowie, who in 1896 diverged from the divine healing movement to establish the Christian Catholic Church in Chicago, declared nothing less than a “holy war” against physicians in that city insisting that, while God alone possessed the power to heal the sick and injured, he had been blessed with the gift of channeling that power through the medium of his own hands. Dowie’s publication *Leaves of Healing* prominently featured stories of miraculous cures, many involving children, attracting worried parents of sick and injured children well beyond the city of Chicago to the divine healer’s activities. Many of those who were drawn to the new healing religions objected to scientific medicine’s privileging of physical over spiritual concerns in child-rearing and worried that the growing social influence of medical doctors undermined parental authority in the home. They also pushed back against the incursion of the state into family matters traditionally circumscribed within the private household. Supporters of spiritual healing insisted that parents’ choice to reject scientific medicine as a tenet of their faith represented the free exercise of religion and thus it must enjoy legal protection as a right delineated in the First Amendment to the United States Constitution.³

Many faiths, of course, regard science and prayer as complementary, rather than competing, contributors to the healing process. The theme of healing, as Amanda Porterfield has pointed out, is integrally threaded throughout ritual practices and theological precepts that are central to Christianity. In the nineteenth century a number of medical sects, including homeopathy, osteopathy and the variety of practices known as “magnetic” healing, had distinctly metaphysical dimensions that attributed health and illness to obscure forces operating beyond the limits of the physical world. Seventh-day Adventist founder Ellen G. White worked closely with John

Harvey Kellogg, a physician and health reformer who headed the highly regarded Battle Creek Sanitarium, and periodically revised her church's doctrines to comport with new understandings of bodily health and illness that emerged from mainstream medical science. Historian Heather D. Curtis has shown that participants in the mid-nineteenth century's divine healing movement regularly debated the question of which bodily conditions counted as sickness and differed over when the resort to medical remedies was acceptable to the faith. Two of spiritual healing's most influential leaders, however, urged their followers to make an unequivocal choice between scientific medicine and spiritual healing. Both Mary Baker Eddy and John Alexander Dowie employed aggressive rhetoric that framed the choice between spiritual and secular healing in stark and belligerent terms, creating a profound dilemma for devout parents whose children became ill or injured. Many sincere believers endured intense physical pain themselves, or allowed their children to suffer, as a sign of their steadfast commitment to these leaders' teachings.

A historical examination of religious-based medical neglect controversies reveals a more complex narrative than a reductive "science versus religion" model might suggest. Some of the new healing churches' most vociferous critics were in fact mainline Protestant clergy who warned their congregations against radical faith healing practices that eschewed all forms of medical attendance, especially when those being denied care were children too young or too ill to seek help of their own accord. Nor did proponents of religious healing always present a united front against their secular detractors. Dowie regularly denounced Christian Science as "mere mesmerism," while Eddy herself took to the courts to protect her proprietary interests from competitors whom she believed had appropriated and distorted her healing system. Both Dowie and Eddy, in fact, maintained a complex relationship with scientific medicine, adopting the title of doctor for themselves at various times in their careers even as they denounced mainstream or "regular" physicians. While he was a divinity student and hospital chaplain at the University of Edinburgh, Dowie had been exposed to instruction at the premier center of western medical education, and he drew upon that experience both to assert his own status as the social equal of licensed physicians in the United States and to denounce the depraved and barbaric practices he claimed to have witnessed in Edinburgh's anatomy laboratories. In 1881 Eddy founded the Massachusetts Metaphysical College in Boston as a state-chartered institution to train and credential practitioners of her own distinctive healing system. Eddy listed herself as a Professor of Obstetrics

in the college's literature as well as in some early editions of her church's foundational text, *Science and Health with Key to the Scriptures*. Despite their attacks on the inefficacies and falsehoods of mainstream medicine both leaders frequently drew upon physicians' emerging social authority to provide scientific verification that bodily healing had taken place by spiritual means, authentications that regularly appeared in official publications and broadcast their churches' success stories well beyond their respective headquarters. Finally, despite their confrontational rhetoric Dowie and Eddy each made compromises with scientific medicine and its practitioners when exigent legal and personal circumstances moved them to do so.⁴

Mainstream medicine's response to practitioners of alternative forms of health care was frequently hostile, particularly as the American Medical Association moved to consolidate regular physicians' dominance over their competitors in the medical marketplace. Nevertheless, the late nineteenth-century's surge of interest in spiritual healing in the United States resists easy characterization solely as a populist revolt against professional elites and medical monopolies. Historian Michael C. Willrich has traced the complex social and intellectual origins of a robust movement that arose in reaction to compulsory vaccination measures imposed by health authorities in a number of states when smallpox epidemics hit major cities. While followers of spiritual healers were often denounced as ignorant and gullible rubes in big city newspapers and professional medical journals, many of those attracted to the new healing churches were in fact educated, lived in urban areas, and fell along a spectrum of socioeconomic classes. Founded in New England the First Church of Christ, Scientist shared a direct cultural heritage with the secular intellectual movement known as New Thought, a background clearly reflected in the membership of Eddy's church, which included a large proportion of white, middle-class, and professional congregants, a significant proportion of whom were female. On the other hand, it was often ordinary Americans rather than over-zealous public health officials or politically powerful doctors who sought help from police, legislators, and courts when they feared people were suffering needlessly without mainstream medical attendance, particularly when the untreated victims were vulnerable women and children. Neighbors complained to local health authorities when contagious disease cases went unreported and alerted coroners' offices when suspect deaths occurred under faith healers' care.⁵

As the twentieth century progressed, and the early promise of bacteriology began to be fulfilled through a number of preventive and therapeutic innovations, the clear benefits of scientific medicine to children's physical

welfare could be more clearly discerned. After World War II physicians, particularly pediatricians, became dominant cultural voices in child-rearing, reaching millions of American households through the expert advice they proffered in popular books, mass circulation magazines, radio broadcasts, and television programs. In the 1960s, pediatricians took a leading public role in renewing the national discourse surrounding child abuse and neglect, arguing that their special medical expertise placed them in a unique position to diagnose cases of adult violence perpetrated against children and pressing for new laws requiring medical professionals to report suspected cases to child protective authorities. Fearing that an increasingly medicalized view of children's welfare weakened societal support for religious healing, supporters turned their attention to securing special exemptions for their practices within states' child abuse and neglect laws. By the mid-twentieth century, Christian Scientists already had been successful in gaining religious exceptions within a range of statutes pertaining to public health regulations and the licensing of medical practitioners. Church officials now took a leading role in lobbying for the insertion of statutory language to clarify that parents' choices to rely exclusively on religious healing would not be defined as child endangerment. The trend reached the federal level when religious exemptions found their way into administrative rules pertaining to the Child Abuse and Prevention Treatment Act of 1974 and the Parental Rights and Responsibilities Act passed by Congress in 1995. Opponents of religious exemptions argued that legal protections for adults who eschewed scientific medical care were responsible for the tragically unnecessary deaths of children from preventable causes. Today, while the nature and scope of laws vary across the United States, all but six states allow some form of religious exemption to the legal duty to provide medical attendance to a sick or injured child. The topic recently has gained a renewed sense of urgency as outbreaks of childhood diseases such as pertussis and measles, widely regarded as relics of a benighted past, have once again caught the public's attention and prompted physicians such as Paul A. Offit to call for the repeal of religious exemptions for mandatory childhood immunizations.⁶

Numerous legal scholars have explored pressing questions about children's right to equal protection under the law that are raised by the persistence of religious exemptions in child abuse and neglect laws, a status quo that distinguishes the United States from most other countries today. Martha Albertson Fineman reminds us that, historically, Americans' understandings of the family have been shaped by particular religious doctrines

that defined a “natural” family unit and linked individuals’ legal rights and responsibilities to membership within that unit. This deep-seated historical foundation is reflected in Americans’ present-day unwillingness to embrace the human rights orientation of the United Nations’ Convention on the Rights of the Child, an international treaty the United States has not ratified. Barbara Bennett Woodhouse has traced the historical antecedents of ongoing theoretical tensions between acknowledging children’s rights that are “needs-based,” such as having adequate food and clothing, and accepting those that are “capacity-based,” such as the right to due process in legal proceedings. By contrast, scholars have been less engaged in exploring the emergence and evolution of the concept of medical neglect as a reflection of broader historical developments occurring in the nineteenth and twentieth centuries. Rennie B. Schoepflin, Shawn Francis Peters, and Alan Rogers have made important and insightful contributions to our understanding by placing highly contested, and disturbing, religious-based medical neglect cases under the historian’s analytical lens.⁷

My aim is to shift the focus of this inquiry so that the history of childhood appears at the center of the historical picture. In her pathbreaking study of lawsuits involving the accidental deaths of children at the turn of the twentieth century, sociologist Vivian A. Zelizer uncovered a profound societal shift as children came to be regarded as economically “useless” but emotionally “priceless” to their parents. Similarly, historians examining the period 1870–1930 have traced the manifestation of changing societal attitudes concerning children’s physical welfare in the appearance of legal battles to combat industrial, domestic, and sexual violence against children. Nevertheless, as Linda Gordon’s work has made clear, many historical efforts at “rescuing” children perceived to be at physical peril did not meet with unqualified success, particularly when they were framed as contests between the interests of children and their parents. While deaths due to religious-based medical neglect have occurred very rarely in the United States, I argue that the first legal prosecutions of parents, and the controversies that surrounded them, signaled an epistemic shift in Americans’ thinking about children as discrete biological beings with specialized needs for physical care. Supported by a broad child welfare movement that asserted the physical well-being of children as a matter of national interest, medical neglect cases both reflected, and contributed to, a major re-examination of adults’ responsibility in ensuring that children’s medical needs were met and prompted reconsiderations of the role of the state in enforcing that duty. As this history also demonstrates, however, a truly

progressive vision of medical care as a right belonging to all children was neither universally shared nor long sustained.⁸

Chapter 2, *The Physical Child*, traces changing conceptualizations of children in scientific medicine over the course of the nineteenth century and the widespread dissemination of these ideas in popular domestic advice literature aimed at parents, particularly mothers. Physicians urged parents to scrutinize their children's bodies closely looking for signs and symptoms of possible danger and advised them about when, exactly, their children's care required the professional services of practitioners trained in scientific medicine. The emergence of pediatrics as a medical specialty secured a central place for physicians as experts in child-rearing. Chapter 3, *The Public Child*, examines the role of child welfare advocates in rendering children's physical well-being into matters requiring urgent societal attention. While early in the century reformers framed child welfare in terms of moral order and social stability, by century's end a new generation of advocates focused on the imperative of meeting children's physical needs and redefining child abuse and neglect in medicalized terms. Chapter 4, *The Metaphysical Child*, explores the healing paradigm that Mary Baker Eddy first laid out in her 1875 text, *Science and Health with Key to the Scriptures*, the foundation of the healing system that was central to the church she founded four years later in Lynn, Massachusetts. Eddy's denial of the reality of human sickness and her views concerning the immateriality of children's bodies stood in sharp contrast with contemporary trends that placed unprecedented importance on children's physical care, a disjuncture that soon led to conflicts between practitioners of spiritual and scientific healing and raised profound dilemmas for parents of sick and injured children.

Chapter 5, *The Infected Child*, highlights the pivotal role played by bacteriology in revolutionizing the theory and practice of scientific medicine, including the new field of pediatrics. Children were often regarded as the special beneficiaries of the new laboratory sciences, a promise that resonated with particular force after 1892 when diphtheria antitoxin came into use in the United States. Early enthusiasm for antitoxin's production and use, however, led to further conflict as public health leaders allied with physicians in private practice clashed with parents who rejected medical treatments for their children as a commitment to their religious faith. Chapter 6 focuses on the divine healer John Alexander Dowie whose noisy crusade against medical science in Chicago embroiled him in a series of clashes with local health authorities that brought attention to his movement far beyond that city. His followers faced both criminal charges and public

opprobrium when they refused to seek medical care for family members, including infants and children. Chapter 7 traces the evolution of religious-based medical neglect in the courts, beginning in 1901 when an adherent of Dowie in Westchester County, New York became the first parent in the United States to be successfully prosecuted for manslaughter following the death of his daughter from bronchial pneumonia. The mixed outcomes of early twentieth-century criminal trials reflected Americans' ambivalence about the unwelcome incursion of the state into parental authority and prompted a backlash from those who insisted that such decisions constituted matters of personal and religious liberty.

Chapter 8 follows the narrative through the remainder of the twentieth century as the ascendancy of scientific medical practices, including successful campaigns to eradicate deadly childhood diseases such as diphtheria and polio, weakened a long-standing claim that spiritual and scientific healing represented equivalent treatments and therefore parents who relied on the former exclusively could not be held criminally responsible when their children died. Supporters of the rights of parents to reject scientific medicine therefore relied more heavily on the inclusion of special exemptions for religious healing within states' child abuse and neglect laws. In 1879, in *Reynolds v. U. S.*, the Supreme Court had delineated a line between belief and practice in determining the scope of constitutional protections for religious liberty. By the mid-twentieth century, however, the court had begun to broaden that scope, blurring the previous distinction between belief and practice and affording more protections for parents' religion-based choices in raising their children. After World War II pediatricians solidified their authority as experts in child-rearing, but they did so largely as private practitioners working in the absence of a broader movement dedicated to the proposition that children's health care represented a matter of shared national interest. Although medical advances continued to improve children's life chances and offered demonstrable means to assuage their physical suffering, fundamental questions about whether all children enjoy a right to benefit from the science of the age remained unresolved at the end of the twentieth century, and indeed lingered well into the twenty-first.

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CHAPTER 2

The Physical Child

Who indeed does not perceive... that the maladies of infants and children form a class, in some measure apart from those of the adult; that they have their peculiar language; run often a very different course; and require for their cure a particular mode of treatment?

In 1844, the prominent Philadelphia physician David Francis Condie published the first edition of his influential work, *A Practical Treatise on the Diseases of Children*. In the text's introduction Condie stated his intention to provide "a simple statement of pathological facts, and plain therapeutic directions"—information that would relay to his readers his own professional "observations and experience acquired during a long and somewhat extensive practice." Although writing for an audience of American physicians, Condie consciously avoided abstract discourses on esoteric medical theories. Instead, he promoted the practice of directly observing children's physical states, offered recommendations for the daily feeding and hygiene of infants, and described pragmatic modes of treating childhood ailments. Condie's learned medical treatise therefore exhibited features more closely associated with the popular domestic advice manuals that proliferated in his time, contributing to what historian Carolyn Steedman has called a "veritable explosion of information" concerning the physiological development of children, their unique diseases, and their specific therapeutic needs. Since