

The Good Moral Character of California Administrative Agencies— A Study of the Good Moral Character Requirement*

“One should respect public opinion insofar as is necessary to avoid starvation and to keep out of prison, but anything that goes beyond this is voluntary submission to an unnecessary tyranny, and is likely to interfere with happiness in all kinds of ways.”¹

Bertrand Russell

I. INTRODUCTION

In any society there exists a fundamental tension between the rights of the individual and the rights of that society. At one extreme, the individual desires complete autonomy and freedom of action. On the other hand, society as a whole requires restrictions and regulations in order to function.

This duality is interwoven into the basic fabric of our culture. It is only through a balancing and weighing process that these

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¹B. RUSSEL, *THE CONQUEST OF HAPPINESS* 136 (1930).

divergent interests reach a tenable middle ground. It is in the valley of this middle ground that society guarantees to all the optimal benefits and to each of the maximum freedoms.

One of the controls exercised by society is the licensing process, by which administrative agencies regulate the quality and kind of services offered to the public. In order to protect that public, these agencies strictly control who may or may not practice a given profession.²

The power to withhold from an individual, the right to earn a livelihood, or to work in the vocation of his choice is awesome. It can be devastating to the very roots of our Constitutional guarantees of the right to life, liberty and property. It is the kind of omnipotence that I attach to a Dostoyevski or Kafka novel, and not to this time or this place. Yet this control over one's life does exist today in this country.

Moreover, these restrictions on freedom of choice can be made on the basis of whether or not the individual is concerned to be "morally fit" to practice a profession.

This article will show why our Constitution countenances such intrusions into individual liberty, what protections restrain this administrative interference with individual freedoms and what alterations are needed in the application of the judicial curatives.

II. POWER OF GOVERNMENT

The power to promote the general welfare is inherent in government. An exercise of that power is the regulation of professional and trade services offered to the public through licensure. By refusing or revoking a license, the government can effectively control who will ply what trades and the quality of the services rendered. Proper implimentation of this control device can protect the public from charletans and cheats, from the untrained and the unqualified.

In protecting the public interest the government has the power to restrict the privilege to engage in a business,³ and to condition

²In this article the terms occupation, profession, trade, vocation, job and licensee are to a large degree interchangeable. This is due to the diverse occupation agency coverage and the basic premise that the elementary tools used to determine good moral character are of general applicability.

³Sales of stock or grain on margin: *Booth v. Illinois*, 184 U.S. 425 (1902); *Broadnax v. Missouri*, 219 U.S. 285 (1911); *Otis v. Parker*, 187 U.S. 606 (1903); the conduct of pool and billiard rooms by aliens: *State of Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392 (1927); the conduct of billiard and pool rooms by anyone: *Mur-*

the right to conduct a business or to pursue a chosen profession.⁴ While a state can require high standards of qualification before it allows a person to practice any occupation, it cannot exclude a person in a manner or for reasons that contravene the due process or equal protection clause.⁵ The state has a right to require good moral character before it permits an applicant to the practice of any occupation. But, in order not to offend the Fourteenth Amendment, any qualifications which are required must have a rational connection with the applicant's fitness or capacity to practice that occupation.⁶

A. INDIVIDUAL RIGHTS AND THE RESTRAINTS ON THE POWER OF GOVERNMENT.

In order to protect the public, the government has the power to set standards for licensing. Unfortunately the exercise of this power will often conflict with the individual's freedom of action.⁷

No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizens

phy v. California, 225 U.S. 623 (1912); the sale of liquor: *Mugler v. Kansas*, 123 U.S. 623 (1887); the business of soliciting claims by one not an attorney: *McCloskey v. Tobin*, 252 U.S. 107 (1920); manufacture or sale of oleomargarine: *Powell v. Pennsylvania*, 127 U.S. 678 (1888); hawking and peddling of drugs or medicines: *Baccus v. Louisiana*, 232 U.S. 334 (1914); forbidding any other than a corporation to engage in the business of receiving deposits: *Dillingham v. McLaughlin*, 264 U.S. 370 (1924); or any other than corporations to do a banking business: *Shallenberger v. First State Bank*, 219 U.S. 114 (1911).

⁴Physicians: *Dent v. West Virginia*, 120 U.S. 114 (1889); *Watson v. Maryland*, 218 U.S. 173 (1910); *Hayman v. Galveston*, 273 U.S. 414 (1927); Dentists: *Douglas v. Noble*, 261 U.S. 165 (1923); *Graves v. Minnesota*, 272 U.S. 425 (1926); employment agencies: *Brazee v. Michigan*, 241 U.S. 340 (1916); public weighers of grain: *Merchants' Exchange v. Missouri*, 248 U.S. 365 (1919); real estate brokers: *Bratton v. Chandler*, 260 U.S. 110 (1922); insurance agents: *La Tourette v. McMaster*, 248 U.S. 465 (1919); insurance companies: *German Alliance Insurance Co. v. Lewis*, 233 U.S. 389 (1914); the sale of cigarettes: *Gundling v. Chicago*, 177 U.S. 183 (1900); the sale of spectacles: *Roschen v. Ward*, 279 U.S. 337 (1929); private detectives: *Lehon v. City of Atlanta*, 242 U.S. 53 (1916); grain brokers: *Board of Trade of City of Chicago v. Olsen*, 262 U.S. 1 (1923); business of renting automobiles to be used by the renter upon the public streets: *Hodge Drive-it-Yourself Co. v. Cincinnati*, 284 U.S. 335 (1932).

⁵*Schware v. Board of Bar Examiners*, 353 U.S. 232, 238 (1957) (hereinafter cited as *Schware*).

⁶*Id.* at 239.

⁷*Nebbia v. People of State of New York*, 291 U.S. 502, 524 (1934).

which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need. ⁸

The Constitutional requirements which must be met in order to curtail the private rights are embodied in the Fifth and Fourteenth Amendments. "And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."⁹

In *Norton v. Macy*¹⁰ a civil service employee was discharged for alleged immoral conduct. The court conceded that the Civil Service Commission enjoys a wide discretion in determining justification for removal of government employees. This decision, reversing the Commission's discharge said that the Commission's discretion is not unlimited. "The Government's obligation to accord due process sets at least minimal substantive limits on its prerogative to dismiss its employees."¹¹

B. RIGHTS INVOLVED.

The rights involved are basic to the entire theme of our Constitutional form of government. We are not just talking about whether Terrance "Kayo" Hallinan has the right to punch his way from adolescence to the State Bar,¹² nor is the inquiry whether Marc Morrison has the right to retain his teaching credential after engaging in a homosexual relationship.¹³ What is being questioned is the application of the due process and equal protection clauses to the fundamental rights of life, liberty and property in the context of occupational licensing. What is also being dealt with are the rights of freedom of expression,¹⁴ freedom of association,¹⁵ the right to privacy¹⁶ and that seldom-

⁸*Id.* at 525.

⁹*Id.*

¹⁰*Norton v. Macy*, 417 F.2d 1161 (D.C. Cir. 1969).

¹¹*Id.* at 1164.

¹²*Hallinan v. Committee of Bar Examiners*, 65 Cal. 2d 447, 421 P.2d 76, 55 Cal. Rptr. 228 (1966) (hereinafter cited as *Hallinan*).

¹³*Morrison v. State Board of Education*, 1 Cal. 3d 214, 461 P.2d 375, 82 Cal. Rptr. 175 (1969) (hereinafter cited as *Morrison*).

¹⁴*Owen v. Board of Education*, 206 Cal. App. 2d 147, 23 Cal. Rptr. 710 (1962).

¹⁵*Konigsberg v. State Bar*, 353 U.S. 252 (1956).

¹⁶*Griswold v. Connecticut*, 381 U.S. 479 (1965).

talked about freedom to live your life as you please.¹⁷

Each citizen in a free society should be able to go about his day to day life and interpersonal relationship without unnecessary governmental interference.

Each individual has a right to exercise all of his freedoms without fear of expulsion from his profession, without fear of denial of admission to practice any occupation of his choice, and only limited by reasonable restrictions, directly related to his ability to perform in the vocation of his choice.¹⁸ "The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection."¹⁹ The protection afforded these rights are constitutional limitations and judicial review.²⁰

By carefully scrutinizing administrative decisions which substantially affect vested, fundamental rights, the courts of California have undertaken to protect such rights, and particularly the right to practice one's trade or profession, from untoward intrusions by the massive apparatus of government.²¹

III. JUDICIAL EFFORTS TO BALANCE THE COMPETING INTERESTS

The center pillar from which all else emanates is the purpose and roll of the administrative agency in the disciplinary context. That sole purpose is to protect the public and *not* to punish the individual.²² Punishment in our society is a judicial function to

¹⁷Mindel v. U.S. Civil Service Commission, 312 F. Supp. 485, 488 (N.D. Cal. 1970); McConnell v. Anderson, 316 F. Supp. 809, 814 (D. Minn. 1970).

¹⁸Nebbia v. People of State of New York, 291 U.S. 502, 537 (1934).

¹⁹Yakov v. Board of Medical Examiners, 68 Cal. 2d 67, 435 P.2d 553, 64 Cal. Rptr. 785, 791 (1968).

²⁰Neisser and Shattuck, *Admission to the Bar Following Conviction for Refusal of Induction*, 78 YALE L.J. 1352 (1968) (hereinafter cited as 78 YALE L.J.).

The constitutional limitations on a character requirement for bar admission have now been established: Any requirement must be rationally related to fitness to practice law. Fitness consists solely of the absence of traits that might endanger clients or the judicial system. *Id.* at 1367.

²¹Bixby v. Pierno, 4 Cal. 3d 130, 143, 481 P.2d 242, 251, 93 Cal. Rptr. 234, 243 (1971).

²²In the final analysis the purpose of any disbarment proceeding is not to punish the attorney—but is to afford protection to the public and to the profession.

In Re Rothrock, 16 Cal. 2d 449, 454, 106 P.2d 907, 910 (1940).

But criminal prosecution, not exclusion from the bar, is the appropriate means of punishing such offenders. The purposes of investigation by the bar into an applicants moral character should be limited to assurance that, if admitted, he will not obstruct the administration of

be meaded out by the appropriate courts of law. It is contrary to prevalent notions of justice that a man should lose his right to earn a livelihood solely on the basis of conduct unrelated to his ability or fitness to perform his profession, whether that conduct is criminal²³ or private.²⁴

Regardless of how disreputable an individual's conduct may be, there are legitimate and illegitimate societal responses. An illegitimate response would be to prohibit the individual from practicing his profession when the conduct involved had no relation to his ability to faithfully perform the duties of that profession.

If the character of an individual does not reasonably indicate an unfitness to ply his trade, then to preclude him from practicing his profession is an unreasonable deprivation of liberty and property and therefore in contravention of the due process clause.²⁵

A. MITIGATION

When a member of a profession conducts himself in such a manner as to be injurious to the public interest because of his position, then removal from the profession is the answer.²⁶ However, when the inquiry is whether to admit an applicant into a trade, the only reference tool available is prediction and probability. The hypothesis employed is that based on the applicant's prior conduct, if it can be assumed that he is now and/or will be in the future unfit to practice this profession, then a denial of admission is deemed proper.²⁷

justice or otherwise act unscrupulously in his capacity as an officer of the court.

Hallinan, 65 Cal. 2d at 462, 421 P.2d at 87, 55 Cal. Rptr. at 239.

²³*In Re Rothrock*, 16 Cal. 3d 449, 454, 106 P.2d 907, 910 (1940), stating:

Where the courts have the power to investigate into the nature of the act, the attorney's name will not be stricken from the rolls where the nature of the particular crime does not reflect a bad moral character with respect to the duties of the attorney's profession.

²⁴*Morrison*, 1 Cal. 3d at 224, 461 P.2d at 382, 82 Cal. Rptr. at 182, stating: "The private conduct of a man, who is also a teacher, is a proper concern to those who employ him only to the extent it mars him as a teacher."

²⁵*Morrison*, 1 Cal. 3d 214, 461 P.2d 375, 82 Cal. Rptr. 175.

²⁶*Id.* "It [immoral conduct] must be considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public."

²⁷78 YALE L.J., *supra* note 20, at 1357, stating:

The good moral character requirement can hence be restated as a demand that entering lawyers not possess personality traits which potentially threaten either their prospective clients' interests or the judicial

Mitigation of prior misconduct by way of rehabilitation is acceptable in California.²⁸ The courts look at the type of conduct,²⁹ the motivation,³⁰ the age of the applicant at the time of the conduct³¹ and the moral rehabilitation at the time of application.³² All positive evidence showing the applicant's good moral character, or his rehabilitation in recent years will be accepted and weighed in his favor.³³

process. Of course, the presence of dangerous characteristics can only be determined by an examination of past acts which either singly or in a pattern evidence the existence of such traits. For example, past acts of fraud or embezzlement may indicate a tendency to steal from or cheat others which represents a threat to future clients. Similarly, prior acts of bribery or misrepresentation may evidence an inclination to deceive which could interfere with the proper administration of justice. Thus, the character requirement entails a pair of inferences: the applicants must not have behaved in the past in a manner which would imply the existence of personality traits which in turn would suggest an unacceptable likelihood of future misbehavior affecting adversely the interests of clients or the system of justice.

See Hallinan, 65 Cal. 2d at 451, 521 P.2d at 80, 55 Cal. Rptr. at 232. What seems to be an unpalatable argument, for it is not mentioned, is that the moral requirements for refusal to admission should be very strict since it's only on conjecture that you are curtailing an individual's right to practice a profession. Of course the public must be protected, but that is true in the criminal law also and yet there is no statutory penalty waged on a person for the mere probability of inpropriety, nor for the mere possibility of statutory violation. Query: How valid is it to restrict an individual's right to pursue a chosen profession based only on the "likelihood of future misbehavior."

²⁸ 78 YALE L.J. *supra* note 20 at 1388, stating:

Even where a functional approach to the felonious behavior of a bar applicant creates a presumption of character deficiency sufficient to prevent his admission, the presumption can be overcome in California, unlike many other states, by evidence that the applicant has been rehabilitated since the time he committed his felony. The importance of rehabilitation as a means of eliminating civil disabilities is underscored by the California Penal Code, which provides that convicted persons who have fulfilled the conditions of [their] probation...shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which [they have] convicted.

²⁹ Schwere, 353 U.S. 232 (political beliefs and to avoid religious and political persecution).

³⁰ Yakov, 68 Cal. 2d 67, 435 P.2d 553, 64 Cal. Rptr. 785 (no profit or evil motive).

³¹ Hallinan, 65 Cal. 2d at 471, 421 P.2d at 93, 55 Cal. Rptr. at 245 ("youth and inexperience might be mitigating circumstances").

³² March v. Committee of Bar Examiners, 67 Cal. 2d 718, 453 P.2d 191, 63 Cal. Rptr. 399 (1967) (realization of wrong conduct and regret and changed person).

³³ *Id.* at 731, 433 P.2d at 200, 63 Cal. Rptr. at 408; Feinstein v. State Bar, 39 Cal. 2d 541, 248 P.2d 3 (1952); Hallinan, 65 Cal. 2d at 453, 454, 421 P.2d at 81, 55 Cal. Rptr. at 233, 234.

B. JUDICIAL DEFINITION OF GOOD MORAL CHARACTER

California law applies requirements of good moral character, professional conduct, and lack of moral turpitude to many of its licensing standards. These three phases relating to moral qualifications are basically synonymous. Good moral character has traditionally been defined in California as "an absence of proven conduct or acts which have been historically considered as manifestations of moral turpitude."³⁴ Moral turpitude has been defined as "everything done contrary to justice, honesty, modesty, or good morals."³⁵ California has also defined moral turpitude as "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man."³⁶

The third category, unprofessional conduct, means conduct which violates rules or ethical code of a profession or is unbecoming a member of a profession in good standing.³⁷

The public regulation of moral standards is a difficult task. The magnitude of the problem for an administrative agency in dealing with moral character is a function of the vagueness and overbreadth of the terms. An illustrative example is found in *Norton v. Macy*, where the D.C. Court of Appeals states:

A pronouncement of immorality "tends to discourage careful analysis because it unavoidably connotes a violation of divine, Olympian, or otherwise universal standards of rectitude. However, the Civil Service Commission has neither the expertise nor the requisite anointment to make or enforce absolute moral judgments, and we do not understand that it purports to do so. Its jurisdiction is at least confined to the things which are Caesar's, and its avowed standards of "immorality" is no more than "prevailing mores of our society".³⁸

The term moral turpitude does not have a definite meaning in spite of judicial efforts to clarify it.³⁹ The reason for this un-

³⁴*Konigsberg v. State Bar*, 353 U.S. 252, 263 (1956). See also *Spears v. State Bar*, 211 Cal. 183, 294 P. 697 (1930) and *In Re Wells*, 174 Cal. 467, 163 P. 657 (1917).

³⁵*In Re McAllister*, 14 Cal. 2d 602, 603, 95 P.2d 932, 933 (1939); *In Re Hatch*, 10 Cal. 2d 147, 150, 73 P.2d 885 (1937).

³⁶*In Re Boyd*, 48 Cal. 2d 69, 70, 307 P.2d 625 (1957).

³⁷*Board of Education of City of Los Angeles v. Swan*, 41 Cal. 2d 546, 261 P.2d 261, 266 (1953).

³⁸*Norton v. Macy*, 417 F.2d 1161, 1165 (D.C. Cir. 1969).

³⁹*Bradway, Moral Turpitude as the Criterion of Offenses that Justify Disbarment*, 24 CALIF. L. REV. 9 (1936).

certainty, as stated by the California Supreme Court, is that "Today's morals may be tomorrow's ancient and absurd customs."⁴⁰ "And conversely, conduct socially acceptable today may be anathema tomorrow."⁴¹ Moreover, the question and the problem can be stated another way, "Whose morals shall be enforced?" Today in secular America there may be a plurality of moralities⁴² and the use of these broad general terms forces the administrative agency to be the prophet of the state of the morals of the people or the common conscious.⁴³

If it is difficult for the administrative agency to determine what conduct is encompassed by the various moral character standards, then it is impossible for the individual to know. Consequently, there is no notice of which acts are acceptable and which will result in exclusion from one's profession. A statute which fails to give adequate notice of what conduct constitutes a violation contravenes due process.

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.⁴⁴

To avoid the inherent problems of over-breath, void for vagueness, changing morality, uncertainty, due process, and equal protection, the California Supreme Court has put a judicial gloss on the statutory use of the terms denoting moral standards. "The Board of Education cannot abstractly characterize the conduct in this case as immoral, unprofessional or involving moral turpitude...unless that conduct indicates that the petitioner is unfit to teach."⁴⁵

C. THE RATIONAL CONNECTION TEST.

This judicial gloss, termed the rational connection test, requires that before conduct can be classified as immoral resulting in disciplinary action, the conduct must relate to one's fit-

⁴⁰Morrison, 1 Cal. 3d at 226, 461 P.2d at 383, 384, 82 Cal. Rptr. at 183, 184, quoting from 14 U.C.L.A. L. REV. 581, 587 (1967).

⁴¹Morrison, 1 Cal. 3d at 226, 461 P.2d at 384, 82 Cal. Rptr. at 184.

⁴²*Id.* at 224, 461, P.2d at 382, 82 Cal. Rptr. at 182 n.4.

⁴³Bradway, *Moral Turpitude as the Criterion of Offenses that Justify Disbarment*, 24 CALIF. L. REV. 9, 22 (1936); see Comment, *Private Consensual Adult Behavior: The Requirement of Harm to Others in the Enforcement of Morality*, 14 U.C.L.A. L. REV. 581 (1967).

⁴⁴Connally v. General Construction Co. 269 U.S. 385, 391 (1926).

⁴⁵Morrison, 1 Cal. 3d at 229, 461 P.2d at 386, 82 Cal. Rptr. at 186.

ness to continue in a profession. The requirement of fitness that the California Supreme Court uses stems from *Schware* (supra)⁴⁶ and from the concept that there can only be exclusions which are reasonably calculated to protect the public interest. Therefore, all of the cases today say basically the same thing, that the rational connection test must be applied to determine if the conduct is immoral. The meaning of immoral, unprofessional, and moral turpitude varies with the occupation involved,⁴⁷ and in each case, there must be a rational connection between the conduct of the applicant and his fitness to practice that particular profession or occupation. This rational connection is the litmus test to see if the exclusion of a person from an occupation is compatible with the requirements of due process and equal protection, namely that the government cannot act in an unreasonable, arbitrary or capricious manner.⁴⁸

In a recent *per curiam* decision of the California Supreme Court filed on February 4, 1972, it was stated that "In evaluating conduct, that may or may not involve moral turpitude, we must recognize the purpose for which we have established the "moral turpitude" standard: to ensure that the public, the courts, and the profession are protected against unsuitable legal practitioners."⁴⁹ Due process requires that there must be a rational nexus between this legitimate societal purpose and the individual's conduct.

Stated differently, due process commands that it is unreasonable, arbitrary and capricious to exclude a person from an occupation on moral character grounds, unless there is a rational connection between his character and his fitness to practice that occupation. This is because the only allowable purpose for such

⁴⁶*Schware*, 353 U.S. at 232.

⁴⁷*Morrison*, 1 Cal. 3d at 227, 461 P.2d at 385, 82 Cal. Rptr. at 185.

⁴⁸*Nebbia v. State of New York*, 291 U.S. 502, 524, 525, 537 (1934).

⁴⁹*In Re Richard Alden Higbie* on suspension of license. The decision of the California Supreme Court was filed on February 4, 1972.

In this case the Court held that evasion of the marijuana tax was not necessarily a crime of moral turpitude because conviction under the statute does not require intent to defraud the government, and that possession of marijuana does not evidence unfitness to meet the professional and fiduciary duties of his practice. The Court did suspend Higbie's license based on his disregard of the public interest, that attorney's not use their legal knowledge to counsel and assist clients to violate the law.

exclusion is to protect the society from incapable, unfit or dangerous practitioners.

In order to truly understand this test it is necessary to review some of the major cases and their progeny. This review deals primarily with the State Board of Education, but the test is of general applicability to all administrative agencies⁵⁰ because it is a general test only requiring a rational nexus between the individual's conduct and his fitness to practice a given profession.⁵¹ The variances will be those peculiarities of any particular occupation, but this overview is to see basically how the courts have applied the fitness test. Looking at the way the courts have dealt with the fact patterns illustrates that all is not well with the rational connection text.

IV. STATE BOARD OF EDUCATION

In California the leading case today on the use of the good moral character requirement by the State Board of Education is *Morrison v. State Board of Education*.⁵² In that case Marc Morrison, a male teacher, engaged with a fellow male teacher in a limited noncriminal physical relationship of a homosexual nature in Morrison's apartment on four separate occasions in a one-week period. The Supreme Court held that he was not subject to disciplinary action under the statute⁵³ authorizing revocation of a teacher's life diploma for immoral conduct, unprofessional conduct, and acts involving moral turpitude, in absence of any evidence that Morrison's conduct indicated his unfitness to teach.

The California Supreme Court distinguished the conduct in

⁵⁰See Appendix at end of article.

⁵¹*Morrison*, 1 Cal. 3d at 239, 461 P.2d at 394, 82 Cal. Rptr. at 194.

Terms such as "immoral," "unprofessional," and "moral turpitude" constitute only lingual abstractions until applied to a specific occupation and given content by reference to fitness for the performance of that vocation.

⁵²*Morrison*, 1 Cal. 3d 214, 461 P.2d 375, 82 Cal. Rptr. 175.

⁵³CAL. EDUC. CODE § 13202 (West 1969) states:

The State Board of Education shall revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the Public School System, or for any cause which would have warranted the denial of an application for certification document or the renewal thereof, or for evident unfitness for service, life diplomas, documents, or credentials issued pursuant to this code.

Morrison from that in *Sarac*⁵⁴ and disapproved of the latter case's, "unnecessarily broad language suggesting that all homosexual conduct, even though not shown to relate to fitness to teach, warrants disciplinary action."⁵⁵

The Court of Appeals in *Sarac* held that homosexual behavior is clearly immoral conduct within the meaning of Education Code section 13202, and may constitute unprofessional conduct under the same statute.⁵⁶ "It certainly constitutes evident unfitness for service in the public school system within the meaning of that statute."⁵⁷ The courts reasoning was that homosexual conduct has been contrary and abhorrant to the social mores of the people of California as it has been since antiquity to those of many other peoples. Therefore it is clearly immoral conduct within the meaning of 13202. The court in *Morrison* held that to the extent that *Sarac* conflicts with their opinion, *Sarac* is to be disapproved. This indicates that the terms immoral, etc. must be defined only in the context of fitness. "But it is not immoral conduct considered in the abstract. It is conduct which is hostile to the welfare of the school community."⁵⁸

⁵⁴*Sarac v. State Board of Education*, 249 Cal. App. 2d 58, 57 Cal. Rptr. 69 (1967) (hereinafter referred to as *Sarac*).

The actual conduct in *Morrison* consisted of caressing and manipulation of each others sexual organs. This occurred in the privacy of Morrison's apartment and at no time did the illegal acts of sodomy or oral copulation occur. [Appellant's Opening Brief in the Court of Appeals Second Appellate District State of California cited in the Statement of Facts as Rep. Tr. P.23, lines 7-21 and P. 24 lines 2-8 (Reporters Transcript).]

In *Sarac*, Thomas Sarac, also a teacher "rubbed, touched and fondled the private sexual parts of... a person of the masculine sex." *Sarac* at 60, 57 Cal. Rptr. at 71. In *Sarac* the conduct took place on a public beach rather than a private apartment, but the real difference is not the private-public dichotomy, rather it's the fact that the man that Sarac met turned out to be a police officer. Sarac was not making a public display, but merely picked up the wrong person. "But the clandestine character of petitioner's acts did not render them any less homosexual acts... It would be fatuous to assume that such acts become reprehensible only if committed in public." *Morrison* at 243, 461 P. 2d at 397, 82 Cal. Rptr. at 197 (Sullivan dissent).

⁵⁵*Morrison*, 1 Cal. 3d at 238, 461 P.2d at 393, 82 Cal. Rptr. at 193.

⁵⁶*Sarac*, 239 Cal. App. at 63, 57 Cal. Rptr. at 72. The court cites *Beilan v. Board of Public Education, School District of Philadelphia*, 357 U.S. 399, 406-408 (1957) for the proposition that unprofessional conduct is not limited to classroom misconduct or misconduct with children.

⁵⁷*Sarac*, 249 Cal. App. at 63, 57 Cal. Rptr. at 72.

⁵⁸*Morrison*, 1 Cal. 3d at 224, 461 P.2d at 382, 82 Cal. Rptr. at 182.

The rationale for finding homosexual conduct as constituting unfitness for service in *Sarac* is the same concept that Justice Sullivan, applies in his dissent to *Morrison*. That is that the California Education Code, section 13556.5⁵⁹ enjoins all teachers "...to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism..."⁶⁰ Sullivan seems to say that the teacher stands *in loco parentis* and his students look to him not only for words of guidance but also as exemplar of the true Americana.

The Board and trial court determined, he not only was a potential danger to them because of his immoral acts but *especially* so because of his insistence that such acts which he frankly admits, were not in his view immoral at all.⁶¹

This language from the dissent in *Morrison* is particularly distasteful for two reasons. First it indicates a belief in an absolute morality, and second because it fails to recognize that strength of conviction, honesty and personal integrity are integral factors in determining the morality of an individual's conduct. When a person sincerely holds the conviction that his beliefs and conduct are moral and virtuous, it is incongruous to say that that individual is "immoral." Does the fact that the ideas in question are unpopular make the individual who publicly adheres to them less moral, or more moral? Consideration of the sufferages, the abolitionists, and our patriots in the American Revolution indicates an answer.

There is no mention of Morrison publicly announcing his homosexuality nor is there even an insinuation of his declaring these beliefs in a classroom. The dissent is finding immorality (apart from the conduct) solely on the basis of a man holding divergent views from the majority of the populace.

Likewise, Garnet Brennan, who had been a teacher for thirty years, who not rehired to her position of teaching-principal in the Nicasio School District.⁷² The reason she was suspended

⁵⁹CAL. EDUC. CODE § 13556.5 (West 1969).

⁶⁰Justice Sullivan dissenting in *Morrison*, 1 Cal. 3d at 242, 461 P.2d at 400, 82 Cal. Rptr. at 200; see *Sarac*, 249 Cal. App. at 63, 64, 57 Cal. Rptr. at 72, 73.

⁶¹Justice Sullivan dissenting in *Morrison*, 1 Cal. 3d at 242, 461 P.2d at 400, 82 Cal. Rptr. at 200.

⁶²*Brennan v. Nicasio School District*, 18 Cal. App. 3d 396, 95 Cal. Rptr. 712 (1971).

Although Mrs. Brennan had taught in the district in excess of three years she was still a probationary teacher due to CAL. EDUC. CODE § 13304 because the district had less than 250 students in average daily attendance.

and then not rehired was not because she had signed an affidavit admitting that she used marijuana,⁶³ but because of the text of the affidavit "upon its face purports to be an admission of wilful violation of the law and a declaration of her belief that a violation of the law as written by authorized authority is appropriate and moral notwithstanding the fact that the same may constitute a commission of a felony."⁶⁴

The reasoning is that her wilful violation of a statute is immoral and it makes her unfit to teach because of the irreparable impression it will have on the young supple minds of her pupils. The idea is that if the students discover that their teacher breaks the law then they will break the law.⁶⁵

⁶³*Id.* The sin Mrs. Brennan really committed was honesty; she along with 4,000 other people signed affidavits for Melkan Melkanian in order to secure him a light sentence on his recent conviction for sale, possession and use of marijuana. Unfortunately Mrs. Brennan went on to explain her personal experiences with the drug and thereby terminated a thirty year career of teaching.

⁶⁴*Brennan v. Nicasio School Dist.*, 18 Cal. App. 2d 396, 401, 95 Cal. Rptr. 712, 715 (1971); see 78 YALE L.J., *supra* note 20, at 1367-1378, saying basically that the violation of a law does not constitute immorality when the violation is based on conscientious scruples or a fundamental belief in the correctness of your action.

Repuville v. U.S., 165 F.2d 152 (2d Cir. 1947) for the majority, Learned Hand wrote the following in discussing the good moral character of a person who perpetrated euthanasia on his thirteen year old brother:

Many people—probably most people—do not make it a final ethical test of conduct that it shall not violate the law; few of us exact of ourselves or of others the unflinching obedience of a Socrates. There being no lawful means of accomplishing an end, which they believe to be righteous in itself, there have always been conscientious persons who feel no scruples in acting in defiance of a law which is repugnant to their personal convictions and who even regard as martyrs those who suffer by doing so. In our own history it is only necessary to recall the abolitionists. *Id.* at 153.

Hand found a lack of good moral character in this case, but indicated the definite possibility of a person violating the law without detracting from his virtuous character.

⁶⁵The court glances over this extremely crucial point stating that there was contradictory evidence on the subject, but that the court believes the district superintendent. *Brennan v. Nicasio School Dist.*, 18 Cal. App. 2d 396, 402, 95 Cal. Rptr. 712, 716 (1971).

In point of fact all that the superintendent said is that "If she is a popular teacher and this is her belief, that same belief will become that of her pupils." (R.T. 38 lines 2-18). Of course this was assuming that the pupils learned of her beliefs.

On the other hand several witnesses contradicted the superintendent's opinion. One sociologist said that peer group pressure controls in this sphere (R.T. 154). Another teacher with the same background as the superintendent said that mass media and peers were more influential than teachers as regards cultural learning (R.T. 93).

Just like *Sarac*, the real immorality was belief in ideas contrary to the mainstream of society and they, *Sarac* and *Brenna*, were punished by the bureaucratic machinery for their indiscretion.⁶⁶

Another victim of "Morality" was William Hensey a permanent junior college teacher, who was dismissed by the school district for reasons less than convincing.⁶⁷ A list of Mr. Hensey's major offenses which *in toto* amounted to immoral conduct and unfitness include: 1) The tearing out a loud speaker system which was found to be an annoyance to some teachers and students and which was eventually removed by the officials when they determined it to be defective and troublesome; 2) The use of vulgarity in a co-ed junior college classroom; 3) The use of a gesture consisting of licking the wall with his tongue in an up and down manner while referring to the County Superintendent of Schools.

The Court evidences a *naivete* about students only matched by their moralistic and paternalistic approach in determining the fitness of a college teacher to do his job.⁶⁸

Morrison is relegated to one short paragraph by the *Hensey* court and cited only for the "fitness to teach" requirement. It is doubtful whether a strict application of *Morrison* to the facts of *Hensey* would sustain the opinion of the appellate court.⁶⁹

⁶⁶Mrs. Brennan's affidavit went on to state that she believes the laws making the sale, use and possession of marijuana illegal are unconstitutional. *Brennan v. Nicasio School Dist.*, 18 Cal. App. 2d 396, 401, 95 Cal. Rptr. 712, 715 (1971).

⁶⁷*Palo Verde Unified School District of Riverside v. Hensey*, 9 Cal. App. 3d 967, 88 Cal. Rptr. 570 (1970).

⁶⁸The court after citing a number of cases dealing with teachers and *children*, goes on to assume that the students appreciated the teachers conduct, but nonetheless characterizes it as "barracks type of language," "bad taste," and showing "evident unfitness". As to the licking gesture the court decided that "The means of expression used puts him *far* outside the protection of the First Amendment...and not an example of responsible dissent which should be fostered in the classroom." *Id.* at 974, 88 Cal. Rptr. at 575.

Hensey addressed himself to the same Mexican American students while in class and warned them about the syphilis in San Luis. From this, without asking the students involved, the court decided that "Blurting it out in the class was not only humiliating and embarrassing to the Mexican Americans, it again showed a lack of restraint and a tendency to vulgarity and bad taste." *Id.*

⁶⁹*Palo Verde Unified School Dist. v. Hensey*, 9 Cal. App. 3d 970, 88 Cal. Rptr. 573 (1970).

Alford v. Department of Education,⁷⁰ gave a very narrow reading to *Morrison* and held that it was limited to its facts. Ruth Alford had taught continuously from 1950 until 1965 in the Los Angeles School District with the exception of maternity and sick leave. Two of the instances of sick leave involved hospitalization in Camarillo State Hospital where she was diagnosed schizophrenic in 1961. In 1967 she was similarly diagnosed as "schizophrenic reaction-paranoid type."⁷¹ Relying on *Morrison* she pleaded that a showing of mental illness *per se* is insufficient to substantiate a showing of unfitness to teach. The court held *inter alia* that,

Morrison thus seems to be a narrow decision, limited to its facts and one decided primarily upon a disinclination of the majority of the court to permit judicial notice by the administrative agency or the trial court of the possibility that a man who had engaged in the conduct of the petitioner in that case might repeat it so as to render him unfit to teach.⁷²

The Court of Appeals also distinguished *Morrison* by saying that the record in the instant case contains direct psychiatric testimony that Mrs. Alford, by reason of her mental illness, is unfit to perform the duties of a teacher.⁷³ In *Alford* there was no showing of any of the manifestations of her illness, the degree of her illness, its impact on her students, nor its effect on her ability to teach. The requirement of *Morrison* is that there must be a rational connection between the individuals conduct or character and his fitness to teach. This due process concept of reasonableness would seem to require the same rational nexus between the applicants physical or mental health and her ability to perform her job.⁷⁴ Yet in *Alford*, the rational connection test is summarily dispensed with in one sentence quoted above.

This same sentence is favorably quoted by the California Court

⁷⁰*Alford v. Department of Education*, 13 Cal. App. 3d 884, 91 Cal. Rptr. 843 (1970). (1970).

⁷¹*Id.* at 887, 91 Cal. Rptr. at 845.

⁷²*Id.* at 887, 91 Cal. Rptr. at 846.

⁷³*Id.*

⁷⁴Mrs. Alford was in the hospital twice for mental health reasons, and after her sick leave she continued to teach for six years and four years respectively. She was retained as a teacher a total of fourteen years until her resignation. The Board of Education only sought to revoke her kindergarten-Primary Life Diploma when she appealed from an administrative determination refusing her a General Pupil Services Credential.

Due to the narrow interpretation given to *Morrison* the Court of Appeals did not give an in-depth discussion of the rational connection test.

of Appeals in *Board of Trustees v. Stufflefield*.⁷⁵ The court in Stufflefield gives only a perfunctory Morrison analysis to the facts involved.⁷⁶ What would seem to be relevant criteria in the resolution of whether there was a rational connection between the conduct and the ability to teach is glaringly omitted.

Stufflefield was a junior college teacher who was caught *in flagrante delicta*⁷⁷ with one of his female students in the front seat of his car. When the policeman approached the scene, Stufflefield accelerated backwards and knocked the officer down with the open door of the car. Then he drove away and was finally caught after an 80-100 mile per hour chase.

Whether this man is fit to be a teacher is questionable. But, the question could be resolved in part by ascertaining the age of the teacher, the age of the student, the relationship between them and the reasons for the attempted escape from the police officer. None of the answers to these queries may exculpate him, but they certainly would reflect on his morality.

There is not real discussion at all of the rational connection between these acts and the teacher's fitness. The court mentions two criteria from *Morrison*. The first was whether publicity surrounding the conduct adversely affected his ability to teach. There was no evidence offered which dealt with publicity or notoriety. The second was whether a man of petitioner's background was more likely than the average adult male to engage in any untoward conduct with a student. It is this category which must be determinative since there are no other criteria offered. The facts that could distinguish *Morrison* such as that Marc Morrison was 37 years old at the time of the incident, engaged in a homosexual not heterosexual relationship and was teaching children not junior college students, are all disregarded. The entire analysis of the rational connection test is

⁷⁵*Board of Trustees v. Stufflefield*, 16 Cal. App. 3d 820, 825, 94 Cal. Rptr. 318, 323 (1971).

⁷⁶The court in *Stufflefield*, Second Appellate District, Division Two, is the same court which the Supreme Court of California overruled in their decision in *Morrison*. This may account for the District Court's narrow view of *Morrison*.

⁷⁷The police officer found the couple in a parked car in an unlighted area of town. Upon illuminating the interior of the car he observed Stufflefield and a woman student. The teacher's pants were unzipped and lowered from the waist exposing his penis, and the student was nude from the waist up, and her capri pants were unzipped and open at the waist.

hinged on the conduct itself. In other words, there was only a *pro forma* mentioning of *Morrison*.

Morrison has received a much broader interpretation and use by the federal courts. In *Mindel v. U. S. Civil Service Commission*,⁷⁸ the U.S. District Court held that the fact that a man and a woman were living together without being married had no rational nexus to the man's position as a postal clerk and therefore could not be a basis for dismissal. *Morrison* is cited here for the proposition that *Mindel's* termination because of his private sex life violates the right to privacy guaranteed by the Ninth Amendment.⁷⁹

In *McConnell v. Anderson*,⁸⁰ the plaintiff was a 28 year old male, who was refused employment as librarian at the University of Minnesota solely for the reason that he was a publicly admitted homosexual. The U.S. District Court in granting McConnell's injunction against the University held "that to justify dismissal...or as the court finds in this case to reject an applicant for public employment, it must be shown that there is an observable and reasonable relationship between efficiency on the job and homosexuality."⁸¹ There was no such showing found here in spite of the publicity given the plaintiffs previous application for a marriage license with a male law student with whom he was living.

V. CONCLUSION

A. THE STATE AND THE INDIVIDUAL REVISITED

The individual's rights have been viewed as fundamental to our system of government. This is true not only because an unwarranted intrusion would have a deleterious effect on each

⁷⁸*Mindel v. U.S. Civil Service Commission*, 312 F. Supp. 495 (N.D. Cal. 1970).

⁷⁹*Id.* at 498.

⁸⁰*McConnell v. Anderson*, 316 F. Supp. 809 (D. Minn. 1970).

⁸¹*Id.* at 814; see note 58, *supra*, especially Sullivan dissent in *Morrison*.

citizen, but equally because of the impact of such intrusion upon society at large.⁸² In *Wieman v. Updegraff*,⁸³ Justice Black concurring states, "Our own free society should never forget the laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnarling and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven."⁸⁴

It is by analogy that I would extend Justice Black's First Amendment reasoning to the basic freedoms of action and conduct not necessarily covered by the free speech concept. Administrative agencies must not be allowed to exercise any unwarranted chilling effect on peoples everyday lives by holding the possibility of loss of employment or loss of the necessary license to gain employment hanging over their heads.⁸⁵ To allow this intrusion into the peoples' private lives is contrary to the Constitutional requirements of due process. Furthermore, it is destructive to the type of free personality that a democratic society thrives on.

The tension between the individual and the state is more apparent than real. The best interests of a free society lie in the maintenance and preservation of free citizens. An individual's morality is the proper subject for government only when there is

⁸²Barron, *Business and Professional Licensing - California, A Representative Example*, 18 Stan. L. Rev. 640, 643 (1966) stating:

Any restriction upon the freedom on individuals to enter an occupation, whether publicly or privately imposed, is a "Monopolistic" restriction on the operation of the market. This is not necessarily undesirable, but it is a fact. Further, any restriction on entry into an occupation has the effect of increasing prices to consumers above what they would be under conditions of free entry.

Thus, licensing results in higher prices than would exist in its absence. Licensing is economically justified if the burden of higher prices is less than the social costs that would arise from damage to the public health, safety, welfare, or morals that would occur in the absence of licensing. As with the application of any theoretical standard, the proper amount of licensing (the assessment of public benefits and costs) is the matter of practical judgment on the part of those responsible for its application.

This excerpt from Barron's article only reflects the economic consequences which flow from restrictions on licensing. See note 83 and 90 *infra*, for the socio-political ramifications:

⁸³*Wieman v. Updegraff*, 344 U.S. 183 (1952) (Black concurring).

⁸⁴*Id.* at 193 (Black concurring).

⁸⁵*Morrison* at 224, 461 P.2d at 382, 82 Cal. Rptr. at 182, stating: "The Legislature

a clear and present danger of harm to others. Every step of government beyond that perimeter of individual freedom is a step towards totalitarianism and societal self destruction.

The object of government is not to change men from rational beings into beasts or puppets, but to enable them to develop their minds and bodies in security, and to employ their reason unshackled; neither showing hatred, anger, or deceit, nor watched with the eyes of jealousy and injustice.⁸⁶

B. SPECIAL PROBLEM WITH THE BOARD OF EDUCATION.

As stated *supra*⁸⁷ the fitness requirement administered by the Board of Education is altered slightly by the statutory responsibility placed on teachers to "endeavor to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism..."⁸⁸ It is for this reason that teachers are scrutinized for their morality more than other employees. But it is precisely for this reason, because of the proximity of teachers to the young minds of our nation that the Boards of Education should *not* be able to enforce their moral standards, and thereby decide what moral prerogatives and cultural precepts will be favored. If the state can limit the ranks of teachers to those who mirror a certain set of moral attitudes, then the state can effectively control and manipulate the moral growth of the nations youth. The moral concepts that people develop have profound effects on their social and political outlook. Strict control over who educates the nations minds is, in a large sense, tantamount to the genetic manipulation of the artificially inseminated population of Brave New World.⁸⁹

Mr. Justice Frankfurter expressed this idea beautifully:

That our democracy ultimately rests on public opinion....It (public opinion) can be disciplined and reasonable only if habits of open-mindedness and of critical inquiry are acquired in the

surely did not mean to endow the employing agency with the power to dismiss any employee whose personal private conduct incurred its disapproval." Morrison at 239, 461 P.2d at 394, 82 Cal. Rptr. at 194, stating: "The power of the state to regulate professions and conditions of government employment must not arbitrarily impair the right of the individual to live his private life, apart from his job, as he deems fit."

⁸⁶B. SPINOZA, *TRACTATUS THEOLOGICO POLITICUS* (trans. R. H. M. Elives). [Reference found in E. BODENHEIMER, *JURISPRUDENCE* 44 (1970).]

⁸⁷See note 58, *supra*, especially Sullivan dissenting in *Morrison*.

⁸⁸CAL. EDUC. CODE § 13556.5 (West 1969).

⁸⁹A. HUXLEY, *BRAVE NEW WORLD* (1960).

formative years of our citizens...To regard teachers—in our educational system, from primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of the teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who in turn, make possible an enlightened and effective public opinion. Teachers must fulfil their function by precept and practice, by the very atmosphere which they generate, they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the practice of a responsible and critical mind are denied to them. They must have the freedom of responsible inquiry, by thought and action into the meaning of social and economic ideas, into the checkered history of social and economic dogma. They must be free to sift evanescent doctrine, qualified by time and circumstance, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by National or State government.⁹⁰

There are legitimate reasons to allow an individual's morality to be a bar to employment. The point is that the reasons are few, and the dangers of exercising the power of exclusion are great. The nation has a responsibility to its young to protect their physical safety and to insure that they obtain a high quality, unbiased, truth-seeking education.

In order for children to become responsible participants in a democratic society, they must learn how to think. A free society, in order to maintain itself, must offer a free and honest education. Therefore, it has a duty to exclude, from the teaching profession, those who will not openly approach questions showing both sides to their students.

Unfortunately, even the broad decisions suggest restricting the teachers of our young to orthodox, conventional, typical stereotype personalities. The problem is not that students will turn out to be exact replicas of these mentors, but that such a sterile educational experience, devoid of eccentricities, variations and minority opinions will breed narrow minded generations, incapable of tolerance, creativity, or happiness.

⁹⁰Frankfurter concurring in *Wieman v. Updegraff*, 344 U.S. at 196, 197 (1952), expresses the idea that teachers need a great deal of latitude to vary from the norm lest they be rubber stamps of what has gone before.

C. BETTER APPROACH

"Thirty five licensing agencies authorized by the Business and Professions Code, currently issue⁸⁷ major categories of licensed occupations to over one million Californians. Twenty-nine of these licensing agencies administer licensing acts for 64 occupations which require applicants to be of good moral character as a condition of licensure."⁹¹

Considering the large number of people effected and the importance of the rights involved, the wiser course is to paint with a very narrow brush when applying moral standards. A strict and narrow application of the good moral character requirement will serve the needs of protecting the public and avoid trampling on individual rights. Reasonable education and training requirements, rational testing of applicants for licenses, and continued policing of licenses throughout their career will ensure competence. Then added on to this scheme, a moral fitness test which only allows removal or refusal to admission when there is a close and direct relationship between the conduct of the individual and his fitness to perform in the occupation.⁹² This will give adequate protection to the public interest.

At the same time, while meeting the public needs, this narrow approach to the use of moral standards maximizes the individuals freedom (both in the general and Constitutional sense) to live his life according to his own desires.⁹³ And this freedom is in tune with the nourishment and growth of the whole society.

By limiting the power of the States to interfere with freedom of speech and freedom on inquiry and freedom of association, the Fourteenth Amendment protects all persons, no matter what their calling. But, in view of the nature of the teacher's relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, *and of action upon thought*, in the case of teachers brings the safeguards of those

⁹¹CAL. SEN. COMM. ON BUS. & PROF., GOOD MORAL CHARACTER REQUIREMENT FOR LICENSURE IN BUSINESS AND PROFESSIONS (Feb. 1972). See Appendix at end of article.

⁹²See *Morrison, Schwere, and Nebbia v. People of New York*, 291 U.S. 502 (1934) as discussed herein.

⁹³"I wanted only to try to live in accord with the promptings which came from my true self. Why was that so very difficult?" from DAMIAN by HERMANN HESSE. See note 82, *supra*.

amendments vividly into operation. Such unwarranted inhibition upon the free spirit of teachers...has an unmistakable tendency to chill that free play of the spirit which all teachers ought especially to cultivate and practice; it makes for caution and timidity in their associations by potential teachers.⁹⁴

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⁹⁴The majority opinion in *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) quoting Frankfurter's concurring opinion in *Weiman v. Updegraff*, 344 U.S. 183, 195, (1952).

Sheldon dealt with the requirement of filing lists of all organizations associated with, and *Weiman* dealt with loyalty oath requirements, but the language used implies breath of application to individual freedoms in a free country and the rights extend beyond those specifically safeguarded by the Constitution. The obvious freedoms to think, and act on one's thoughts are guarantees of nature not of governments.

⁹⁵Appendix Table from CAL. SEN. COMM. ON BUS. & PROF., GOOD MORAL CHARACTER REQUIREMENT FOR LICENSURE IN BUSINESS AND PROFESSIONS (Feb. 1972).

Table III

1. HEALTH RELATED LICENSES Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
Board of Medical Examiners Physicians & Surgeons Physical Therapists Physical Therapist Assts. Physician Assistants Podiatrists Dispensing Opticians Hearing Aid Dispensers Psychologists	x x x	x x x x x x	x x x x x x	x x	x x x x x x x	x x x	1,3 1,3 1,3
Board of Nurse Education & Registration Registered Nurses							3
Board of Vocational Nurse & Psychiatric Technician Examiners Vocational Nurses Psychiatric Technicians	x	x x	x x	x x		x x	3 3
Board of Pharmacy Pharmists	x	x	x	x	x	x	3
Board of Osteopathic Examiners Osteopaths	x	x	x		x	x	1,3
1. Immoral conduct 3. Unprofessional conduct							

Table III

HEALTH RELATED LICENSES								2.
Grounds for Denial of Application for Licensure								
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other	
Board of Optometry Optometrists		x	x	x	x	x	3	
Board of Chiropractic Examiners Chiropractors		x		x	x			
Board of Dental Examiners Dentists Dental Hygienists		x x	x x	x x	x x		3 3	
Nurses Registry Nurses Registry	x				x			
Board of Nursing Home Administrators Nursing Home Administrators	x	x	x	x	x	x		
Board of Veterinary Medicine Veterinarians		x		x	x			
3. Unprofessional conduct								

Table III

HEALTH RELATED LICENSEES Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
Department of Public Health Clinical Lab Technologist Clinical Lab Bioanalyst Clinical Chemist Clinical Microbiologist	x	x	x	x			3
	x	x	x	x			3
	x	x	x	x			3
	x	x	x	x			3
Board of Behavioral Science Examiners Registered Social Workers Clinical Social Workers Educational Psychologists Marriage, Family & Child Counselors		x	x			x	4
		x	x		x		3,4
3. Unprofessional conduct 4. Committed any dishonest or fraudulent act							

Table III

DESIGN AND CONSTRUCTION Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
Board of Architectural Examiners Architects					x		5
Contractors' State License Board Contractors				x	x	x	5
Board of Registration for Professional Engineers Engineers Land Surveyors					x		
Board of Registration for Geologists Geologists				x	x		
Board of Landscape Architects Landscape Architects					x		
Structural Pest Control Board Pest Control Operators, Pest Control Field Representative, & Pest Control Office or Branch		x	x	x		x	5
5. Conviction of a felony in connection with licensed activity.							

Table III

BUSINESS & SANITATION Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
State Athletic Commission Boxers, Wrestlers & Clubs		x			x	x	1
Board of Barber Examiners Barbers, Apprentice Barbers, Shops, Instructors, & Colleges					x		
Board of Cosmetology Cosmetologists, Cosmetology Instructors, Electrologists, Cosmetology Colleges, Cosmetology Shops & Manicurists					x		
Board of Dry Cleaners Plant, shop, school operator certificate			x	x	x	x	2
Board of Funeral Directors Funeral Directors & Embalmers		x		x	x		
1. Immoral conduct 2. Bad reputation & integrity							

Table III

6.							
BUSINESS & SANITATION							
Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
Certified Shorthand Reporters Board Shorthand Reporters					x		
Bureau of Furniture & Bedding Retailers, Manufacturers, Wholesalers, Sterilizers, Renovators, & Custom Upholsters							
Bureau of Employment Agencies Employment Agencies Counselors Babysitting Agencies		x	x		x x x	x	2
Board of Guide Dogs for the Blind Trainer & School					x		
Bureau of Repair Services Electronic Repair Dealers					x		
Bureau of Automotive Repair Automotive Repair Dealers		x	x	x	x		
3. Unprofessional conduct							

Table III

FIDUCIARY Grounds for Denial of Application for Licensure							
Agency and Licensees	Any act involving moral turpitude	Conviction of a crime involving moral turpitude	Conviction of a felony	Conviction of a crime involving fraud	Lack of good moral character	Any act if licensee would be subject to disciplinary proceedings	Other
State Bar Attorneys	x	x			x		
Department of Real Estate Real Estate Salesmen & Brokers	x	x		x	x	x	
Security Dealers & Mineral, Oil, & Gas Brokers							
Cemetery Board Cemetery Salesmen, Brokers & Owners					x		2
Bureau of Collective & Investigative Services Collection Agencies, Collectors, Managers Private Investigators, Insurance Adjusters, Private Patrol Operators, & Repossessors		x	x	x	x	x	
Board of Accountancy Public Accountants & Certified Public Accountants					x		
2. Immoral conduct							