There Is No Constitutional Right to Satanism

Description

There was an uproar last week when a school district in my neck of the woods approved an “after-school Satan club.” After proper chaos ensued, the school district did the right thing and reconsidered, deciding they should not approve a club for children sponsored by the Satanic Temple after all.

In the midst of this controversy, before the school district reversed course, a friend called me to discuss the issue. He explained that a prominent conservative organization in our community was torn as to whether a Satan club is protected by the First Amendment, and whether conservatives can or should publicly oppose the club. Though this particular after-school Satan club is now a moot issue, the troubling reality behind these events needs to be addressed.

American conservatives have been so shaped by libertarian arguments for absolute personal freedom that the point has come where they wonder whether Satanism is part of the tradition protected by the U.S. Constitution. Something must be done to take back this obvious ground.

There is very little case law on the specific issue of whether Satanism is a protected religion, and what we do have is a bit jumbled. An illustrative case from the mid-1990s from the federal court in the Northern District of Ohio, while not binding precedent, is an excellent summary of how confused American constitutional law has become regarding religion.

In *Carpenter v. Wilkinson*, the court deals with a lawsuit by a prisoner who was denied access to a Satanic Bible while incarcerated. While the court ends up deciding the case on other grounds, it goes into great detail about the contours of religious liberty. The court’s analysis begins by admitting that “Deciding what is ‘religious’ or what constitutes a ‘religion’ is a very delicate undertaking, especially where the claimed ‘religious’ beliefs fall outside what is commonly thought of as mainstream religion.” At the same time, the court knows that there cannot be a “blanket privilege” to create any set of beliefs justifying one to conduct himself however he pleases, and call it a protected religion. Thus the court is stuck between religious relativism and the anarchy that would result if it actually allowed that relativism to play out.

For our purposes, the most interesting part of the *Carpenter* case is the admitted shift in the court’s

understanding of religion. Since the Constitution does not define religion, the court “must turn to case law for guidance.” The court begins by noting that early Supreme Court precedent “defined religion in traditional theistic terms.” Keep this in mind, because for the originalist, this should largely be the end of the analysis. The court goes on to state, however, that over time the standard expanded to include unorthodox religions and even belief systems that are non-theistic.

Here we have gone wrong. Once the traditional understanding of religion at the time the Constitution was ratified is discarded, we have no clear way to define the contours of what constitutes a religion at all. So we resort to allowing courts to make up tests and rules. The Supreme Court suggested that, when determining whether a non-traditional religion has First Amendment protection, we should ask whether “the claimed belief occup[ies] the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption.” Here the question is not about the content of the beliefs, but only whether they are held and lived with similar vigor as that of a believing Christian.

A Third Circuit Court of Appeals suggested three indicia to determine whether the above criterion is met (for the uninitiated, federal courts love to make up multi-prong tests involving the word “indicia”): “First, a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters. Second, a religion is comprehensive in nature; it consists of a belief system as opposed to an isolated teaching. Third, a religion often can be recognized by the presence of certain formal and external signs.” Again, the court has fallen into a relativist, meaningless understanding of religion. If someone invents a comprehensive belief system that addresses the deep questions of life and death and has some rituals or signs to accompany it, that is religion protected by the First Amendment, no matter the truth or quality of the views expressed.

There are two important concepts that rebut the idea that Satanism is protected by the Free Exercise Clause of the First Amendment. First, anti-blasphemy laws were consistently upheld as compatible with the free exercise of religion: According to the *Harvard Law Review*, “the blackletter rule was clear. Constitutional liberty entailed a right to articulate views on religion, but not a right to commit blasphemy — the offense of ‘maliciously reviling God,’ which encompassed “profane ridicule of Christ.’” Throughout the nation’s history and even into the twentieth century, the federal courts have consistently upheld state anti-blasphemy laws as constitutional. There is no binding precedent stating that anti-blasphemy laws violate the First Amendment.

This is where the actual content of religious claims matters. A simple look at the Church of Satan website or its Wikipedia page (for both of which I intentionally choose not to provide a link) clearly shows that the views of the Satanic sect revile God and ridicule Christ. Thus, the practice of “Satanism” is itself blasphemous. By law, it ought to be punishable, not protected.

The fact that the practice of Satanism is itself blasphemous and thus historically does not deserve First Amendment protection leads to the question that emerged in discussing the *Carpenter* case above: what is religion under the First Amendment? We get very little guidance from the text of the Constitution itself. The text tells us that Congress shall not prevent the free exercise of religion; the incorporation doctrine based on the Fourteenth Amendment extends this protection to the state governments. But nowhere does the text of the Constitution define religion.

Originalism proposes that a legal text “ought to be given the original public meaning that it would have had at the time that it became law.” This is not a controversial position: The text of a law means what the words meant at the time the law was enacted. The meaning of legal texts cannot change with the

times, or else we risk passing laws that come to mean something drastically different than what the legislators thought they meant. It is critically important, then, to understand the meaning of words at the time they were enacted into law.

Religion is defined in Samuel Johnson's 1768 *Dictionary of the English Language* as "Virtue, as founded upon reverence of God, and expectation of future rewards and punishments." The *Dictionarium Britannicum*, published in 1730, defines religion as "a general Habit of Reverence towards the divine Nature, by which we are both enabled and inclined to worship and serve God, after that Manner which we conceive to be most agreeable to his Will, for that we may procure his Favour and Blessing." These two eighteenth-century definitions from prominent dictionaries reveal a truth uncomfortable to many modern ears: Religion—at least at the time of the Founding—was specifically about the proper worship of *God*; it was not simply a profound set of beliefs about the great questions in life, nor a faith in whatever one considers his higher power. Religion was (and is) specifically about the fulfillment of the duties we human creatures have toward our Creator, God.

It makes sense, then, that early jurisprudence limited First Amendment protections mostly to Christian denominations. It also makes sense that courts consistently found that anti-blasphemy laws do not deny First Amendment rights.

Now, as America became more and more religiously diverse, it does make sense to ask how far First Amendment protection of religion should go. If religion is based on reverencing and honoring God, it may be reasonable to include other major monotheistic faiths under the definition. Even polytheistic faiths such as Hinduism may fit the definition, if one accepts that the Hindu worship of many deities is an attempt to worship God the Creator. These are at least reasonable inquiries.

However far one chooses to extend the definition of religion, there is no case to extend it to include Satanism. Satan is the one who rejected God, who said "*non serviam*" and would not give God his due. Satan presents the very antithesis of the definition of religion; Satanism is by definition, not religion. It is blasphemy in its practice. Therefore, Satanism ought to enjoy no protection under the First Amendment or any other law of the United States.

Our Founders strove to create a more perfect union. Nothing about the promotion or toleration of Satanism, especially among our children, furthers that goal. Conservatives need to start getting comfortable speaking up about these types of issues—articulating basic truths unapologetically. A combination of overemphasis on individual liberty and the desire to get along with an increasingly insane world presents nothing but danger. Conservatives cannot let these things slide.

It is arguable that America was founded as an expressly Christian nation: That depends on what one means by the term "Christian nation." But it is beyond doubt that the American founding favored Christianity, had limited tolerance for non-Christian religions, and had no tolerance for anti-Christian blasphemy. A Satanic club popping up at a children's school would have horrified the Founders, and there would have been no legal tolerance of such a thing. That is our inherited tradition.

Satanism has no constitutional protection. It has no place in our public square, and certainly not in our schools. If we twist the Constitution and the concept of religious liberty so far that it considers in any way protecting such horrendous and evil things as Satanic cults in publicly funded schools, the Constitution of the Founders is broken beyond recognition. Conservatives need not disavow our constitutional tradition; we simply need to fight boldly to take it back. This is an easy place to start.

By Jonas E. Alexis
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Date Created
04/21/2023