

COMMENT

THE DEVIL YOU KNOW!: SHOULD PRISONERS HAVE THE RIGHT TO PRACTICE SATANISM?

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I. INTRODUCTION

The State of Kentucky made world news in the fall of 2002 by banning the practice of Satanism in its prison system.¹ The warden of the Green River Correctional Complex, where the ban occurred, had allowed the practice of Satanism throughout the summer of 2002,² believing that it was safer for Satanic worship to be monitored than practiced in secrecy.³ However, when the local newspaper publicly questioned the decision, the services were suspended.⁴ To justify this action, the prison claimed that Satanism was a security risk to the prison and other prisoners.⁵ Kentucky officials further supported the change by declaring that other states, specifically Texas, also prohibit Satanic practices.⁶

The question that arises is whether the action of the Kentucky officials is valid when the First Amendment of the Constitution states, "Congress [and the states] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof"⁷ It seems clear that Kentucky's actions interfere with the Satanist's right of free exercise. The Supreme Court has stated that the minimum requirement of the First Amendment is facial neutrality, that is, freedom from specific discrimination against one's religion by state action.⁸ Kentucky's actions fail to meet any level of neutrality as required by the Constitution.⁹

However, these actions may be permissible because the Supreme Court has also held that prisoners do not have the same

1. See *Kentucky Aims to Keep Satan Out of the Prison System*, AGENCE FRANCE-PRESSE, Sept. 4, 2002, available at 2002 WL 23592501; Sam Leith, *Prisoners' Devil Worship Is Halted*, DAILY TELEGRAPH (LONDON), Sept. 4, 2002, at 13.

2. *Kentucky Prison Cancels Satanic Masses: Newspaper Alerts Officials to Weekly Worship Service*, NAT'L POST (Canada), Sept. 3, 2002, at A10 [hereinafter *Kentucky Prison Cancels Satanic Masses*].

3. *Id.*

4. *Id.*

5. *Id.* (quoting Donald Kaspar, a chaplain for the Texas corrections system where the practice of Satanism is banned, as saying that "[o]ne of their tenets is revenge—if somebody hurts you, hurt them back").

6. *Id.* (acknowledging that policies in other states vary).

7. U.S. CONST. amend. I. Of course, the language of the First Amendment only applies its mandates to the federal government. However, for the last two generations the Supreme Court has applied these two clauses to both the federal and state governments. See *Everson v. Bd. of Ed.*, 330 U.S. 1, 15–16 (1947); *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940).

8. See *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993) (declaring that a law is not neutral if no "secular meaning" can be discerned).

9. See *Kentucky Prison Cancels Satanic Masses*, *supra* note 2 (describing the Kentucky action as a specific ban on the practice of Satanism rather than a neutral application).

level of rights as private citizens.¹⁰ Prison administrators may restrict or withdraw the constitutional rights of a prisoner to maintain “institutional security and preserv[e] internal order.”¹¹ Courts give wide discretion in the exercise of prison power because prison officials have more expertise in managing inmates.¹² Ultimately, the judiciary is not equipped to deal with the increasing problems of prison administration or the reformation of inmates.¹³ Despite the great discretion granted to prison officials, they cannot ban any religion solely because they disagree with its beliefs.¹⁴

This Comment proposes that the practice of Satanism generally does not risk the security or internal order of prisons, and that despite the judiciary’s deference to prison administrators, courts should overturn any outright ban as unconstitutional. For a court to uphold a prison ban on Satanism, there must be a rational connection between the restriction and a legitimate governmental interest.¹⁵ A court will also ask whether there are alternative means of practicing the religion, what impact the religious practice will have on prison resources, and whether there are less restrictive alternatives to the prison action.¹⁶ Part II of this Comment describes the tenets and rituals of the Church of Satan. Part III examines these tenets in evaluating whether Satanism meets the constitutional definition of religion. Part IV discusses the penological interests in proscribing Satanic worship and whether those interests validate restrictions on the practice of Satanism. Part V sets forth a compelling reason to *allow* so inclined inmates to explore the tenets of Satanism. This Comment proposes that the Church of Satan is a constitutionally protected religion and that no penological interest exists to completely ban Satanic practices. Prisons are not required to allow free rein and can restrict

10. See *Turner v. Safley*, 482 U.S. 78, 84–85 (1987) (describing how courts must balance the needs of prison administration against the constitutional rights of prisoners).

11. *Bell v. Wolfish*, 441 U.S. 520, 546 (1979).

12. See *Turner*, 482 U.S. at 84–85 (expounding that “separation of powers concerns counsel a policy of judicial restraint” because prison administration is in the province of the legislative and executive branches).

13. See *Doty v. Lewis*, 995 F. Supp. 1081, 1082 (D. Ariz. 1998) (citing *Procunier v. Martinez*, 416 U.S. 396, 405 (1974), to uphold a prison restriction on the possession of certain Satanic items).

14. See *Turner*, 482 U.S. at 89 (“[W]hen a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.”).

15. *Id.* (declaring this standard necessary so that prison officials and not courts make the difficult decision relating to prison operations).

16. *Id.* at 90.

certain aspects of Satanism. However, this Comment concludes that it is ultimately better to allow prisoners to openly explore Satanism than to ban it, forcing the prisoners to become miseducated on the basis of rumor and innuendo.

II. THE CHURCH OF SATAN: THE DOGMA AND THE RITUALS¹⁷

The Church of Satan was born in April 1966, on the night of Walpurgisnacht.¹⁸ This new religion was the brainchild of Anton Szandor LaVey¹⁹ as his antithesis to the other organized religions.²⁰ The tenets of Satanism grew in part out of the life experiences of LaVey. He was a prodigy as a youth—at fifteen, he was the second oboist in the San Francisco Ballet Symphony Orchestra.²¹ Bored by high school, he dropped out and joined a circus, and then later a carnival.²² On Saturday nights, LaVey would see men lusting after half-naked dancing girls and then see the same men return the next morning for the evangelist tent shows with their families.²³ This planted the seed of LaVey's belief that established religion was hypocritical.²⁴ At twenty-one, LaVey married and left the carnival, whereupon he became a photographer for the San Francisco Police Department.²⁵ "I saw the bloodiest, grimeiest side of human nature," LaVey later recounted.²⁶ He began to wonder where God was and to detest the idea that the violence of the world was God's will.²⁷ These experiences led to his

17. The research for this Part is almost exclusively drawn from *The Satanic Bible* and is intended to simulate the understanding that a prisoner, who only had access to *The Satanic Bible*, would have of Satanism. In this Comment, Satanism is used in reference to the members and beliefs of the Church of Satan. It should be distinguished from the traditional view of devil worshipers. See, e.g., Matt G. Paradise, *Satanism 101*, at <http://www.satanism101.com/satfaq.html> (last visited May 1, 2004).

18. Burton H. Wolfe, *Introduction* to ANTON SZANDOR LAVEY, *THE SATANIC BIBLE* 9, 13–14 (1969) [hereinafter *INTRO. TO SATANIC BIBLE*]. Walpurgisnacht is the night before May 1, when demons and ghouls come forth to revel. ANTON SZANDOR LAVEY, *THE SATANIC BIBLE* 97 (1969) [hereinafter *SATANIC BIBLE*].

19. See *INTRO. TO SATANIC BIBLE*, *supra* note 18, at 9, 13–14 (describing how Wolfe first met LaVey as a freelance writer seeking an interview with the "Black Pope").

20. See *SATANIC BIBLE*, *supra* note 18, at 55 ("Satan represents opposition to all religions which serve to frustrate and condemn man for his natural instincts.").

21. *INTRO. TO SATANIC BIBLE*, *supra* note 18, at 11.

22. *Id.* at 11–12.

23. *Id.* at 12 (describing how LaVey played organ for both the dancing girls and the evangelists).

24. *Id.* (stating that this led to his discovery of Satanism).

25. *Id.* at 12–13 (explaining that LaVey had been a criminology major at City College of San Francisco).

26. *Id.* at 13 (internal quotation marks omitted).

27. *Id.* (reporting that this also led to LaVey leaving his job).

creation of the Church of Satan, which adopted a Darwinian view of survival of the fittest.²⁸ This survival of the fittest concept is tempered by Satanism's tenet that individuals are solely responsible for their actions, both the good and the bad.²⁹

Satanists maintain a belief in God, but only as the balancing force of nature that permeates the universe.³⁰ This force, though, is too impersonal to be concerned with the individual lives of the world.³¹ A Satanist believes that everything she gets is of her own doing and not the result of prayers to a large, unearthly force.³² This belief cuts in both directions, for a Satanist must also take responsibility for the wrongs she commits, strive to learn from her mistakes, and take care not to commit them again.³³

LaVey argued that the human characteristics of God are simply humankind's creation.³⁴ Therefore, the Satanist should create a God that best represents her carnal and physical attributes.³⁵ Christianity focuses solely on the spiritual, as evidenced by outlawing the manifestations of a person's physical, mental, or emotional nature in the seven deadly sins.³⁶ LaVey believed spirituality is a creation of humanity.³⁷ Because the rest of the world chose God to represent their spiritual nature, LaVey

28. *Id.* at 18. Co-opting Darwinism is not unique to Satanism, as numerous legal scholars have also done so. See E. Donald Elliott, *The Evolutionary Tradition in Jurisprudence*, 85 COLUM. L. REV. 38, 48–65 (1985). John Henry Wigmore and Albert Kocourek cowrote *Evolution of Law*, stating that lawsuits are like “wrestling bouts” with victory going to the best. *Id.* at 46–49. Elliott also discusses Oliver Wendell Holmes's use of Darwinism in *The Common Law*. *Id.* at 51. Holmes argued “that just as evolution adapts existing biological structures to different uses in different time periods, so too the functions of legal doctrines evolve from one period to another.” *Id.* (footnote omitted). The article next discusses Paul Rubin, a law and economics theorist who “contend[ed] that this evolutionary process will drive the law toward economically efficient rules despite the motivations of judges.” *Id.* at 64–65.

29. See SATANIC BIBLE, *supra* note 18, at 41 (stating that a Satanist will learn from his mistakes and take care not to repeat them).

30. *Id.* at 40 (refuting the misconception that Satanists do not believe in God).

31. *Id.* (finding the impersonal nature of God evident by the fact that good people often suffer untimely deaths).

32. *Id.* at 41 (“No longer will we sit back and accept ‘fate’ without doing anything about it Positive thinking and positive *action* add up to results.”).

33. *Id.* at 41–42 (declaring that one should not confess one's mistakes to God; instead, if one is truly sorry, he should strive to change his actions, and if one is not sorry, he should not confess merely to clear his conscience).

34. *Id.* at 44 (stating that religion is the creation of man's carnal brain and God is just an externalization of man's ego).

35. *Id.*

36. *Id.* at 46. Refer to notes 39–47 *infra* and accompanying text (describing the Satanic belief that people should indulge in the seven deadly sins).

37. SATANIC BIBLE, *supra* note 18, at 44 (claiming that man “created an entire system of gods with nothing more than his carnal brain”).

adopted God's adversary to embody his religion, which would focus on the physical nature.³⁸

The Church of Satan believes in indulging one's physical nature and that the seven deadly sins represent our natural instincts.³⁹ Envy and greed are simply the forces motivating ambition, which accomplishes everything of importance.⁴⁰ Gluttony is simply eating more than needed to keep oneself alive.⁴¹ And when one gets overweight, her pride will cause her to slim down.⁴² Dreading the buzz of the alarm clock is sloth,⁴³ and *any* consideration of sex is lust.⁴⁴ Anger, the last sin, is simply a manifestation of self-preservation.⁴⁵ Because man's natural instincts all lead to sin, living is sin⁴⁶ and, therefore, "Satanism is the only religion known to man that accepts man as he is."⁴⁷

Indulgence in the physical is the central tenet of the Church of Satan.⁴⁸ Only through indulgence can a person be completely satisfied and without frustrations.⁴⁹ LaVey drew a strong

38. See *id.* at 45 (explaining that the Satanist must merge the spiritual and carnal).

39. *Id.* at 46 (declaring that these sins lead to physical, mental, and emotional gratification).

40. *Id.*

41. *Id.* LaVey may have been ahead of his time, as gluttony has become a very popular sin in the last few years. See *Poll: Most Americans Older than 25 Are Overweight*, CNN.com/Health, Mar. 5, 2002, at <http://www.cnn.com/2002/HEALTH/03/05/obesity.poll>. The poll found that eighty percent of Americans over twenty-five are overweight, as compared to fifty-eight percent in 1983. *Id.* The then-U.S. Surgeon General David Satcher is quoted as saying that obesity is reaching "epidemic proportions." *Id.* (internal quotation marks omitted).

42. SATANIC BIBLE, *supra* note 18, at 46 (equating pride with self-respect). LaVey also equates pride with buying clothes based on labels. *Id.* In fact, any form of ornamentation is pride. *Id.*

43. *Id.* at 47.

44. *Id.* (arguing that sex is such a powerful instinct because it ensures the continuance of the human race—making it the second most powerful of human instincts).

45. *Id.* (citing self-preservation as the strongest of man's instincts). Satanism, in fact, preaches, "If a man smite thee on one cheek, *smash* him on the other!" *Id.* This is derived from the Satanic Golden Rule: "Do unto others as they do unto you." *Id.* at 51. LaVey felt you should treat others with courtesy, but if they treat you badly in return, then they deserve your wrath. *Id.*

46. *Id.* at 47 (finding that Christianity has relaxed the notion of sin by no longer considering all sex dirty, pride shameful, or envy vicious).

47. *Id.* at 53 (advocating that one should act on her natural instincts). LaVey felt Satanism ultimately represents opposition to any religion that frustrates humanity's natural instincts and then condemns them for it. *Id.* at 55. LaVey argued that Christianity's creation of the seven deadly sins was purely pecuniary. See *id.* at 73. Christianity knew "sins" were natural and people would indulge their instincts. *Id.* The purpose of sin was to cause guilt, forcing the faithful to atone for these sins by donating money to the church. *Id.*

48. *Id.* at 81 ("[T]he most simplified description of the Satanic belief is: Indulgence Instead of Abstinence.").

49. *Id.* (arguing that these frustrations are harmful to oneself and others). This aspect of Satanism is also not very shocking. LaVey's theories on indulgence are basically

distinction between indulgence and compulsion.⁵⁰ Not indulging creates a compulsion.⁵¹ This frustration, according to LaVey, is the source of many of man's illnesses.⁵² Every Satanist, however, must choose her own path to indulgence.⁵³ The Satanist's indulgence allows her to be the master *of* her urges rather than to be mastered *by* them.⁵⁴

Indulgence is important because "life is the one great indulgence; death the one great abstinence."⁵⁵ Satanism rejects the notion of other religions that death is an awakening.⁵⁶ However, LaVey stated, "It is this lust for life which will allow the vital person to live on after the inevitable death of his fleshly shell."⁵⁷

the same as a law and economics discussion of utilitarianism. They are nearly identical to act-utilitarianism, espousing that each person should act to maximize her own utility. See Christopher T. Wonnell, *Problems in the Application of Political Philosophy to Law*, 86 MICH. L. REV. 123, 139-40 (1987) (describing also rule-utilitarianism, that is, the theory that individuals should follow the law, but the sovereign should create laws based on maximum utility). Utilitarianism is the "theory that the aim of action should be the largest possible balance of pleasure over pain or the greatest happiness of the greatest number." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1302 (10th ed. 1996).

50. SATANIC BIBLE, *supra* note 18, at 81 (citing *Webster's Encyclopedic Dictionary*, which defines indulgence as "[t]o give oneself up to; not to restrain or oppose; to give free course to; to gratify by compliance; to yield to," and defines compulsion as "[t]he act of compelling or driving by force, physical or moral; constraint of the will").

51. *Id.* (declaring "indulgence implies choice, whereas compulsion indicates the lack of choice").

52. *Id.* at 82-83 (noting that the majority of all illnesses are psychosomatic in nature).

53. LaVey illustrates this in a discussion of one form of indulgence generally associated with Satanism—sex. See *id.* at 66-74. Satanism advocates sexual freedom, but does not encourage orgiastic activity for everyone. *Id.* at 66. Group sex is not indicative of sexual freedom because such activity would be completely unnatural for most people. *Id.* at 66-67. Satanism encourages engaging in sexual activity that satisfies one's individual desire. *Id.* at 67. Satanism is more accepting than Christianity in this regard, because it condones heterosexuality, homosexuality, and bisexuality. See *id.* A caveat does remain: One cannot engage in activity that harms another. *Id.* at 69. Satanism opposes rape, child molestation, bestiality, or any other activity that involves naïve or unwilling participants. *Id.* at 70. LaVey's notions even run to the more traditional end; for example, LaVey states that "the ideal relationship is one in which the people are deeply in love with one another." *Id.* at 71. This is because "there is no greater sexual pleasure than that derived from association with someone you deeply love." *Id.* For some though, abstinence is their indulgence and valid if made of their own will. See *id.* at 84-85.

54. *Id.* at 85-86.

55. *Id.* at 92. This is especially important because man is the only animal that is aware of the unavoidability of death. *Id.* at 91.

56. *Id.* at 91-92. LaVey believed this is due to many individuals' unhappiness on earth and the hope for something better. *Id.*

57. *Id.* at 92.

Satanism even believes in love,⁵⁸ advocating loving strongly those who deserve it, but not wasting love on one's enemy.⁵⁹ Attempting to love one's enemies leads to the repression of one's hatred.⁶⁰ If one releases her anger toward those who deserve it, she is cleansed of that emotion and will not take out her pent-up frustrations on those she loves.⁶¹ By venting her frustration through a ritualized expression of hatred, the Satanist obtains a deeper, more honest love.⁶² This ritualized hatred is called a "human sacrifice."⁶³ The Satanist only *symbolically* destroys the victim by placing a curse on her.⁶⁴ Even this is qualified—the Satanist does not "sacrifice" an animal or child.⁶⁵ In the end, a curse should only be performed if it serves the dual purpose of releasing one's pent-up anger and "disposing of a totally obnoxious and deserving individual."⁶⁶

The curse is achieved through ritual.⁶⁷ The stereotypical ritual associated with Satanism is the black mass,⁶⁸ but LaVey declared that no true Satanist ever embraced it.⁶⁹ The stereotype originated from various groups attempting to blaspheme the Roman Catholic Church.⁷⁰ The black mass's ultimate goal should

58. *See id.* at 64 (describing love as one of the most intense emotions one can feel). Refer to note 53 *supra* (citing LaVey's belief that the greatest sexual pleasure is with the one you love).

59. SATANIC BIBLE, *supra* note 18, at 64 (stating that forcing oneself to love indiscriminately is unnatural). Refer to note 45 *supra* (discussing the Satanic Golden Rule).

60. SATANIC BIBLE, *supra* note 18, at 64 (arguing that such repression causes physical and emotional ailments).

61. *Id.*

62. *Id.* at 65 ("By honestly recognizing and admitting to both the hate and the love [the Satanist] feels, there is no confusing one emotion with the other.").

63. *Id.* at 88 (qualifying the term and stating that "human sacrifice in a Satanic ritual does not imply that the sacrifice is slaughtered 'to appease the gods'").

64. *Id.* (stating that a curse "leads to the physical, mental, or emotional destruction" of her target).

65. *Id.* at 89 (derogating the myth of baby sacrifices by Satanists as a lie of "propagandists of the right-hand path"). The sacrifice simply is energy discharged during a ritual. *Id.* at 88. Many emotions release the required energy—sexual orgasm, mortal terror, or consuming grief. *Id.* at 87–88.

66. *Id.* at 88.

67. *Id.* at 115.

68. *Id.* at 99. The traditional black mass consists of a defrocked priest standing before the altar of a nude woman who lays spread eagle, clutching a black candle made of unbaptized baby fat in each hand, and who has a chalice of prostitute urine laying on her belly. *Id.*

69. *Id.* at 104 ("It has often been said, and rightly so, that all of the books about the Devil have been written by the agents of God. It is, therefore, quite easy to understand how a certain breed of devil worshippers was created through the inventions of theologians.").

70. *Id.* at 101–02.

be to shock and outrage, a goal no longer achieved by blaspheming the Roman Catholic Church.⁷¹ To properly shock the world, the Satanist must parody and desecrate the values dearly held by today's society; she must find each era's sacred cow.⁷²

LaVey rejected the black mass and in its place set forth three new rituals.⁷³ First is the sex ritual, more commonly called a love charm.⁷⁴ Second is the compassion ritual performed to help oneself or another.⁷⁵ LaVey felt this ritual "could fall into the realm of genuine charity."⁷⁶ The third ritual is the destruction ritual, more commonly called a curse.⁷⁷

Satanic rituals are highly stylized—the participants wear black robes⁷⁸ and use a nude woman as an altar.⁷⁹ Hanging above the altar is the symbol of Baphomet, representing the Powers of Darkness.⁸⁰ The ritual requires one white and several black candles to light the room, white representing traditional religions and black representing Lucifer.⁸¹ For each ritual, the Satanist should extinguish all light but that from the candles.⁸²

To start the ritual, the Satanist purifies the air by ringing a bell,⁸³ followed by an invocation to Satan.⁸⁴ Next, she drinks wine

71. *Id.* at 101 (finding a black mass to be ineffective today because the modern Roman Catholic Church's reputation is unimpressive compared to what it represented in the Middle Ages).

72. *Id.* Writing in the 1960s, LaVey felt patriotism should be celebrated, drugs defiled, and militants defiled in order to properly shock people. *Id.* However, in a post-September 11 America, one may wish to do the opposite—parodying and attacking patriotism.

73. *See id.* at 114 (stating that each corresponds to a basic human emotion).

74. *Id.* (purporting that the spell can create desire in another person).

75. *Id.* at 115 (listing areas affected as "health, domestic happiness, business activities, material success, and scholastic prowess").

76. *Id.* (remarking that one should bear "in mind that 'charity begins at home,'" meaning that performing the compassion ritual to help yourself obtain a goal is still charity).

77. *Id.* (noting that this ritual is used to express "anger, annoyance, disdain, contempt, or . . . hate").

78. *Id.* at 134–35 (stating that substitution of all-black clothes for robes is allowed).

79. *Id.* at 135 (explaining that Satanism is a religion of the flesh and therefore uses an altar of flesh). A woman is used because woman is the "natural passive receptor." *Id.* In certain situations, a Satanist can use a more traditional altar. *See id.*

80. *Id.* at 136. The symbol of Baphomet is an upside down five-pointed star within a circle with a goat's face drawn to fit inside the star. *Id.* Outside the first circle is a second circle, and between the two the word "Leviathan" is written in Hebrew. *Id.* The Church of Satan trademarked the symbol in the United States. *See* Peter H. Gilmore, *The History of the Use of the Sigil of Baphomet in the Church of Satan*, at <http://www.churchofsatan.com/Pages/BaphometSigil.html> (last visited Apr. 23, 2004).

81. SATANIC BIBLE, *supra* note 18, at 136–37 (stating that candles are also used to burn written blessings or curses during the ritual).

82. *Id.* at 131.

83. *Id.* The bell is rung nine times while turning counterclockwise to the four points of the compass. *Id.* at 137.

84. *Id.* at 131. The Satanist also reads some of the seventy-seven "Infernal Names."

or spirits from a chalice⁸⁵ and directs a sword toward the four points on the compass, calling forth the “Princes of Hell.”⁸⁶ The Satanist then performs the specific ritual to meet her goal.⁸⁷ For the sex ritual, the Satanist uses a device that represents her desire,⁸⁸ coupled with a display of intense sexual feelings.⁸⁹ For the compassion ritual, she creates a mental image of the subject and intensely projects her desire onto the image.⁹⁰ For the destruction ritual, she must create an effigy of the victim and then destroy it.⁹¹ Ringing the bell again and stating, “So it is done,” completes the ritual.⁹²

III. SATANISM IS A CONSTITUTIONALLY PROTECTED RELIGION

These tenets and rituals are quite different from most recognized religions. But do the tenets of Satanism in fact constitute a religion, protected under the Free Exercise Clause?⁹³ At least eight cases report challenges to the constitutionality of a prison’s restriction of the right to practice Satanism.⁹⁴ In four of these cases, the Court assumed Satanism was a religion for procedural reasons.⁹⁵ Of the four other cases, one court stated

Id. at 131, 145–46.

85. *Id.* at 131, 138. “Ideally, the chalice should be made of silver,” but metal, glass, or crockery is allowed. *Id.* at 137.

86. *Id.* at 131. The sword represents aggressive force, but a knife, cane, or staff can be used. *Id.* at 138.

87. *Id.* at 131.

88. *Id.* at 132 (including drawings, stories, or roleplaying the object of desire).

89. *Id.* (stating that the sexual feelings should be displayed by masturbatory means, culminating in a strong orgasm).

90. *Id.* at 133.

91. *Id.* (describing the means of effigy destructions such as pins into dolls, burning images or stories of the victim’s demise, or a soliloquy of the same destruction).

92. *Id.* at 134. The Satanist rings the bell nine times before and after the ceremony. *Id.* at 137.

93. *See Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972) (asking whether the lifestyle of the Amish amounts to religious tenets). In the process of choosing what constitutes a religion, a court should distinguish the philosophical and personal beliefs of a person from those grounded in religion. *Id.* at 215–16. The Court found that the Amish lifestyle was a religion. *Id.* at 216. “[T]he traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living.” *Id.* Amish beliefs are rooted in the Bible and have been constant despite changes in the outside world. *Id.*

94. *See McCorkle v. Johnson*, 881 F.2d 993, 995 (11th Cir. 1989); *Childs v. Duckworth*, 705 F.2d 915, 919–20 (7th Cir. 1983); *Kennedy v. Meacham*, 540 F.2d 1057, 1058–59 (10th Cir. 1976); *Doty v. Lewis*, 995 F. Supp. 1081, 1082 (D. Ariz. 1998); *Carpenter v. Wilkinson*, 946 F. Supp. 522, 523–24 (N.D. Ohio 1996); *Ramirez v. Coughlin*, 919 F. Supp. 617, 619 (N.D.N.Y. 1996); *Howard v. United States*, 864 F. Supp. 1019, 1021 (D. Colo. 1994); *Joshua v. N.Y. City Dep’t of Corr.*, No. 86 CIV.1591 (RWS), 1987 WL 9199, at *1 (S.D.N.Y. Apr. 2, 1987).

95. *See Childs*, 705 F.2d at 919–20 (finding the issue was whether the restrictions

that it did not need to determine if Satanism was a religion.⁹⁶ In another case, the parties never raised the question of whether Satanism constitutes a religion.⁹⁷ In one case, the court of appeals reversed a district court's dismissal of the case, partly because the district court made no finding as to whether Satanism was a religion.⁹⁸ In the last case, the court held the plaintiff had failed to establish that the requested items were required for Satanic rituals, never addressing the issue of Satanism as a religion.⁹⁹ Consequently, no case has definitively decided if Satanism is a constitutionally protected religion.

A. *The Supreme Court Definition of Religion*

With no cases directly on point, the analysis must start with Supreme Court jurisprudence defining religion.¹⁰⁰ The first major free exercise case was *Reynolds v. United States*.¹⁰¹ The Court felt that the proper determination was not a precise definition of religion, but an examination of the religious freedom

were lawful and assuming that Satanism was a religion); *Carpenter*, 946 F. Supp. at 523, 528 (assuming that Satanism is a religion for the purpose of a motion for summary judgment); *Howard*, 864 F. Supp. at 1024 (stating that the government (in this case) never claimed Satanism was not a religion and so the court would assume that it was); *Joshua*, 1987 WL 9199, at *2 (stating that deciding the validity of a religion is not proper on a motion for summary judgment and that the defendant had not challenged whether Satanism was a religion).

96. See *McCorkle*, 881 F.2d at 995 (deciding the prison had acted properly even if Satanism was a protected religion).

97. See *Ramirez*, 919 F. Supp. at 621 (stating that the issue raised by the Department of Correctional Services was whether a claim could be brought to force it to officially recognize a religion, and that such a claim was valid).

98. See *Kennedy*, 540 F.2d at 1060 (rejecting defendant's claim that Satanism is not a religion because the district court made no finding either way).

99. See *Doty*, 995 F. Supp. at 1084. The court implied that Satanism's flexible rituals might disqualify it as a religion because if a prisoner were allowed to choose the items needed to exercise his religion, such flexibility would be "inimical to preserving institutional order, safety, and security of the inmates and staff." *Id.* at 1085.

100. Implicit in this analysis is that religion can be conclusively defined. Postmodernism posits that our language makes such subjects incapable of determinate meaning. See Peter C. Schanck, *Understanding Postmodern Thought and Its Implications for Statutory Interpretation*, 65 S. CAL. L. REV. 2505, 2517 (1992). Furthermore, definitions are in a constant state of flux. *Id.* at 2518. Neopragmatist Stanley Fish stated that one understands a text not by rules, "but by applying one's internalized cultural understandings." *Id.* at 2541-42. "We can never transcend our perspective; we can never reach a position independent of our experiences, physiology, interests, and history in order to attain a truly objective understanding." *Id.* at 2543. Thus any test set forth by the Supreme Court or the Courts of Appeals is not a true definition of religion, but is instead a value judgment as to what society should recognize as a religion. The Author concedes that this Comment's application of those tests may equally be a value judgment and makes no attempt to define the ever-changing scope of religion.

101. 98 U.S. 145, 161-67 (1878) (rejecting a Mormon challenge to a bigamy law).

guaranteed.¹⁰² “Congress was deprived of all legislative power over mere *opinion*, but was left free to reach *actions* which were in violation of social duties or subversive of good order.”¹⁰³ Almost seventy years later, the Supreme Court stated that a citizen is “granted the right to worship as he please[s] and to answer to no man for the verity of his religious views.”¹⁰⁴ The Court went on to state that the First Amendment does not choose one religion over another, and that ultimately the relationship between man and God is no concern of the state.¹⁰⁵

The next major development came in twin cases examining the conscientious objector status.¹⁰⁶ In *United States v. Seeger*, the Court defined religion as a belief that occupies the same place in the life of the party that God occupies in the life of one of traditional faith.¹⁰⁷ The truth of a person’s belief is not to be questioned, but the sincerity of those beliefs can and should be questioned.¹⁰⁸ The *Welsh* Court expanded this definition to include any strongly held “moral, ethical, or religious beliefs about what is right and wrong.”¹⁰⁹ However, both cases dealt with a statutory definition of religion¹¹⁰ and likely have no bearing on a constitutional definition of religion.¹¹¹

The ruling in *Wisconsin v. Yoder*¹¹² two years after *Welsh* strengthened the narrow reading of *Seeger* and *Welsh*.¹¹³ *Yoder* challenged a law compelling school attendance for children,

102. *Id.* at 162.

103. *Id.* at 164 (emphasis added) (determining this from the history of the passage of the First Amendment).

104. *United States v. Ballard*, 322 U.S. 78, 87 (1944). The defendants were charged with mail fraud for misrepresenting their religion, 1 Am. *Id.* at 79. The district court refused to charge the jury to determine “whether or not the defendants honestly and in good faith believed the representations which are set forth in the indictment.” *Id.* at 84. The district court had properly withheld a determination of the veracity of the defendant’s religion from the jury. *Id.* at 88.

105. *Id.* at 87.

106. *See United States v. Seeger*, 380 U.S. 163, 184–85 (1965) (extending conscientious objector status beyond those who are members of traditional religions); *see also Welsh v. United States*, 398 U.S. 333, 340 (1970) (expanding *Seeger* to beliefs that are not strictly religious in nature).

107. *See* 380 U.S. at 184.

108. *Id.* at 185.

109. 398 U.S. at 340.

110. Both *Seeger* and *Welsh* interpret section 6(j) of the Universal Military Training and Service Act. *Welsh*, 398 U.S. at 335; *Seeger*, 380 U.S. at 164–65.

111. *See James M. Donovan, God Is as God Does: Law, Anthropology, and the Definition of “Religion,”* 6 SETON HALL CONST. L.J. 23, 52 (1995) (stating that many authorities feel the *Seeger-Welsh* rulings do apply to the constitutional definition of religion).

112. 406 U.S. 205 (1972).

113. *See id.* at 215–16 (abandoning the language of *Seeger-Welsh*, examining the history of the Amish religion).

claiming it violated the Amish religion.¹¹⁴ The question presented was whether the Amish aversion to publicly educating their children was rooted in religious belief.¹¹⁵ The Court noted that the Amish beliefs were well founded in the Bible,¹¹⁶ that the beliefs had been constant for centuries,¹¹⁷ and that Amish religion “determines virtually their entire way of life.”¹¹⁸ The Court engaged in this finding because beliefs that are “philosophical and personal rather than religious . . . [do] not rise to the demands of the Religion Clauses.”¹¹⁹ This language seems to be at odds with the *Welsh* Court’s statement that any “moral, ethical or religious beliefs about what is right and wrong” fall under the statutory definition of religion.¹²⁰ As such, *Yoder* can be read to limit the broad definition of religion as set forth in *Welsh*.

The Court has recognized that the task of defining what constitutes a religion is a delicate problem.¹²¹ “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible” to be protected by the First Amendment.¹²² “One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause”¹²³

B. *The Africa v. Pennsylvania Definition of Religion*

The Supreme Court’s lack of an articulated, clear standard for determining what beliefs constitute a religion¹²⁴ caused one federal circuit to report that the lower federal courts have used

114. *Id.* at 208–09 (stating that the Amish believe sending their children to high school would endanger the salvation of Amish parents and children).

115. *Id.* at 215. “Although a determination of what is a ‘religious’ belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.” *Id.* at 215–16 (footnote omitted).

116. *Id.* at 216 (finding particular importance for the Amish belief system in the Epistle of Paul to the Romans, which states “be not conformed to this world”). Refer to note 93 *supra* (describing further the holding of *Yoder*).

117. *Yoder*, 406 U.S. at 216–17.

118. *Id.* at 216 (“[F]or the Old Order Amish, religion is not simply a matter of theocratic belief.”).

119. *Id.*

120. *Welsh v. United States*, 398 U.S. 333, 340 (1970).

121. *See Thomas v. Review Bd.*, 450 U.S. 707, 713–14 (1981) (stating this is a question that must be asked because only religious beliefs amount to Free Exercise protection).

122. *Id.* at 714.

123. *Id.* at 715.

124. *See Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981) (reporting that the courts, however, have moved beyond thinking of religion in purely theistic terms).

this absence to define religion in “broad, non-theistic” terms.¹²⁵ These courts caution that it is not their job to assess the truth of a person’s beliefs.¹²⁶ The accepted analysis in these courts is the “definition by analogy” approach.¹²⁷

The *Africa v. Pennsylvania* court promulgated a three-pronged test to identify whether a religion fits the “definition by analogy.”¹²⁸ The first prong of the analysis asks whether the putative religion addresses the “fundamental and ultimate questions having to do with deep and imponderable matters.”¹²⁹ These are questions “having to do with . . . life and death, right and wrong, . . . good and evil,” and the like.¹³⁰ Not every element of a religion need deal with these matters, but the court could not “conceive of a religion that d[id] not address these larger concerns.”¹³¹ Above all else, religions promote “certain ‘underlying theories of man’s nature or his place in the Universe.’”¹³²

125. *Id.* at 1032. The court cited the following as representative cases: *Malnak v. Yogi*, 592 F.2d 197, 207 (3d Cir. 1979) (Adams, J., concurring) (defining religion as “beliefs holding the same important position for members of one of the new religions as the traditional faith holds for more orthodox believers”); *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969) (finding Scientology a religion despite followers’ belief in “no deity in the conventional sense”); *Women’s Services, P.C. v. Thone*, 483 F. Supp. 1022, 1036 (D. Neb. 1979), *aff’d*, 636 F.2d 206 (8th Cir. 1980), *vacated by* 452 U.S. 911 (1981) (“For some persons it springs from a belief in a Supreme Being; for others, perhaps, from a tenet of a nontheistic religion; and for still others, from philosophical considerations unrelated to a Supreme Being or a tenet of a nontheistic religion.”); *Remmers v. Brewer*, 361 F. Supp. 537, 540 (S.D. Iowa 1973), *aff’d*, 494 F.2d 1277 (8th Cir. 1974) (declaring the Church of the New Song a religion though its beliefs center on “an inanimate and supreme force or spirit called Eclat”). *Africa*, 662 F.2d at 1032 n.12.

126. *Africa*, 662 F.2d at 1030.

127. *Id.* at 1032. This method involves courts “look[ing] to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted religions.” *Id.* (internal quotation marks and citation omitted).

128. *Id.* Courts in a number of circuits have used this three-pronged test. *See* *United States v. Meyers*, 95 F.3d 1475, 1484 (10th Cir. 1996) (affirming a finding of no religion by the district court, which substantially relied on the *Africa* analysis); *Alvarado v. City of San Jose*, 94 F.3d 1223, 1229 (9th Cir. 1996) (finding plaintiff’s beliefs were not religious under the *Africa* analysis); *Wiggins v. Sargent*, 753 F.2d 663, 666 (8th Cir. 1985) (listing several characteristics of plaintiff’s religion that met the *Africa* criteria, but without a full discussion of the analysis); *see also* *Friedman v. S. Cal. Permanente Med. Group*, 125 Cal. Rptr. 2d 663, 678 (Ct. App. 2002) (discussing several appellate and district court cases that have used the *Africa* analysis in whole or in part).

129. *Africa*, 662 F.2d at 1032.

130. *Id.* at 1033 (reporting that the putative religion, MOVE, contained “no transcendental or all-controlling force”).

131. *Id.* (describing MOVE’s larger concern as reconciling humanity and nature and noting that MOVE was more secular than religious).

132. *Id.* (quoting *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1160 (D.C. Cir. 1969)).

The second prong determines whether the supposed religion is a comprehensive belief system or simply isolated teachings.¹³³ A religion does not have one moral teaching, but instead addresses a broader scope.¹³⁴ The court noted a case in which a nontraditional belief system “qualified as a religion” because it provided answers concerning the nature of both the world and humankind, the sustaining force of the universe, and the means of ultimate happiness.¹³⁵

The final indicium showing that the beliefs amount to a religion is the presence of “formal and external signs.”¹³⁶ These signs are any that can be analogized to accepted religions, including “formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar[ities]” to other religions.¹³⁷

C. Satanism Is a Religion Under the Africa Definition

To garner any protection under the First Amendment, Satanism must be a constitutionally protected religion.¹³⁸ The analysis set forth by the Supreme Court in the *Seeger-Welsh* decisions would grant protection if the party sincerely held the religious beliefs.¹³⁹ The *Africa* analysis, however, follows the *Yoder* precedent and focuses on the more objective belief system of the putative religion and not the subjective strength of the believer’s faith.¹⁴⁰ Under the *Africa* analysis, Satanism is a protected religion because it answers the fundamental questions of life, it is comprehensive in nature, and it contains the formal signs of religion.¹⁴¹

133. *Id.* at 1032.

134. *Id.* at 1035 (describing MOVE’s theory as addressing one issue, “philosophical naturalism”).

135. *Id.* (citing *Malanak v. Yogi*, 592 F.2d 197, 213 (3d Cir. 1979) (Adams, J., concurring)) (declaring that a “secular, one-dimensional philosophy” cannot become a comprehensive theology solely because it pervades all of the believer’s activities).

136. *Id.* at 1032.

137. *Id.* at 1035–36 (noting that MOVE lacked almost all of the described indicia).

138. *See Wisconsin v. Yoder*, 406 U.S. 205, 215–16 (1972) (declaring that the concept of ordered liberty precludes allowing every person to decide that their beliefs are religious).

139. *See Welsh v. United States*, 398 U.S. 333, 343–44 (1970); *United States v. Seeger*, 380 U.S. 163, 184 (1965) (describing this test as “objective” despite its focus on the strength of believer’s faith).

140. *Africa*, 662 F.2d at 1032 (creating a three-pronged test that examines the putative religion’s tenets).

141. *See id.*

As stated above, the first prong of the *Africa* analysis is whether the religion answers the fundamental questions of existence such as “life and death, right and wrong, and good and evil.”¹⁴² Satanism directly discusses life and death, teaching that “[l]ife is the one great indulgence”¹⁴³ and encouraging a “driving enthusiasm for life.”¹⁴⁴ Having a strong vitality for life, a person clings to existence, allowing her to live beyond her physical death.¹⁴⁵ The Satanist’s enthusiasm associates her with the eternal.¹⁴⁶

The *Africa* court also felt a true religion discusses both right and wrong.¹⁴⁷ One of the main tenets of Satanism is the discussion of right and wrong.¹⁴⁸ Satanism expresses its tenets of right and wrong by stating that Christianity has reversed them, taking what is good and making it wrong in the form of the seven deadly sins.¹⁴⁹ The Satanist instead indulges, avoiding the repression of her feelings, because of her belief that suppression of these feelings leads people to commit wrongful acts.¹⁵⁰ For example, by releasing her anger at those who deserve it, a Satanist avoids venting her hatred on those she loves.¹⁵¹ However, Satanism qualifies the expression of wrath, stating that one does not truly attack the person, but instead performs a destruction ritual against them.¹⁵² Furthermore, *The Satanic Bible* posits that one should not hurt others, specifically declaring rape and molestation of children wrong.¹⁵³ In fact, Satanists are never to harm a child or animal in any manner, not even symbolically.¹⁵⁴

142. *Id.* at 1032–33.

143. SATANIC BIBLE, *supra* note 18, at 92 (stating that life is like a good party no one wants to leave).

144. *Id.* at 94 (praising children for living in this manner every day).

145. *Id.* (“It is this child-like vitality that will allow the Satanist to peek through the curtain of darkness and death and remain earthbound.”).

146. *Id.*

147. *Africa*, 662 F.2d at 1033.

148. *See* SATANIC BIBLE, *supra* note 18, at 46–47 (positing that following your natural instincts is right).

149. *Id.* at 46–47, 85 (encouraging Satanists to indulge in these sins).

150. *Id.* at 64 (declaring that the repression of emotion also leads to physical and emotional impairments).

151. *Id.* (explaining that forcing oneself to love everyone indiscriminately is unnatural).

152. *Id.* at 88–89 (emphasizing that the destruction is only symbolic).

153. *Id.* at 70 (stating that imposing one’s desires on another infringes on the other person’s freedom).

154. *Id.* at 89 (noting that animals and children are more in tune with their instincts than are adult humans).

Satanism also discusses good and evil.¹⁵⁵ It argues that anything leading to emotional or physical gratification has traditionally been labeled evil.¹⁵⁶ Satanism embraces this label of evil, both “evil” and its anadrome, “live.”¹⁵⁷ The *Africa* court believed it inconceivable to imagine a religion that does not discuss man’s place in the universe.¹⁵⁸ Satanism answers this by declaring that man is an animal like any other,¹⁵⁹ and that because of this, man should embrace his natural instincts.¹⁶⁰ By answering the question of man’s place in the universe and all the above-discussed matters, Satanism satisfies the first prong of the *Africa* analysis.

The second *Africa* criterion requires the putative religion to concern more than “isolated, unconnected ideas.”¹⁶¹ Answering “questions concerning the nature both of world and man, the underlying sustaining force of the universe, and the way to unlimited happiness” are indications that the belief system is comprehensive.¹⁶² Satanism places people wholly in the physical world and equates humankind to animals.¹⁶³ The Satanist—all of humankind, in fact—is ruled by her natural instincts.¹⁶⁴ Satanism declares God is the power that sustains the universe by permeating and balancing it.¹⁶⁵ Because God’s power is focused on balancing the universe, he is too impersonal and disconnected to care about the happiness of humankind.¹⁶⁶ Thus, Satanism teaches that man must strive for ultimate happiness here on earth instead of waiting for it to appear in heaven.¹⁶⁷ Satanism addresses man’s place in the universe and satisfies the second prong of the *Africa* analysis.

155. *Cf. Africa v. Pennsylvania*, 662 F.2d 1025, 1033 (3d Cir. 1981) (setting this as an indicium for the first prong of its test).

156. SATANIC BIBLE, *supra* note 18, at 62–63 (embracing this so-called evil as actually being good).

157. *Id.* at 63.

158. *Africa*, 662 F.2d at 1033.

159. SATANIC BIBLE, *supra* note 18, at 83.

160. *Id.* at 46–47 (stating that the traditional seven deadly sins represent aspects of man’s natural instincts).

161. *Africa*, 662 F.2d at 1035.

162. *Id.* (quoting *Malnak v. Yogi*, 592 F.2d 197, 213 (3d Cir. 1979) (Adams, J., concurring)).

163. SATANIC BIBLE, *supra* note 18, at 83 (declaring that man is sometimes better than animals, but often more vicious).

164. *Id.* at 46–47.

165. *Id.* at 40.

166. *Id.*

167. *Id.* at 54. However, the Satanist is also responsible for any wrongs she commits and will strive to correct them. *See id.* at 41.

The final element of the *Africa* test asks whether the beliefs evidence any formal signs similar to accepted religions.¹⁶⁸ Such signs include “formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observance of holidays and other similar manifestations associated with the traditional religions.”¹⁶⁹ Satanism has three ceremonies.¹⁷⁰ For these rituals, the participants dress in black robes, except one female participant who is nude and serves as the altar.¹⁷¹ The ritual chamber is lit with candles, and a bell is rung to purify the air.¹⁷² The priest drinks from a chalice and then passes it to other participants, while the priest uses the sword to invoke Satan.¹⁷³ The group ceremonies not only accomplish the goal of the ritual, but they also reinforce the participants’ faith.¹⁷⁴ These ceremonies represent Satanism’s formal services in which the participants have ceremonial functions, as required by the *Africa* test.¹⁷⁵

The Church of Satan grants positions of clergy to those it deems worthy.¹⁷⁶ The clergy levels include Priest or Priestess, and Magister or Magistra, some of whom are chosen for the Council of Nine, the ruling body of the Church.¹⁷⁷ Certain members of the clergy also make up the Order of the Trapezoid, which handles the administration of the Church.¹⁷⁸ The clergy are responsible to the High Priest or the High Priestess.¹⁷⁹ The Church allows for the formation of Grottos, local organizations in which the members can gather to reinforce their beliefs.¹⁸⁰ The head of each Grotto is called the Grotto Master, but not all Grotto Masters are priests.¹⁸¹ These

168. *Africa v. Pennsylvania*, 662 F.2d 1025, 1035 (3d Cir. 1981).

169. *Id.*

170. SATANIC BIBLE, *supra* note 18, at 114–15 (describing the sex, compassion, and destruction rituals—each corresponding to a basic human emotion).

171. *Id.* at 134–35 (allowing for alternatives).

172. *Id.* at 136–37.

173. *Id.* at 137–38 (allowing more alternatives to these acts).

174. *Id.* at 119 (“The pageantry of religion is what has sustained it.”).

175. *See Africa v. Pennsylvania*, 662 F.2d 1025, 1035 (3d Cir. 1981).

176. *Affiliation with the Church of Satan*, available at <http://www.churchofsatan.com/Pages/Affiliation.html> (last visited Apr. 23, 2004) [hereinafter *ChurchofSatan.com*] (declaring that “[t]his is meritocracy at work”).

177. *Id.* (claiming that priests are successful members of the community, having mastered skills and gained peer recognition, following the idea “as above, so below”).

178. *Id.*

179. *Id.*

180. *Id.* (stating the Grotto is for ritualization, socialization, and reinforcement of the Church of Satan).

181. *Id.* (denying Grotto Masters the right to speak for the Church of Satan “unless

make up the clergy and the formal structure of the Church, as required by *Africa*.¹⁸²

The Church of Satan unambiguously states it does not engage in any form of propagation.¹⁸³ Though it does not meet that part of the third *Africa* criterion, the Church does have holidays.¹⁸⁴ The first day of celebration, and the most important holiday, is the Satanist's own birthday.¹⁸⁵ The Satanist also celebrates Walpurgisnacht and Halloween,¹⁸⁶ the former being the last day of April, and the latter being the last day of October.¹⁸⁷ Finally, a Satanist celebrates the solstices and equinoxes.¹⁸⁸

The Church of Satan meets nearly all aspects of the third criterion of the *Africa* analysis.¹⁸⁹ Having found that Satanism also meets the first two criteria for religion, the *Africa* analysis mandates a finding that Satanism is a religion and subject to protection under the First Amendment of the Constitution.¹⁹⁰ Satanism demands this protection because it confronts the same ideas and serves the same purposes as the traditional and accepted religions.

IV. SATANISM AND PRISON WORSHIP

A. *The Turner v. Safley Test and Its Application in O'Lone v. Shabazz*

Having found that Satanism is a protected religion under the First Amendment, it must be determined what right prisoners have to practice these beliefs. As stated above, no court

they are members of the . . . Priesthood”).

182. See *Africa v. Pennsylvania*, 662 F.2d 1025, 1035 (3d Cir. 1981).

183. ChurchofSatan.com, *supra* note 176 (“We don’t solicit memberships.”). This mandate seems to stem, at least partly, from Satanists’ understanding of how others view the religion. They understand others might react negatively if asked by members to join the religion.

184. See *Africa*, 662 F.2d at 1035; see also SATANIC BIBLE, *supra* note 18, at 96–97 (listing observed holidays).

185. SATANIC BIBLE, *supra* note 18, at 96. One’s own birthday is the main holiday because the religion focuses on the individual as the highest embodiment of human life. *Id.* at 44–45.

186. *Id.* at 96–97. These two holidays are traditionally associated with demons reveling throughout the night. *Id.*

187. *Id.* at 97.

188. *Id.* at 98.

189. See *Africa*, 662 F.2d at 1035 (defining the third criterion as structural similarities to traditional religions).

190. See *id.* at 1032 (declaring that by meeting the test’s three prongs, a belief system is deemed a religion and is protected by the Constitution).

has declared that Satanism is a protected religion,¹⁹¹ but many have made adverse rulings against Satanic practices.¹⁹² This is because with imprisonment comes the necessity of limiting prisoner rights.¹⁹³ However, a prisoner does not forfeit all constitutional protection when found guilty of even the most heinous of crimes.¹⁹⁴ In the end, the nature of incarceration allows valid penological objectives to restrict a prisoner's constitutional rights.¹⁹⁵

In *Turner v. Safley*,¹⁹⁶ the Supreme Court set forth a standard to determine when a valid penological interest overrides a constitutional right.¹⁹⁷ *Turner* was a constitutional challenge to a prison's prohibition of interprison mailings and a requirement that the superintendent of prisons approve all prisoner marriages.¹⁹⁸ The *Turner* test has four prongs. First, there must be a rational connection between the prison action and a legitimate penological interest necessitating such action.¹⁹⁹ Second, the restriction is reasonable if it allows the prisoner an alternative means of exercising the right.²⁰⁰ The third element asks, if allowed, how the right would affect other prisoners, guards, and the allocation of prison resources.²⁰¹ Finally, a court should look at the availability of alternate means of achieving the

191. Refer to notes 94–99 *supra* and accompanying text.

192. See, e.g., *McCorkle v. Johnson*, 881 F.2d 993, 995–96 (11th Cir. 1989) (finding a prison prohibition of LaVey's works and a medallion constitutional); *Childs v. Duckworth*, 705 F.2d 915, 921 (7th Cir. 1983) (upholding the prison's denial of incense, candles, and a request for an organized religious service); *Doty v. Lewis*, 995 F. Supp. 1081, 1085–87 (D. Ariz. 1998) (allowing a denial of incense, candles, a Baphomet tapestry, and *The Satanic Bible* to a prisoner); *Carpenter v. Wilkinson*, 946 F. Supp. 522, 529 (N.D. Ohio 1996) (affirming a prison's refusal to allow a prisoner access to *The Satanic Bible*); *Joshua v. N.Y. City Dep't of Corr.*, No. 86 CIV.1591 (RWS), 1987 WL 9199, at *1, *3 (S.D.N.Y. Apr. 2, 1987) (agreeing that a prison can deny a request to perform midnight service).

193. See *Price v. Johnston*, 334 U.S. 266, 285 (1948) (stating that limitation of rights is "justified by the considerations underlying our penal system").

194. See *Bell v. Wolfish*, 441 U.S. 520, 545 (1979) ("There is no iron curtain drawn between the Constitution and the prisons of this country." (quoting *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974))).

195. See *Pell v. Procunier*, 417 U.S. 817, 822–23 (1974) (listing the following as valid penological interests: deterrence of crime, rehabilitation of prisoners, and institutional security).

196. 482 U.S. 78 (1987).

197. *Id.* at 89–90 (creating a four-pronged test to determine the constitutionality of the action of the prison administrators).

198. *Id.* at 81–82 (reporting that a prison official testified that marriage would only be approved if children were involved).

199. *Id.* at 89 (citing *Block v. Rutherford*, 468 U.S. 576, 586 (1984)).

200. *Id.* at 90 (stating that where alternatives are available courts should be deferential to the prison officials).

201. *Id.* (referring to this prong as the "ripple effect").

interest without damaging the prisoner's right either wholly or partly.²⁰²

The Court applied the *Turner* test in a freedom of exercise case later that same year.²⁰³ The challenged policy stated that prisoners working details outside the prison must remain there all day.²⁰⁴ This prevented Muslim prisoners who were assigned outside details from attending Jumu'ah, a religious service.²⁰⁵ The Court found the restriction served the valid penological interests of reducing congestion at the main gate where security was a problem, reducing the strain on guards supervising the outside details, and simulating an actual workday for the prisoners.²⁰⁶ The Court found a logical connection between the action of the prison and the penological interests advanced by the State, thereby satisfying the first prong of the *Turner* test.²⁰⁷

The Court found there were no reasonable alternatives for attending Jumu'ah, but stated the real question was whether the prisoners "retain the ability to participate in other Muslim religious ceremonies."²⁰⁸ Because the prisoners were able to participate in other Muslim services, the court found that the restrictions were reasonable.²⁰⁹ Thus, the prison's actions met the second criterion of the *Turner* test.²¹⁰

The Court examined the third and fourth prongs together.²¹¹ The prisoners suggested Muslims be allowed to work in one group that could attend Jumu'ah, or that they allow the Muslims to work on the weekends instead of Fridays.²¹² The Court agreed with the prison administrators that such plans could threaten

202. *Id.* at 90–91 (declaring, however, that "prison officials do not have to set up and then shoot down every conceivable alternative").

203. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 350 (1987) (rejecting the claim that prison officials carry the burden of proof under the *Turner* test).

204. *Id.* at 346–47 (stating that the imam was consulted when this policy was put into effect).

205. *Id.* at 347. The Qur'an commands Jumu'ah to be held every Friday between noon and the afternoon prayer. *Id.* at 345. Jumu'ah is a mandatory service for all men, but if a Muslim does miss Jumu'ah he can make up for it by praying four *rak'ahs* Zhuhr. *See* Ælfwine Mischler and Wa'il Shihab, *Jumu'ah (Friday Congregational) Prayer*, at <http://www.islamonline.net/english/introducingislam/Worship/Prayers/article05.shtml> (Sept. 15, 2003).

206. *O'Lone*, 482 U.S. at 351.

207. *Id.*

208. *Id.* at 351–52.

209. *Id.* at 352 ("The record establishes that respondents are not deprived of *all forms* of religious exercise, but instead freely observe a number of their religious obligations." (emphasis added)).

210. *Id.* (listing numerous other accommodations the prison officials made for Muslim prisoners).

211. *Id.*

212. *Id.*

security by creating affinity groups that may challenge institutional authority.²¹³ Furthermore, such special accommodation could smack of favoritism.²¹⁴ Thus, the Court found there were no reasonable alternatives that would not affect the prison adversely.²¹⁵ Finding the *Turner* test had been satisfied, the court upheld the prison regulation.²¹⁶

B. The Practice of Satanism and the Turner Test

In *O'Lone*, the Supreme Court applied the *Turner* test to determine whether a prison's action was a violation of the Free Exercise Clause of the First Amendment.²¹⁷ In order to withstand a challenge, a prison action restricting the practice of Satanism must also satisfy the *Turner* test.²¹⁸

213. *Id.* at 353 (reporting that when affinity groups are created, one prisoner takes on a leadership role and can challenge the order of the institution).

214. *Id.*

215. *Id.* (reaffirming that the Court would not substitute its judgment for that of the prison officials).

216. *Id.*

217. *Id.* at 350–53 (holding that the prison action was valid).

218. There is possibly another means for the prisoner to challenge the prison's restriction of his free exercise right. In 1993, Congress passed the Religious Freedom Restoration Act (RFRA). Pub. L. No. 103-141, 107 Stat. 1488 (1993) (codified as amended at 42 U.S.C. §§ 2000bb–2000bb-4 (2000)). The RFRA was passed to attempt to overturn the Supreme Court holding in *Employment Division v. Smith*, 494 U.S. 872 (1990), and to reestablish that the government requires a compelling justification to burden an individual's religious exercise. See 42 U.S.C. § 2000bb (2000). However, in 1997 the Supreme Court ruled that the RFRA was an unconstitutional use of Congress's power under the Enforcement Clause of the Fourteenth Amendment. *City of Boerne v. Flores*, 521 U.S. 507, 536 (1997). However, this ruling may only have rendered the RFRA unconstitutional as it applies to state action and not federal action. See *Kikumura v. Hurley*, 242 F.3d 950, 958 (10th Cir. 2001). Several circuits have actually found that *Flores* is not dispositive of the RFRA's applicability to federal action. *Id.* ("This court agrees, however, with both the Eighth and Ninth Circuits in their conclusion that *Flores* does not determine the constitutionality of RFRA as applied to the federal government."). But see *La Voz Radio de la Comunidad v. FCC*, 223 F.3d 313, 319 (6th Cir. 2000) (doubting that the "RFRA is constitutional as applied to the federal government"). "[U]nder RFRA, a court does not consider the prison regulation in its general application, but rather considers whether there is a compelling government reason, advanced in the least restrictive means, to apply the prison regulation to the individual claimant." *Kikumura*, 242 F.3d at 962. *Kikumura* would allow federal prisoners to bring an RFRA action and require the prison to show that its actions met strict scrutiny. Because of the unclear status of the RFRA and the individualized nature of an RFRA analysis, further discussion of an RFRA challenge is outside the scope of this Comment. Further analysis is also unnecessary due to this Comment's conclusion that prison bans on the practice of Satanism violate the *Turner* test. Refer to Part IV.B *infra*. For more information on how one might use the RFRA to construct a religious freedom claim against the federal government, see Gregory P. Magarian, *How to Apply the Religious Freedom Restoration Act to Federal Law Without Violating the Constitution*, 99 MICH. L. REV. 1903 (2001).

1. *The Turner Test and Satanic Rituals.* Prison actions restricting Satanism seem to fall into two categories: first is the restriction of certain Satanic rituals and on items used in those rituals,²¹⁹ and second is the complete denial of the right to perform Satanic rituals.²²⁰ The first category of restriction has been carried out in five reported cases where prisoners have been denied incense, candles, medallions, a Baphomet tapestry, a three-inch metal bell, and even the right to hold services.²²¹ This type of restriction was also carried out in Kentucky, where Satanic services were suspended after inmates were allowed to practice throughout the summer.²²²

The first prong of the *Turner* test asks whether the prison action is rationally related to a legitimate governmental interest.²²³ Maintaining the security and safety of the institution is often deemed a valid governmental interest.²²⁴ The security threat often alleged is that the restricted items can hide contraband or assist the prisoner in committing some illegal activity.²²⁵ However, the *Howard* court rejected this argument, recognizing that the prison had allowed many of the restricted items to be used in other religious ceremonies with “[n]o security problems.”²²⁶ In *Ramirez*, the court expressed disbelief that ritualistic items could be a security threat because the prison officials could keep items in a secure place when not in use.²²⁷ Thus, prison officials should be able to provide a prisoner with

219. Refer to note 192 *supra* (citing several cases restricting access to items used in various Satanic rituals).

220. Refer to Part IV.B.2 *infra* for further discussion of the complete denial of the practice of Satanic rituals.

221. See *McCorkle v. Johnson*, 881 F.2d 993, 996 (11th Cir. 1989) (prohibiting access to a medallion); *Childs v. Duckworth*, 705 F.2d 915, 921 (7th Cir. 1983) (restricting access to incense and candles); *Doty v. Lewis*, 995 F. Supp. 1081, 1085–86 (D. Ariz. 1998) (denying incense, candles, and a Baphomet tapestry); *Ramirez v. Coughlin*, 919 F. Supp. 617, 622 (N.D.N.Y. 1996) (refusing to allow a prisoner a three-inch metal bell); *Joshua v. N.Y. City Dep’t of Corr.*, No. 86 CIV.1591 (RWS), 1987 WL 9199, at *3 (S.D.N.Y. Apr. 2, 1987) (denying a request to perform midnight service).

222. *Kentucky Prison Cancels Satanic Masses*, *supra* note 2.

223. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

224. See, e.g., *McCorkle*, 881 F.2d at 995 (finding that a plaintiff’s Satanic practices could cause disorder in the prison); *Doty*, 995 F. Supp. at 1085 (stating that incense could hide the smell of drugs).

225. See, e.g., *Childs*, 705 F.2d at 921 (contending that candles can be either a fire hazard or be used to mold keys, and that “incense can be . . . used to mask the odor of illegal substances”).

226. *Howard v. United States*, 864 F. Supp. 1019, 1025 (D. Colo. 1994) (including Hare Krishna ceremonies that the plaintiff himself engaged in that allowed incense and candles).

227. *Ramirez v. Coughlin*, 919 F. Supp. 617, 622 (N.D.N.Y. 1996).

the needed items without any harm to security.²²⁸ Because there is not a reasonable connection between the prison action and a governmental interest, these policies fail to meet the first prong of the *Turner* test.²²⁹

The second criterion of the *Turner* test examines whether there are alternative means of practicing the religion.²³⁰ Satanism is a very flexible religion, allowing members to substitute ritualistic items for those more commonly available.²³¹ Under the *Turner* test, the prison does not have to supply a prisoner with the exact requested item if reasonable alternatives exist;²³² Satanism's flexibility recognizes that alternatives are viable.²³³ For example, a Satanist uses a sword in the invocation of Satan.²³⁴ Clearly, a sword is a security risk, but Satanism allows for the substitution of a staff or similar item.²³⁵ Therefore, restricting access to particular items needed for the ritual does not completely deprive the ritual of its symbolic significance. Because a prison action is constitutional if the prisoners "retain the ability to participate in other . . . religious ceremonies," the second element of the *Turner* test will be satisfied as long as the prison is willing to allow alternatives.²³⁶

The third element of the *Turner* test requires consideration of the impact that allowing the right would have on other prisoners, guards, and resources.²³⁷ The Supreme Court has recognized that prisons do not have to fully accommodate every religion, nor does such accommodation need to be identical.²³⁸ In *Howard*, prison officials seized upon this concession, claiming they were too understaffed to provide the requested accommodations.²³⁹ The court

228. *Id.*

229. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

230. *Id.* at 90.

231. Refer to notes 78–79, 85–86 *supra* and accompanying text (discussing the Satanic rituals and the faithful's ability to use substitutes for the altar, robe, chalice, and sword).

232. *Turner*, 482 U.S. at 90.

233. See *Howard v. United States*, 864 F. Supp. 1019, 1022 (D. Colo. 1994) ("Plaintiff also emphasized the flexibility of his requests. He asked that if a certain implement could not be allowed for any reason, a suitable alternative be substituted.").

234. SATANIC BIBLE, *supra* note 18, at 138.

235. *Id.*

236. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 351–52 (1987) (stating that the inability to attend Jumu'ah was acceptable because plaintiffs could attend other Muslim services).

237. *Turner v. Safley*, 482 U.S. 78, 90 (1987).

238. See *Cruz v. Beto*, 405 U.S. 319, 322 n.2 (1972) (declaring that "reasonable opportunities" to practice religion must be given to all prisoners).

239. *Howard v. United States*, 864 F. Supp. 1019, 1027 (D. Colo. 1994).

rejected this argument based on past prison behavior.²⁴⁰ For example, the prison had previously allowed a single Hare Krishna to perform a ritual that included incense and candles.²⁴¹ Most of the required items are readily available or already present in the prison—either generally available or available for other religious services. For example, if a prison offers candles for Catholic prisoners, it is hard to claim reasonableness when it denies the Satanist the same candles. Both the *Howard* and *Ramirez* courts emphasized that the time requirement for Satanic ceremonies was minimal.²⁴² Again, the effort required to securely store the needed items while the prisoners are not using them is negligible, thereby involving little impact on prison resources.²⁴³ Thus, these prison actions fail to meet the third criterion of the *Turner* test because they clearly have a minimal impact on the prison as a whole if unilaterally imposed on Satanists and not practitioners of other religions.²⁴⁴

The final prong of this test considers whether there are alternative means for the prison to achieve its goals.²⁴⁵ The presence of obvious alternatives is evidence that the prison action is unreasonable.²⁴⁶ As stated above, one reasonable alternative would be for the prison to store the necessary items while not in use.²⁴⁷ Another suggestion has been to bring in outside volunteers to supervise the rituals, allowing the prison chaplain to attend to other duties.²⁴⁸ The *Howard* court concluded that prison officials were willing to accommodate eleven other religions, but not Satanism, a factor strongly indicating that the prison's actions were unreasonable.²⁴⁹ The prison action of prohibiting items used in the practice of Satanism fails the fourth element of the *Turner* test because there are more reasonable actions the prison could take.²⁵⁰

240. *Id.*

241. *Id.* at 1025, 1027.

242. *Id.* at 1022 (stating that the prisoner was seeking only one hour per month); see also *Ramirez v. Coughlin*, 919 F. Supp. 617, 622 (N.D.N.Y. 1996) (citing the *Howard* decision).

243. See *Ramirez*, 919 F. Supp. at 622 (noting that keeping a ceremonial bell in a "secure place" would only require "a minimum of effort" on the part of the prison).

244. See *Turner v. Safley*, 482 U.S. 78, 90 (1987).

245. See *id.*

246. *Id.*

247. *Ramirez*, 919 F. Supp. at 622.

248. See *Howard v. United States*, 864 F. Supp. 1019, 1028 (D. Colo. 1994).

249. *Id.* (finding that the prison accommodated "Roman Catholic (in both Spanish and English), Protestant, Native American, Mormon, Buddhist, Jewish, Muslim, Nation of Islam, Rastafarian, Hare Krishna, and Jehovah's Witness" faiths).

250. See *Turner*, 482 U.S. at 90.

Ultimately, the restriction of some items used in Satanic rituals is constitutionally allowed.²⁵¹ However, the items used are all necessary instruments to achieve the five needed elements of the Satanic ritual: desire to achieve one's goal; perfect timing for success; proper imagery to intensify one's emotions; direction to expunge those emotions during the ritual; and the ability to discern the proper target for one's rituals.²⁵² Because these elements are central to the practice of Satanism, at a minimum, prison officials should accommodate as best as possible the alternatives a Satanist requires for her rituals. The role of the courts should be to ensure that prison officials are providing some alternative means of practicing Satanism.

2. *The Turner Test and the Denial of All Practices.* The second category of prison action is more insidious,²⁵³ involving two related types of action. The first action involves the total denial of the right to perform Satanic rituals.²⁵⁴ The Program Statement of the Federal Bureau of Prisons (BOP) expressly forbids religious practices involving the casting of spells or curses.²⁵⁵ Because Satanic rituals involve the use of magic, especially curses,²⁵⁶ BOP policy effectively denies a Satanist the right to practice her rituals.²⁵⁷ In the second type of action, some prison administrators have gone so far as to deny prisoners access to *The Satanic Bible*.²⁵⁸ These two actions, especially when

251. See *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987) (stating that as long as prisoners have alternative means of practicing their religion, the prison can curtail one aspect of the beliefs). For example, substituting a staff for a sword, or even prohibiting both items.

252. SATANIC BIBLE, *supra* note 18, at 121–28.

253. I call the actions insidious because they are based on the contents of the prisoner's beliefs rather than a legitimate penological interest. See *Howard v. United States*, 864 F. Supp. 1019, 1030 (D. Colo. 1994) (declaring that the content of the beliefs is "an unacceptable criteria according to the Supreme Court"); see also *Ramirez v. Coughlin*, 919 F. Supp. 617, 623 (N.D.N.Y. 1996) (citing *Howard* in its decision).

254. *Howard*, 864 F. Supp. at 1021 (refusing to allow a prisoner to perform Satanic rituals); *Joshua v. N.Y. City Dep't of Corr.*, No. 86 CIV.1591 (RWS), 1987 WL 9199, at *3 (S.D.N.Y. Apr. 2, 1987) (denying a request to perform a midnight service).

255. FEDERAL BUREAU OF PRISONS, PROGRAM STATEMENT 5360.08, at 3 (2002) [hereinafter BOP PROGRAM STATEMENT], available at http://www.bop.gov/progstat/5360_008.pdf. The Program Statement stems from an agency rule limiting religious activity if the security of the institution is threatened. See 28 C.F.R. § 548.10(b) (2003).

256. SATANIC BIBLE, *supra* note 18, at 88.

257. See BOP PROGRAM STATEMENT, *supra* note 255, at 3 (denying prisoners the right to cast spells or curses).

258. *McCorkle v. Johnson*, 881 F.2d 993, 995 (11th Cir. 1989); *Doty v. Lewis*, 995 F. Supp. 1081, 1086–87 (D. Ariz. 1998); *Carpenter v. Wilkinson*, 946 F. Supp. 522, 528–29 (N.D. Ohio 1996).

used together, amount to a complete denial of the prisoners' right to freely exercise Satanism.²⁵⁹

In several reported cases, prison officials have set forth governmental interests to support a curtailment of Satanic practices. First, prisons have claimed that knowledge of a fellow prisoner's adherence to Satanism could inflame other prisoners.²⁶⁰ However, the *Howard* court rejected this claim as unsubstantiated, especially in light of the fact that other prisoners already knew that the prisoner, Howard, practiced Satanism and that he had never been harassed.²⁶¹ The second claim, based entirely on the content of the religion, argues that Satanism is inherently violent²⁶² and opposed to the goals of rehabilitation.²⁶³ The *Howard* court rejected this notion because the plaintiff did not advocate an extreme position of Satanism as did the prisoner in *McCorkle*,²⁶⁴ who sought to perform virgin sacrifices, blood-drinking, and flesh-consumption.²⁶⁵ However, the *Howard* court's characterization of these beliefs as an extreme position of Satanism is somewhat flawed. *McCorkle* does not represent an extreme version of Satanism; it instead represents a misreading and misunderstanding of *The Satanic Bible*.²⁶⁶ Additionally, in *Doty*, prison officials read *The Satanic Bible* to "condone[] human sacrifice,"²⁶⁷ despite LaVey's express statement that such deaths are purely symbolic.²⁶⁸

Furthermore, Satanism embraces the rehabilitative process; when a Satanist commits a wrong, she must learn from it and not

259. Such actions would be similar to denying a Roman Catholic the right to attend mass and have access to the *Holy Bible*. Without the ceremonies and texts of a religion, the faithful are essentially left without any form of practice. These actions are tantamount to complete denial of free exercise, which is unconstitutional even if done to a prisoner. See *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987) (stating that prison action must still allow prisoners to engage in some of their religious activities).

260. *Howard v. United States*, 864 F. Supp. 1019, 1025–26 (D. Colo. 1994).

261. *Id.* at 1026. The Kentucky prisoners had also already openly practiced their beliefs for several months before the prison condemned Satanism. *Kentucky Prison Cancels Satanic Masses*, *supra* note 2.

262. *McCorkle v. Johnson*, 881 F.2d 993, 995 (11th Cir. 1989).

263. See *Doty v. Lewis*, 995 F. Supp. 1081, 1086–87 (D. Ariz. 1998); *Carpenter v. Wilkinson*, 946 F. Supp. 522, 529 (N.D. Ohio 1996); *Howard*, 864 F. Supp. at 1026.

264. *Howard*, 864 F. Supp. at 1026.

265. *McCorkle*, 881 F.2d at 995.

266. Refer to notes 309–16 *infra* and accompanying text (describing how *McCorkle* misstates Satanism).

267. *Doty*, 995 F. Supp. at 1086.

268. SATANIC BIBLE, *supra* note 18, at 88 (advocating only a symbolic destruction of a human through a hex or curse, and explaining that the curse or "sacrifice" could only be performed if it both "release[d] the magician's wrath" and "dispose[d] of a totally obnoxious and deserving individual").

repeat it.²⁶⁹ In *Doty*, prison officials stated that Satanists have no respect for the law, which adds to the harm that Satanism might cause the rehabilitative process.²⁷⁰ This assertion is flatly wrong; the Satanist believes she must follow the law because she has entered into a social contract to do so.²⁷¹ She also believes that punishment for breaking the law should be “swift and sure.”²⁷² The claim that Satanism is antithetical to the rehabilitative process is a misreading of *The Satanic Bible* and invalid.

Again, the first element of the *Turner* test states that there must be a logical connection between the prison action and a legitimate governmental interest.²⁷³ The first stated interest, preventing an inflamed reaction, does not have a logical connection to the action of preventing prisoners from practicing Satanism.²⁷⁴ To advance the interest of protecting a Satanist against an inflamed reaction, the prison is seeking to deny her constitutionally granted rights.²⁷⁵ There appears to be a logical inconsistency in this claim.²⁷⁶ Furthermore, the incidents where Satanists have been allowed to practice openly, no retaliation has

269. *Id.* at 41 (arguing that the Satanist must learn from those wrongs for which she is “truly sorry” and not commit them again).

270. *See Doty*, 995 F. Supp. at 1086.

271. THE CHURCH OF SATAN INFORMATIONAL PACK 7 (2001), at <http://www.churchofsatan.com/Pages/cosinfopack.pdf> [hereinafter CHURCH OF SATAN INFORMATIONAL PACK] (“Man is by nature a social creature and makes his social contract with his fellows, thus rules of conduct are established to allow maximum freedom for individuals to interact.”).

272. *Id.*

273. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

274. *See, e.g., Howard v. United States*, 864 F. Supp. 1019, 1026 (D. Colo. 1994).

275. *Id.* There is another constitutional problem here; the prison action also restricts the prisoner’s right to free speech. The stated interest is similar to the hostile audience cases. *See, e.g., Feiner v. New York*, 340 U.S. 315, 319 n.2 (1951) (citing the New York Court of Appeals statement that a defendant had “so inflamed and agitated a mixed audience of sympathizers and opponents that, in the judgment of the police officers present, a clear danger of disorder and violence was threatened”). The Court has declared that a state cannot make “the peaceful expression of unpopular views” illegal. *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963). The speech must rise above simple “public inconvenience, annoyance, or unrest.” *Id.* at 237–38 (quoting *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949)). Of course, the constitutional rights of prisoners are not as strong as the rights of regular citizens. *Price v. Johnston*, 334 U.S. 266, 285 (1948) (stating that along with a prison sentence comes certain restrictions in a prisoner’s rights). However, one certain Supreme Court dictum can be read to offer an individual more protection than when there is a single constitutional restriction. *See Employment Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 881–82 (1990) (declaring that the presence of two constitutional rights allows for neutrally written laws to be invalidated where one would not). It is unclear that this dictum would be followed in any suit, let alone a suit brought by a prisoner practicing Satanism.

276. As Benjamin Franklin stated, “They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.” *The Quotable Franklin*, at <http://www.ushistory.org/franklin/quotable/quote04.htm> (last visited Apr. 23, 2004).

been reported. Because the second interest concerning Satanism's alleged violent tendencies lacks a valid foundation, it is unrelated to the prison action, and it too fails the first prong of the *Turner* test.²⁷⁷

The second prong looks at whether there are alternative means of practicing the right.²⁷⁸ The *O'Lone* Court stated that a restriction is reasonable if the prisoner can engage in some of the activities of her religion.²⁷⁹ When a prison refuses to allow a prisoner to engage in any rituals,²⁸⁰ or to allow prisoners access to religious texts,²⁸¹ or both,²⁸² little religious practice is left. Whereas the Muslim prisoners in *O'Lone* had the opportunity to attend other services,²⁸³ these Satanist prisoners cannot engage in other rituals or even study the texts of their religion. In *Howard*, the prison official suggested the prisoner could practice an alternative religion offered at the prison.²⁸⁴ The court expressed outrage at this suggestion and rejected the notion as "not a serious suggestion."²⁸⁵ The *Howard* prison officials plainly did not respect Satanism as a religion and felt that the prisoner should be happy to accept any religion.²⁸⁶ It is also clear that the prison officials understood their actions ended any practice of Satanism, because they suggested the prisoners practice another religion as the alternative, not some other Satanic practice.²⁸⁷ Thus, this action did not meet the *O'Lone* standard for the second prong of the *Turner* test.²⁸⁸

The third prong of the *Turner* test requires the court to examine the impact that allowing a free exercise right would have on other prisoners, guards, and resources.²⁸⁹ In *McCorkle*,

277. Refer to notes 260–68 *supra* and accompanying text.

278. *Turner*, 482 U.S. at 90.

279. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987).

280. *Howard v. United States*, 864 F. Supp. 1019, 1021 (D. Colo. 1994) (refusing to allow a prisoner to perform Satanic rituals); *Joshua v. N.Y. City Dep't of Corr.*, No. 86 CIV.1591 (RWS), 1987 WL 9199, at *1 (S.D.N.Y. Apr. 2, 1987) (denying a request to perform midnight service).

281. See, e.g., *McCorkle v. Johnson*, 881 F.2d 993, 995 (11th Cir. 1989); *Carpenter v. Wilkinson*, 946 F. Supp. 522, 528–29 (N.D. Ohio 1996) (denying prisoner access to *The Satanic Bible*).

282. *Doty v. Lewis*, 995 F. Supp. 1081, 1085–87 (D. Ariz. 1998).

283. *O'Lone*, 482 U.S. at 352.

284. *Howard*, 864 F. Supp. at 1028.

285. *Id.* (declaring that prison officials never considered alternative means for *Howard* to practice Satanism).

286. See *id.*

287. *Id.*

288. See *O'Lone*, 482 U.S. at 352 (stating that the prison action must leave some alternative means of worship).

289. *Turner v. Safley*, 482 U.S. 78, 90 (1987).

the prison asserted that because Satanism “teach[es] hatred for one’s fellow man and disrespect for laws and legal order, and . . . encourage[s] . . . the practice of violent acts such as flesh-eating and blood-letting,” Satanism has an adverse impact on the prison environment.²⁹⁰ Again, this language misconstrues the tenets Satanism.²⁹¹ Satanism does not teach hatred, expressly states Satanist should follow the law, and allows only symbolic violence. Moreover, the complete denial of *The Satanic Bible* actually hurts other prisoners, because prisoners like McCorkle who are interested in Satanism can misunderstand its teachings without access to *The Satanic Bible*.²⁹² Because the denial actually hurts more prisoners than it helps, this action fails the third part of the *Turner* test.²⁹³

The final element of the *Turner* test states that when there are obvious alternatives to the prison action, such action may be an “exaggerated response” to prison concerns.²⁹⁴ In *Howard*, the interest asserted was that other prisoners might harm Satanist prisoners.²⁹⁵ Prohibiting Satanism in response to such an interest is clearly an exaggerated response because the most obvious choice would be to punish other prisoners for trying to harm the Satanist prisoner rather than denying the Satanist prisoner his constitutional rights. In *Howard*, this response was further exaggerated because the general prison populace already knew the plaintiff was a Satanist and had never harmed him.²⁹⁶ The stated reason for restricting the prisoner’s right to practice Satanism therefore failed the fourth element of the *Turner* test.²⁹⁷

Prison officials cannot completely restrict the practice of Satanism by prisoners because the prison’s stated interests fail to meet the elements of the *Turner* test.²⁹⁸ Furthermore, *O’Lone* dictates that the prison action should not remove all alternatives of practicing a religion.²⁹⁹ However, prison officials can restrict

290. McCorkle v. Johnson, 881 F.2d 993, 996 (11th Cir. 1989).

291. Refer to notes 262–72 *supra* and accompanying text (explaining how the officials in McCorkle and Doty misread *The Satanic Bible*).

292. See, e.g., McCorkle, 881 F.2d at 995–96 (stating that because the prisoner wanted to sacrifice virgin females, drink blood, and consume human flesh, denying access to *The Satanic Bible* was valid). Refer to Part V *infra* (positing that restrictions on access to *The Satanic Bible* are more harmful to the prison environment than helpful).

293. See *Turner*, 482 U.S. at 90.

294. *Id.*

295. Howard v. United States, 864 F. Supp. 1019, 1025–26 (D. Colo. 1994).

296. *Id.* at 1026.

297. *Id.* at 1028.

298. See *Turner*, 482 U.S. at 89–90.

299. See O’Lone v. Estate of Shabazz, 482 U.S. 342, 352 (1987).

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access to certain items,³⁰⁰ such as a sword.³⁰¹ The role of the court should be to make sure the action of the prison is truly a restriction due to security threats and not a complete restriction of the practice of Satanism.³⁰² The ultimate goal of the *Turner* test is to allow prison officials to take neutral action for legitimate reasons not based on the content of the religion.³⁰³

V. BEATS THE DEVIL YOU DON'T!

Prison officials are certain there is a good reason not to allow the practice of Satanism,³⁰⁴ but there is a better reason to allow it. Warden Patti Webb understood this reason when she allowed prisoners to practice Satanism during the summer of 2002.³⁰⁵ Warden Webb felt it was safer for inmates to practice Satanism openly, where it could be monitored, than to practice it secretly in the prison yard.³⁰⁶ *McCorkle v. Johnson* provides an example of how a prisoner's misconceptions about Satanism are often much worse than the actual rituals.³⁰⁷

Prisoner McCorkle fought the prison's denial of his request for a copy of *The Satanic Bible*.³⁰⁸ At an evidentiary hearing, McCorkle described a fertility ritual where the participants sacrifice a female virgin, "preferably a Christian."³⁰⁹ He went on to describe an initiation ritual in which the participants engage in "[w]rist-slashing, blood-drinking, and the consumption of human flesh," preferring the victim to be alive until the end of the ceremony.³¹⁰ However, these rituals are in direct opposition to the teachings of *The Satanic Bible*.³¹¹

Satanists use the terms "kill" and "sacrifice" to refer to the workings of a ritual curse that Satanists believe can bring about

300. See *id.* at 351–52.

301. See SATANIC BIBLE, *supra* note 18, at 138 (calling for a sword to be used in Satanic rituals).

302. See *Howard*, 864 F. Supp. at 1029 (implying that the action of the prison was based not on interests of security, but on a disagreement with the content of the religion).

303. *Turner*, 482 U.S. at 90 ("[T]he governmental objective must be a legitimate and neutral one.").

304. See, e.g., *Howard*, 864 F. Supp. at 1025–26 (claiming that allowing the prisoner to practice Satanism might inflame other prisoners and that Satanism is antithetical to the goals of rehabilitation).

305. *Kentucky Prison Cancels Satanic Masses*, *supra* note 2.

306. *Id.*

307. 881 F.2d 993 (11th Cir. 1989).

308. *Id.* at 994.

309. *Id.* at 995.

310. *Id.*

311. See SATANIC BIBLE, *supra* note 18, at 88 (noting that human sacrifice is a symbolic destruction of the victim).

physical, mental, or emotional harm to their victims.³¹² This killing is a symbolic act.³¹³ LaVey described the need for killing any living creature during a ritual as “inhibitive” and “asinine.”³¹⁴ The energy that must be released during the ritual should be that of the actor in a heightened emotional state.³¹⁵ Furthermore, Satanists advocate following the law of the state, which also condemns the murder of individuals.³¹⁶

To paraphrase Justice Louis D. Brandeis, prison officials feared the devil and banned Satanism.³¹⁷ But Satanism is a benign religion. LaVey picked Satan as a religious masthead because Satan represented the opposite of the religions that LaVey felt frustrated man’s natural instincts.³¹⁸ Satanism advocates embracing these natural instincts.³¹⁹ It also advocates rehabilitation in the form of learning from one’s past wrongs and striving, if one is truly sorry, to never commit them again.³²⁰ As stated, Satanists must obey the law.³²¹ Furthermore, LaVey advocated a strong commitment to love.³²² The final teaching of Satanism is that one should have a thirst for life, and that by living a happy, vital level of life, one can obtain some life after death.³²³

In sum, the tenets of the Church of Satan stand in opposition to those things sought by Charles McCorkle.³²⁴ With proper access to and the ability to study *The Satanic Bible*, prisoners like McCorkle may come to embrace the true teachings of Satanism. With rejection of a false conception of Satanism,

312. *Id.* The purpose of the ritual is to expunge repressed anger and it allows the Satanist to avoid taking out the anger on those she loves. *Id.* at 64.

313. This ritual involves destroying an effigy of the hated person; for example, a voodoo doll, an image of the person, a written description of the person, or an oral description of the person. *Id.* at 133–34.

314. *Id.* at 88 (describing those who sacrifice animals as “truly the cold and the dead”).

315. *Id.* at 87–88 (stating the released energy can come from sexual orgasm, blind anger, mortal terror, or consuming grief).

316. CHURCH OF SATAN INFORMATIONAL PACK, *supra* note 271, at 48–49 (“The Church of Satan harshly frowns upon the commission of any illegal act.”).

317. *See* Whitney v. California, 274 U.S. 357, 376 (1927) (Brandeis, J., concurring) (“Men feared witches and burnt women.”).

318. SATANIC BIBLE, *supra* note 18, at 55.

319. *Id.* at 46–48.

320. *Id.* at 41.

321. CHURCH OF SATAN INFORMATIONAL PACK, *supra* note 271, at 48–49.

322. SATANIC BIBLE, *supra* note 18, at 64, 71 (stating that the greatest sexual experiences are with those you love).

323. *See id.* at 94 (“If a person has been vital throughout his life and has fought to the end for his earthly existence, it is this ego which will refuse to die, even after the expiration of the flesh which housed it.”).

324. McCorkle v. Johnson, 881 F.2d 993, 995–96 (11th Cir. 1989).

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perhaps the prisoner can accept rehabilitation. Without such access, the McCorkles of the world will continue to believe that Satanism represents terror and violence. In the end, the devil they know may beat the devil they don't.

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