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Religious Liberty and Snake-Handling Churches¹

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Abstract: Handling poisonous snakes in religious services is illegal in some states, but should it be? In this paper, I will examine the meaning of religious liberty by exploring Martha Nussbaum's work on religious tolerance and applying the theories of John Locke and Roger Williams to the issue of snake-handling churches. Using the recent National Geographic television series, *Snake Salvation* (2013), as a point of departure, I will argue on the basis of the ideas espoused by Locke and Williams that snake-handling churches should be allowed to use venomous snakes under certain conditions.

On November 15, 2013, Andrew Hamblin, pastor of the Tabernacle Church of God in LaFollette, Tennessee, stood on the steps of the Campbell County courthouse and declared: "This is about standing for freedom...If God moves on me, and I feel led through and by the Holy Ghost to reach my arm into a box of rattlesnakes, I should have my religious right to do that."² Handling snakes in religious services has been illegal in Tennessee since 1947, and in November 2013 Pastor Hamblin had around fifty venomous snakes confiscated from his church and was charged with the possession of Class I wildlife. In this paper, I will *not* explore whether religious snake handling is wise or moral (in fact, I think it is neither), but I will examine the meaning of religious freedom and argue that churches like Hamblin's Tabernacle Church of God should be allowed to handle snakes during services with certain restrictions.

Pastor Andrew Hamblin, the aspiring "Billy Graham of snake-handling,"³ became famous through the National Geographic series, *Snake*

¹ Originally developed for *The Journal of the Mildred Haun Conference* (2014), and used with permission from © Gregory L. Bock (2014).

² "LaFollette Pastor Andrew Hamblin: Case about Freedom, not Snakes," YouTube, accessed March 21, 2014, <http://www.youtube.com/watch?v=UYBcfbJpAfk>.

Salvation (2013). He was one of two pastors featured on the show, the other being Pastor Jamie Coots of the Full Gospel Tabernacle in Jesus Name⁴ in Middlesboro, Kentucky, who was charged with illegally possessing and transporting venomous snakes in Tennessee in November 2012. Incidentally, Pastor Coots died from a snake bite he received in a church service in February 2014. The show brought renewed attention to the practice of religious snake handling by documenting the lives of these believers and their charismatic worship services. They believe that handling snakes is a biblical command, one that is a sign of the presence and anointment of God. As Mark 16:17-18 says, “And these signs shall follow them that believe; In my name shall they cast out devils; they shall speak with new tongues; They shall take up serpents; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover.” As Pastor Jamie Coots says on the season finale of the show, “I believe if I didn’t take up serpents, I’d die and go to hell. Most of my people believe this just as strongly as I do, so, you know, it’s really important that we have them.”

Freedom of Religion

The U.S. Constitution upholds the freedom of religion in the First Amendment, which says, “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.” The Tennessee State Constitution contains a much stronger statement of religious freedom:

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law, to any religious establishment or mode of worship.⁵

This means that the state cannot establish an official religion or interfere with the practices of religion. This does not mean, however, that religious practices

³ “The Devil Fights Your Mind Facts,” National Geographic, accessed March 18, 2014, <http://channel.nationalgeographic.com/channel/snake-salvation/articles/the-devil-fights-your-mind-facts/>.

⁴ [sic]

⁵ As quoted in the Tennessee Supreme Court opinion: *Swann v. Pack* (1975).

cannot be restricted at all. For example, no one is allowed to sacrifice a human being in the name of religion, and this is how it should be.

In *Liberty of Conscience*, Martha Nussbaum explores six normative principles that are expressed by the First Amendment.⁶ The first is the Equality Principle, which states that everyone should have equal rights and respect under the law. The second is the Respect-Conscience Principle, which recognizes the special value and vulnerability of the human conscience. The third is the Liberty Principle, which explains that citizens need ample space in which to follow the dictates of conscience. The fourth is the Accommodation Principle, which declares that sometimes religious followers need exemptions from otherwise applicable laws. The fifth is the Nonestablishment Principle, which prevents the state from endorsing one religion over another. The sixth is the Separation Principle, which requires a separation of church and state to uphold the previous five principles.

Nussbaum describes two ways of interpreting these principles, the philosophical traditions of John Locke and Roger Williams.⁷ Locke argues for a doctrine of neutrality that holds that the state should be neutral as to whether a practice is religious or not. As Locke says, “Whatsoever is lawful in the commonwealth, cannot be prohibited by the magistrate in the church.”⁸ In other words, if nonreligious citizens can dunk themselves in water for fun, then church baptisms should be allowed. If citizens can cover their faces in cold weather, then Muslim *burqas* should be allowed. If citizens are allowed to kill animals for food, then animal sacrifices should be allowed. And if citizens are not allowed to use certain drugs, then religious followers should not be allowed to either.⁹

Roger Williams argues for accommodation, a liberty more generous than Lockean neutrality. Accommodationism is the view that not only should the state not interfere with religious practices, but it should also allow religions more space than it allows the general public. In other words, religious followers should sometimes be exempt from generally-applicable laws. The reason for this is that in a democratic society, laws often favor the majority, so minority religions will need extra freedoms in order to thrive. Nussbaum gives

⁶ Martha Nussbaum, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality* (New York, Basic Books, 2008), 22-25.

⁷ Martha Nussbaum, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age* (Cambridge: The Belknap Press of Harvard University Press, 2012), 68-77.

⁸ John Locke, *A Letter Concerning Toleration* (Buffalo: New York: Prometheus Books, 1990), 48.

⁹ These examples and more can be found in Martha Nussbaum, *The New Religious Intolerance*, 71-73, 102-111.

the example of George Washington's letter to the Quakers, exempting them from military service. As Washington writes, "I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as regard for the protection and essential interests of the nation may justify and permit."¹⁰ Other examples include not requiring Catholic priests to disclose at a trial what is said in a confessional and allowing Amish parents to pull their children from the last two years of compulsory state education to teach them traditional skills at home.

Both Lockean neutrality and Williams' accommodationism have influenced American jurisprudence, but in recent decades the courts have favored a Lockean interpretation.¹¹ For my purposes here, it will suffice to show that even under the less generous Lockean approach, snake-handling churches should be allowed to operate. To make this case, I will show that state laws are not being applied consistently.

Lockean Neutrality and Snakes

Is it legal to handle dangerous reptiles in *nonreligious* settings? In some states, it is. For example, Sweetwater, Texas holds an annual rattlesnake convention where participants can milk the venom from live rattlesnakes and even stand in a snake pit. In Florida, live alligator wrestling is a popular tourist attraction. However, neither of these states violates Lockean neutrality because neither has laws outlawing snakes in religious services (but these examples will be useful below). National reptile shows, like Repticon, exhibit venomous snakes, but often with strict guidelines, such as requiring special permits and sealed containers. When Repticon comes to Tennessee, however, venomous reptiles are excluded because nobody in the state is allowed to possess these kinds of animals *except* zoos, nature centers, and wildlife rehabilitation centers.

Do these exceptions in Tennessee constitute a violation of Lockean neutrality? Some would argue that these places are not similar to snake-handling churches in the relevant sense, for public safety is not an issue and these institutions are certified. Nevertheless, zoos and the like are, in fact, dangerous places. For example, in 2011 an elephant trainer was killed at the

¹⁰ Martha Nussbaum, *New Religious Intolerance*, 77.

¹¹ *Ibid.*, 79-80.

Knoxville Zoo.¹² A worker at the Kentucky Reptile Zoo has been bitten by snakes nineteen times over thirty years.¹³ Lest one think that zoos are only dangerous places for workers, in 2012 a two-year-old boy fell into an African dog exhibit at a Pennsylvania zoo and was mauled to death.¹⁴ While these incidents may be rare, injuries and deaths at snake-handling churches are also rare, and usually the victims are the adults who are “anointed” and have chosen to participate, not children or visitors, who are kept away from the snakes. Further research would be helpful in providing an accurate comparison of the levels of risk at zoos and snake-handling churches.

Even if zoos tended to be safer than snake-handling churches, it is doubtful that this would justify an absolute prohibition of snake handling on Lockean grounds. At most, it would justify strict regulations such as licensing requirements and prominently displayed signage. States require zoos to have a permit to operate, and it seems reasonable to require snake-handling churches to do the same.

Accommodationism and Compelling State Interests

Ironically, of the two philosophical traditions mentioned above, the State of Tennessee endorses the more generous accommodationism of Roger Williams. In 2009 Governor Bredesen signed into law Tennessee’s Religious Freedom Restoration Act, which includes the following language:

No government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability. No government entity shall substantially burden a person’s free exercise of religion unless it demonstrates that application of the burden to the person is (1) essential to further a compelling governmental interest and

¹² “Elephant that Crushed Woman Handler Gets Reprieve,” ABC News, accessed March 18, 2014, <http://abcnews.go.com/US/elephant-crushes-animal-handler-stephanie-james-death-knoxville/story?id=12630510>.

¹³ “Jim Harrison’s hands – Mangled by 30 Years Worth of Snake Bites – Tells One-Of-A-Kind Story,” KYForward, accessed March 18, 2014, www.kyforward.com/2013/08/jim-harrisons-hands-mangled-by-30-years-worth-of-snake-bites-tell-one-of-a-kind-story/.

¹⁴ “Autopsy Suggests Boy Mauled at Pennsylvania Zoo Killed by Dogs, not Fall,” Fox News, accessed March 18, 2014, <http://www.foxnews.com/us/2012/11/04/toddler-dies-after-fall-mauling-at-pennsylvania-zoo/>.

(2) the least restrictive means of furthering that compelling governmental interest.¹⁵

This legislation endorses the practice of giving exemptions from laws of “general applicability,” which goes much further than simple neutrality with regards to religion. Under these terms, religious liberty can only be restricted if there is a compelling state interest. Is there a compelling state interest in the case of picking up serpents?

The Tennessee Supreme Court thought so in *Swann v. Pack* (1975). In the opinion of the Court, snake handling constitutes a “public nuisance”:

The handling of snakes in a crowded sanctuary, with virtually no safeguards, with children roaming about unattended, with the handlers so enraptured and entranced that they are in a virtual state of hysteria and acting under the compulsion of ‘anointment,’ we would be derelict in our duty if we did not hold that respondents and their confederates have combined and conspired to commit a public nuisance and plan to continue to do so.¹⁶

A “nuisance” is defined by the Court as anything “that endangers the life or health, gives offense to the senses, violates laws of decency, or obstructs the reasonable or comfortable use of property.”¹⁷ In the opinion of the Court, snake handling is considered a public nuisance because it is a risk to everyone, not only to the public, but also to the snake handlers themselves. The Court states, “Tennessee has the right to guard against the unnecessary creation of widows and orphans. Our state and nation have an interest in having a strong, healthy, robust, taxpaying citizenry capable of self-support and of bearing arms and adding to the resources and reserves of manpower.”¹⁸ It says such reasoning also justifies compulsory immunizations, water fluoridation, and required chest x-rays. The Court states, “Yes, the state has a right to protect a person from himself and to demand that he protect his own life.”¹⁹

However, snake-bite deaths in religious services are rare; in fact, snake-bite deaths in general are rare. According to the CDC, from 1999 to 2004,

¹⁵ “House Bill No. 1598,” accessed on March 18, 2014, <http://www.capitol.tn.gov/Bills/106/Chapter/PC0573.pdf>.

¹⁶ *Swann v. Pack* (1975).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

there was an average of six deaths per year for the whole country, from *any* kind of snake bite, not just those received in religious services. Prior to Jamie Coots' death in 2014, the last recorded snake-bite death in a religious service was Mack Wolford in West Virginia in 2012. According to one source, there have been 92 deaths in the roughly one-hundred year history of the tradition.²⁰ In recent years, with an estimated population of 2,500 snake handlers in 125 churches, there has been roughly one death every two years, an annual rate of .5 deaths per 2,500 followers. As Ralph Hood describes, "All I know is that these people do handle [snakes], and most of the time they are not bit, and they can do what scientists think is not likely. Nobody has a good explanation."²¹

Moreover, there are dangerous nonreligious practices that remain legal. For example, according to the CDC, smoking causes over 480,000 deaths annually.²² Secondhand smoke alone causes almost 42,000 deaths annually. Smoking is more dangerous than snake handling and should, on the basis of *Swann v. Pack*, qualify as a "public nuisance." In fact, Tennessee has outlawed smoking in public places because it views it as just such a nuisance, but it makes exceptions for bars and places that cater to adults over 21. If Tennessee can make exceptions for this nonreligious public nuisance, why not for religious snake handling? Religious practices are supposed to be accommodated whenever possible; however, there are no such legislative or constitutional protections of nonreligious practices.

I am not arguing for the prohibition of tobacco, but I am arguing on the basis of neutrality that the state should not discriminate against risk-taking behavior in religion, especially when those risks are small. The law restricts smoking and requires proper warning labels in order to lower the risk to the public. Why not do the same with signage for snake-handling churches? In addition, barriers could be used to separate the snakes from the parishioners. At the rattlesnake convention in Texas, there are barriers around the kill floor and the snake pit to keep the snakes contained. In Florida, alligator-wrestling shows also have barriers to keep the alligators from attacking tourists or vice versa. Barriers at snake-handling churches would make these churches even

²⁰ Ralph Hood and W. Paul Williamson, *Them That Believe: The Power and Meaning of the Christian Serpent-Handling Tradition* (Berkeley: University of California Press, 2008), 239-245.

²¹ Ralph Hood, a researcher from the University of Tennessee, Chattanooga, quoted in, "Snake-Handling Preachers Open Up about 'Takin' Up Serpents,'" NPR, accessed on March 18, 2014, <http://www.npr.org/2013/10/04/226838383/snake-handling-preachers-open-up-about-takin-up-serpents>.

²² "Tobacco Related Mortality," CDC, accessed on March 18, 2014, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/.

safer; in fact, Tennessee already has a barrier policy for exhibiting dangerous wildlife at licensed facilities, which would work for churches as well:

Exhibits of Class I animals shall be in a manner that provides for the protection of the animals and the public at all times. Such exhibits shall have exclusionary barriers and trained uniformed guards or caretakers in a position to deter unauthorized public access to the animals; to prevent any escape of animals; and to prevent any direct physical contact of the animals with the public. A barrier system of moats and/or deterrent fencing of a design sufficient to prevent the escape of the animals, deter any unauthorized entry, and prevent any direct physical contact with the public shall be required for all exhibits that do not have trained uniformed guards or caretakers on duty in view of the exhibit area when open to the public. Such deterrent fencing shall be [at] least eight feet in height to deter the throwing of foreign objects into the cage area and prevent the entry of any unauthorized person.²³

From the perspective of snake handlers, such restrictions might be an inconvenience, but they might welcome such a compromise if it means having their freedoms recognized.

In *Swann v. Pack*, the Court considered alternatives to an absolute prohibition, but rejected them for the following reasons:

We gave consideration to limiting the prohibition to handling snakes in the presence of children, but rejected this approach because it conflicts with the parental right and duty to direct the religious training of his children. We considered the adoption of a “consenting adult” standard but, again, this practice is too fraught with danger to permit its pursuit in the frenzied atmosphere of an emotional church service, regardless of age or consent. We considered restricting attendance to members only, but this would destroy the evangelical mission of the church. We considered permitting only the handlers themselves to be present, but this frustrates the purpose of confirming the faith to non-believers and separates the pastor and leaders from the congregation. We could find no rational basis for limiting or restricting the practice, and could conceive of no alternative plan or procedure which would be palatable to

²³ “Rules of the Tennessee Wildlife Resources Agency Wildlife Resources,” accessed March 18, 2014, <http://tn.gov/sos/rules/1660/1660-01/1660-01-18.pdf>.

the membership or permissible from a standpoint of compelling state interest.²⁴

Apparently, the Court did not consider a barrier policy. A barrier might seem intrusive, but it would be effective. I suggest something like a church baptismal. Many American Protestant churches have baptismals built into the stage or the wall behind the stage. The same design could be used to create an aesthetically pleasing and safe snake cage, into which practitioners enter when they feel anointed. A uniformed deacon could sit in front of the snake cage door to make sure that only signees are allowed to enter. To the Court's concern about the presence of children, children are not presently allowed to handle snakes in these services, so the Court's concern is puzzling. However, the snake cage would settle the safety issue for children by not allowing anyone to wander unsuspectingly into the vicinity of the snakes. To the Court's concern about applying the consenting adult standard, consent could be given in advance of the "frenzied atmosphere," and, if needed, a signature could be obtained and kept on file. Of course, participants do not know when they will be anointed by God to handle snakes, but if they have signed a form in advance saying they understand the risks and that they release the church from liability *if* they ever are anointed, then this should settle the Court's concerns.

In conclusion, I am not saying that picking up serpents is wise; in fact, I would say just the opposite. There are also real ethical issues that need to be addressed like the ethical treatment of animals, the place of children, and responsible hermeneutics; however, I believe that these issues are separate from the question of whether snake handling should be legal. In this paper, I have argued on the basis of neutrality and accommodationism that snake-handling religion should be permitted under certain conditions.

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²⁴ *Swann v. Pack* (1975).