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Tax Exemptions, Spaghetti, and the Devil: The Perils of Ambiguous Limitations on Religion and a Proposed Definition for Legally Acknowledged Systems of Faith

1. Introduction

This paper will analyze the scope of what the United States legal system as well as their international counterparts recognize and therefore, define as religion (part 2), to develop an argument supporting the potential need for limitations on unorthodox religions in the modern era (part 3) as exemplified in the instances of the following: the practice of LaVeyan Satanism, Scientology, and Pastafarianism (part 4). For the purposes of specificity, the following analysis will focus on the United States government and federal courts' opinions regarding the topic at hand.

2. Defining religion and its requisite elements

Before evaluating the United States' governmental approach to determining the limitations of a religion, it is pivotal to examine first the international legal community and how religion is treated in other nations as a whole. The European Court of Human Rights (hereinafter ECtHR) explicitly notes their

view in relation to the "importance of Article 9 on the [ECtHR] Convention in a democratic society and the *locus standi* of religious bodies", stating that the word "religion is defined neither by the text of Article 9 nor in the Court's case law" intentionally "because such a definition would have to both flexible enough to embrace the whole range of religions worldwide (...) and specific enough to be applicable to individual cases" – a task that would be "extremely difficult, [if not] impossible"[1]. More specifically, the ECtHR emphasizes the fact that the Convention is "designed to guarantee no rights that are theoretically or illusory but [rather] rights that are practical and effective", which essentially means that should the Court grant States a degree of discretion that "allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection[s]", the right to religious freedom discussed in Article 9 would ultimately end up becoming "highly theoretical and illusory"[2].

The only standard the ECtHR provides for evaluating the legitimacy of a religion is that for a "personal or collective conviction is to benefit from the right to 'freedom of thought, conscience and religion' it must attain a certain level of cogency, seriousness, cohesion, and importance"; so long as this fundamental prerequisite condition is satisfied, "the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed"[3]. Overall, all of these judicial doctrines point to the international adherence to the Principle of Neutrality, which is largely "synonymous with non-identification", a sentiment that is not necessarily governmental indifference to the sociopolitical dynamics associated with religion, but rather an understanding that as a "result of a plurality of ideologies and religions", non-secular governments must maintain impartiality towards faith-related issues for the preservation of religious freedom and equality

1 "The scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions. On the other hand, not all opinions or convictions necessarily fall within the scope of the provision, and the term 'practice' as employed in Article 9 § 1 does not cover each act which is motivated or influenced by a religion or belief" (*Pretty v. the United Kingdom*, § 82). ECtHR, Guide to Article 9 ECHR, 2022, pg. 7.

2 "Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith. At all events, these definitions may not be interpreted to the detriment of non-traditional forms of religion" (*İzzettin Doğan and Others v. Turkey [GC]*, § 114). Guide on Article 9 of the Convention – Freedom of thought, conscience and religion European Court of Human Rights. Id.

3 (*Eweida and Others v. the United Kingdom*, § 81). ECtHR, Guide to Article 9 ECHR, 2022, pg. 7.

in a diverse environment[4]. The notion of a state's necessity to perpetuate an unbiased administration, particularly in sensitivity to the contentious nature of religious accommodation, is one that is echoed not only through European jurisprudence but also in the American judicial bodies, where the freedom to express and practice one's chosen faith without persecution nor discrimination is foundational to the nationally valued promulgation of individual choice. It is important to note, however, that a single isolated opinion – even if it is fundamentally inspired by religious views – is not and cannot be regarded as a conviction of religious nature on its own, and therefore, it is not protected under this specific aspect of Article 9 of the ECtHR. This being said, the scope of Article 9 in its entirety does protect more than religion, which opens its authority to beliefs that may not constitute faith-based notions. Thus, the European Court of Human Rights does not necessarily need to set a clear border between religion and other types of personal ideology in the way that the American legal system must.

As for how religion is quantified in the American legal system, the simple answer is that it is not. United States courts have refused to ubiquitously define what constitutes a valid system of belief, and even when they have given certain parameters, the required element or elements have been notoriously ambiguous – such as the focal characteristic of "sincerity" – so as to maintain the state interest in the preservation of religious freedom. The idea of "sincerity" refers to the manner through which certain convictions or beliefs are accepted and subsequently respected by the practicing individual – however, it does not on its own define what a "religion" is. While the freedom "to believe" is an "absolute" freedom contained within the United States Constitution's First Amendment rights, the component of whether an individual retains the freedom to act "cannot be," as it "remains subject to regulation for the protection of society"[5]. And in order to determine the constraints of the latter freedom, the Court in *State ex rel. Lake Drive Baptist Church v. Bayside of Trs.* found it necessary to appropriately define what fundamental requirements a belief needed to have to be legitimately approached

[4] "In this respect, the modern French notion of positive laicism serves as the foundation of judicial principles that seek to ensure the neutrality of public power regarding religion and to ensure equal treatment of diverse religious expressions. Neutrality means first of all state impartiality towards various existing religions and ideologies (...) But it also requires that the state observe principles of freedom... and equality" L. Garlicki, *Perspectives on Freedom...*, p. 467.

[5] *State ex rel. Lake Drive Baptist Church v. Bayside Bd. of Trs.,* 12 Wis. 2d 585, 108 N.W.2d 288 (1961).

as a religion in the eyes of the law[6]. More specifically, the US government has continually demonstrated a conscious avoidance in defining the requisite elements necessary to be deemed a legally valid religion in deference to the potential threat limitations may pose on religious freedoms. Literature on the matter is scarce for this very reason, but there are a few foundational concepts ubiquitous throughout American jurisprudence.

What is most pivotal to the United States government's approach to defining religion is enumerated in the First Amendment of the Constitution, where it is guaranteed that the state will employ the Principle of Neutrality in practicing impartiality towards religion as a concept. There are two specific provisions within the First Amendment that address governmental attitudes towards faith, the Non-Establishment Clause and the Free Exercise Clause. Chiefly, the Non-Establishment Clause ensures the non-secular nature of the American government by prohibiting the State from establishing a religion in the following language: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"[7]. Although the exact definition of what establishing a religion would entail is unclear, the clause holds historical significance by plainly denying the possibility of a federally-sponsored church or otherwise sovereign body of preferred worship, such as the Church of England[8].

Simultaneously, American case law has continually upheld the judicial tradition of non-interference with the limitation of religious rights, stating that "courts may not inquire into the verity of a religious belief"; although it is "entirely appropriate" and at times, "necessary" for a "court to engage in analysis of the sincerity of someone's religious beliefs in both the free exercise context, and the Title VII context" so as to draw boundaries for the very minimum of what is requisite for a faith to be considered legitimate in the eyes of the government[9]. However, it is pivotal here to acknowledge

6 "The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom" *State ex rel. Lake Drive Baptist Church v. Bayside Bd. of Trs.*, 12 Wis. 2d 585, 108 N.W.2d 288 (1961).

7 USCS Const. Amend. 1.

8 *First Amendment and Religion*, United States Co urts, https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion.

9 *Protos v. Volkswagen of Am., Inc.*, 797 F.2d 129 (3d Cir. 1986).

that while the Constitution enumerates the rights afforded to people, it is the judicial branch's responsibility to interpret legislative intent. Thus, regardless of what is written, the practice of defining what entails a religion is predominantly dependent on how and what the courts dictate.

The most pertinent factor evaluated in consideration whether a system of faith legitimately constitutes the legal definition of a religion is based on sincerity – which is especially dependent on facts as well as the governing court's discretion "particularly when the belief system is non-traditional"[10]. The sincerity analysis is notoriously ambiguous due to the amorphous nature of how the government could fairly ascertain whether an individual's cohesion to a set of ideologies is truly genuine. Thus, some federal district courts have ruled that in order to justly administer the sincerity analysis, the State has a duty to "delve into the claimant's most veiled motivations and vigilantly separate the issue of sincerity from the fact finder's perception of the religious nature of the claimant's beliefs"[11]. The most useful of the federal jurisprudence to assess the elements of a religion has been outlined by district courts, due to their more limited jurisdictional boundaries, which have ironically granted more leeway in determining cases of a religious nature. Namely, the New York district court held that whether a given set of beliefs can be deemed as constituting a religion for "purposes of either the First Amendment or Title VII of the Civil Rights Act of 1964" is dependent on the following: "(1) whether the beliefs are sincerely held and (2) whether they are, in the believer's own scheme of things, religious. The inquiry is whether the beliefs professed by a claimant are sincerely held and whether they are, in his own scheme of things, religious" – which is again complicated by the fact that 'sincerity' alone does not define what a religion fundamentally is[12].

Notably, the term "religion" is defined at the legislative level. The Civil Rights Act of 1964 ("Title VII") provides that the scope of what is considered religion "includes all aspects of (...) observance and practice"[13]. In conjunction with the wording of Title VII, courts often employ the test adopted in

[10] *State ex rel. Lake Drive Baptist Church v. Bayside Bd. of Trs.*, 12 Wis. 2d 585, 108 N.W.2d 288 (1961).

[11] "This need to dissever is most acute where unorthodox beliefs are implicated" *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[12] *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[13] 42 U.S.C.S. § 2000e(j).

Seeger[14] and developed in *Adeyeye v. Heartland Sweeteners, LLC*[15] which explicitly guidelines the definition of religious practices "to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views" as protections against occupational discrimination[16]. Even if "no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief", this fact does not undermine whether or not the faith is religious in nature, thus granting broader state acknowledgement across minority denominations[17].

For a set of beliefs to legally constitute a religion and be granted this protected status, the courts reference the "ultimate concerns" that the said faith purports, with the word "ultimate" indicating a belief that is greater than an "intellectual" ideology so that a believer would "categorically disregard elementary self-interest in preference to transgressing [the religion's] tenets"[18]. In doing so, not only does the government ascertain the teachings of a belief – be it worship of a deity or charity for the common good – but they are also able to compare the religion's primary concerns with the government's own goals to assess whether its principles are sufficiently compatible. Even if a legally recognized religion is not "acceptable, logical, consistent, or comprehensible to others", it is pivotal to determine whether its contrast to existing governmental interests for the sake of accurately evaluating

[14] The US Supreme Court decided on the sincerity test for three consolidated cases regarding conscientious objection for the Universal Military and Training Act, basing its finding on congressional intent and establishing that "A sincere and meaningful belief that occupied in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition". The court ruled that each case satisfied this test and thus ruled in favor of their individual conscientious objector status. *United States v. Seeger* (1965) 380 U.S. 163 [85 S.Ct. 850, 13 L.Ed.2d 733].

[15] The US Court of Appeals for the Seventh Circuit found in favor of an employee in the Heartland Sweeteners Co. who brought a religious discrimination claim (based on the Title VII of the Civil Rights Act) for unconstitutional termination of his employment. The Court found that the employee had given "sufficient notice of the religious nature of his unpaid leave" in his request to attend to his father's funeral justified by his "personally and sincerely held religious beliefs" in the need to perform customary rites per. *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013).

[16] "The Equal Opportunity Employment Commission adopted its expansive definition of religion based on two Supreme Court decisions, which defined religion broadly for purposes of addressing conscientious-objector provisions to the selective service law" *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[17] 29 C.F.R. § 1605.1.

[18] "The United States Supreme Court and Second Circuit have each declared religion to involve the ultimate concerns of individuals". Id.

whether acknowledging practitioners' accommodations will preserve the State's ability to serve the greater general public without disruption[19].

The bar for acknowledging a religion is not its socially perceived legitimacy, but rather if it will do no harm even if protected by the First Amendment. Hence, even if the individual that supposedly holds these beliefs does not personally see their ideology as religious in nature, this factor is "not dispositive for determining whether a given set of beliefs constitutes a religion" because if it does not negatively impact the surrounding society, there is no impairment to the State's recognition of the belief as a legitimate faith[20].

After all, religions are granted a level of accommodation from the government that necessitates an extraordinary effort from the State to "be mindful [in] differentiat[ing] between those beliefs that are held as a matter of conscience and those that are animated by motives of deception and fraud"[21]. In *Lemon v. Kurtzman*[22] the Court established a test based on a "secondary obligation of the government to the general public to not inequitably disadvantage nor advantage practitioners of a religion over the interests of the surrounding non-secular community". Therefore, there is an inherent limitation on the Free Exercise Clause, which ensures the protection of individual citizens' rights to practice and express their religion as is desired, "so long as the practice does not run afoul of a 'public morals' or a'compelling' governmental interest"[23]. This restriction on the claiming of Free Exercise rights allowed the Supreme Court to dictate that, regardless of religion, for adherents of a faith to benefit from basic assistance from the State such as public schooling, they must comply with the minimum requirements of that program[24].

[19] "A religious belief can appear to every other member of the human race preposterous, yet still be entitled to protection. The religious views espoused by the criminal defendants might seem incredible, if not preposterous, to most people. But those doctrines are not subject to trial" *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[20] *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

[21] *Protos v. Volkswagen of Am., Inc.*, 797 F.2d 129 (3d Cir. 1986).

[22] In this case he US Supreme Court found that Pennsylvania and Rhode Island's Acts providing direct taxpayer financial aid to church-related schools were unconstitutional and affirmed that state programs requiring examination of expenditures for secular education and funding of specific religious activity "fostered excessive entanglement between government and religion" *Lemon v. Kurtzman* (1971) 403 U.S. 602 [91 S.Ct. 2105, 29 L.Ed.2d 745].

[23] *First Amendment and Religion*, United States Courts, https://www.uscourts.gov/educational-resources/educational-activities/first-amendment-and-religion.

[24] *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763 (S.D. Ind. 2002).

Evidence of this doctrine was the 1944 case *Prince v. Massachusetts*, which held that a municipal or state government reserved the right to "force the inoculation of children whose parents would not allow such action for religious reasons" in respect for the "overriding interest in protecting public health and safety"[25]. Thus, although claimants petitioning for a religious accommodation may benefit from the granting of their request, it cannot be at the expense of more pertinent governmental priorities such as public safety or morals. Whether or not a personal conviction is deemed to be religious by the government does not equate to the level of freedom or protections it will be granted; it is foundational to the State's interests that a religion – as well as its practices or manifestations – are "harmless" to the surrounding non-secular population. Hence, the innocuousness of a belief system is a pertinent indicator in the assessment of its compelling nature to the countervailing public interest, which is a pitfall to those beliefs that include notions of violence, hyper-accentuated free will, sacrificial offerings, or other aspects that are controversial in substance to the preservation of public safety – the existence of which would give the State legitimate basis for barring the religion itself.

All of the aforementioned doctrines apply equally to non-traditional religions, although modern faiths have proved to be more contentious in litigation. In Europe, governmental entanglement through constitutionally permitted assistance or accommodation is limited to only certain types of religions, but legislation has played a part in creating categories that specify certain established minority communities or denominations that afford comparable protections to those granted to traditional churches with regards to regulation or the instigation of religious instruction in public school, and the collection of religious taxes, etc. Although not all atypical systems of beliefs classify themselves as religious organizations, those that do wish to claim the protected status under the First Amendment and the Civil Rights Act are permitted to so long as they qualify under the bare minimum standards of sincerity and harmlessness. However, as has been repeatedly analyzed, not only are these boundaries amorphous and highly discretionary, they are fairly easy to fulfill – which is intentional on the part of the government's need to provide broad, sweeping protections to "avoid the excessive entanglement of church and state" and in light of their inability to dictate whether

[25] "Sometimes the Establishment Clause and the Free Exercise Clause come into conflict. The federal courts help to resolve such conflicts, with the Supreme Court being the ultimate arbiter" *EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763 (S.D. Ind. 2002).

a specific religious tenet is immoral or moral unless it explicitly goes against the law[26]. Although the courts do examine the validity of religious status on a case-by-case basis, this process is administratively arduous and poses the risk of assigning advantages to an organization that will exploit governmental resources at the disadvantage of the general public[27].

3. Standardizing the definition of religion

In light of this conundrum, the following standard for limitations on the definition of religion is proposed: for a set of beliefs to qualify for protected status as a religion by the government, it must 1) revolve around a central deity or deities as well as belief to be worshiped, 2) have an established doctrine enumerated in detail both by practice and teaching of a sanctified text that codifies the faith's core tenets, 3) be organized into a hierarchy or otherwise clearly defined system of membership, 4) and finally, purport an ultimate goal that incorporates all aforementioned values in collaboration to produce a conclusive objective of the belief that is compatible to governmental interests to the extent that it will present no harm to the general public's security and morals.

Of course, this proposed standard does not have arbitrary origins. The ECtHR has already declared that the freedom of thought, conscience and religion that every individual has the right to "manifest his religion [or] belief, in worship, teaching, practice and observance", which ought to be "subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the right [and] freedoms of others"[28]. Additionally, it is pivotal that a legally recognized definition of religion must include provisions so that no person or organization will

[26] "One purpose of defining religion so broadly is to minimize the need for judicial decisions on which particular beliefs and practices qualify as a religion in order to avoid the excessive entanglement of church and state prohibited by the First Amendment. The United States Equal Employment Opportunity Commission has shed some light on the concept of religion within Title VII by explaining that the religious nature of a practice or belief includes any moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views" 42 C.F.R. § 1605.1.

[27] *Andrews v. Va. Union Univ.*, Civil Action No. 3:07cv447, 2008 U.S. Dist. LEXIS 40001 (E.D. Va. May 15, 2008).

[28] European Court of Human Rights § 9.

be predisposed to "coercion which would impair his freedom to have [or] adopt a religion or belief of his choice", while still preserving the general public's own religious freedom[29]. Therefore, in undertaking the creation of the proposed limitation, it was critical to analyze the common characteristics outside of the already existing measures of sincerity that can be employed to evaluate the logical validity of a system of faith.

In discerning the boundaries of what constitutes a genuine religion and differentiates it from personal ideology, the definition needs to contrast worship versus doctrine, as is addressed in the first segment of the proposal. This comparison stems from the understanding that worship is an act of reverence to a holy figure or notion while doctrine is a code of moral conduct that one adheres to in practice of their faith. And because this proposal is meant for the non-secular government of the United States, the doctrine addressed must qualify for the preservation of *forum internum* principles of respecting an individual or communities' decision to incorporate religion internally within their own personal principles of bearing.

Furthermore, case law on the subject also dictates what elements would constitute an "establishment of religion", which has been often under the three-part test provided by the Supreme Court in the *Lemon v. Kurtzman* decision: "under the *Lemon* test, the government can assist religion only if (1) the primary purpose of the assistance is secular, (2) the assistance must neither promote nor inhibit religion, and (3) there is no excessive entanglement between church and state"[30]. This governance is especially critical when analyzing the degrees of governmental acknowledgement for a certain religion.

Ultimately, the policy concern for accurately drawing boundaries on what systems qualify as a religion are such that disingenuous organizations are barred from taking advantage of assistance and benefits reserved for truly pious and sincere practitioners of a belief. And in the evaluation of legal legitimacy, it is critical to observe the different categories of governmental recognition for religions within the confines of neutrality. Of the highest scrutiny is the State's permission for a religion to have an educational system based on their faith's teachings. A principle demonstrated by non-governmental funded Catholic schools and other institutions that incorporate religious teachings, the existence of a secular educational system not only ratifies

[29] UN Human Rights Committee: General Comment #22 (1993) – Article 18.

[30] *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105 (1971).

the legitimacy of said organization, but also propagates their doctrine to be structurally continued for generations to come.

Next is the permission to register with the State as a religion. This would allow faiths to reap financial benefits through breaks in taxation, subsidized property acquisition, and further on. The bare minimum of state recognition for the religion coincides with the First Amendment's protections for speech, manifesting as preservation of communal and individual rights for pursuing religious freedom so long as practices are not inherently illegal. On this point, it is critical to note that the existence of a religion that is externally expressed intrinsically implies a community of worship; and so, for the government to formally recognize a religion requires the organization to be designed so that there is a body of leadership for administrative communication and superior liability.

4. Incorporating the Proposed "Standard" to Modern Religions in Practice

In this final section, the analysis will shift to scrutinize three modern religions currently in practice, their validity as has been determined in contemporaneous case law, and the applicability of the proposed definition of religion as well as whether this proposal would accept or reject the subjects as legally viable systems of belief to be protected under the First Amendment and the Civil Rights Act of 1964. Although the subjects themselves may seem to be of facetious nature at times, they have been selected specifically to demonstrate the very ambiguity afforded by the State's current definition of religion and to manifest the uncertainty that shrouds differentiation between personal doctrine and a sincerely held faith.

4.1. Scientology

Founded in 1952 by author L. Ron Hubbard, Scientology is a commonly recognized system of faith that originally began as medical research into human biology[31]. The same year that the organization had been registered as a scientific facility by Hubbard, he published a book outlining the belief's teaching as a religious text. It is unquestionable that the Church of

[31] *What is Scientology...*

Scientology has an established doctrine codified in sanctified text, most notably the aforementioned book authored by the religion's founder. Furthermore, the organization utilized by practitioners of this faith is such that they are allotted into a hierarchy of membership, with David Miscavige as the current leader and head of the Church of Scientology. The self-described religion purports to offer a path to "complete and certain understanding of one's true spiritual nature" and believes that "man is an immortal spiritual being" whose "experience extends well beyond a single lifetime"[32]. Scientologists claim that their "ultimate goal (...) is true spiritual enlightenment and freedom for all", which does not seem immediately contradictory or even controversial to the interests of the State – although notably vague[33]. Therefore, even with a cursory glance, it is evident that this system of faith does satisfy the structural requirements necessary to be deemed a viable religion in the eyes of the law.

As for the ideological requirements, this proves to be a far more complicated matter. In their own words, the Church of Scientology expresses that they do – in fact – believe in the concept of a god as "the Supreme Being (...) the urge toward existence as infinity (...) as the Eighth Dynamic"[34]. However, for the purposes of this analysis, Scientology's belief that existence and its inhabitants are constantly approaching infinity is too akin to the scientific theory of a continually expanding universe to qualify as worship of a central deity or phenomenon. The proposed definition's first element is based on the *Seeger* test of religion from the 7th Circuit Court decision in *Adeyeye v. Heartland Sweeteners, LLC*[35]. The ruling provided that the test of whether a belief qualifies as a religion requires that it is "sincere and meaningful [and] occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God (...) in traditionally religious persons", and that if this condition is fulfilled, "those beliefs represent her religion"[36]. The holding further defines that "a religious belief is a belief that is considered religious in the person's own scheme of things" and the intimately personal nature of the principle is an innate factor in determining integrity[37].

[32] *What is Scientology...*

[33] R.L. Hubbard, *The Science...*

[34] R.L. Hubbard, *The Science...*

[35] *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013). See, supra, Note 15.

[36] *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013).

[37] This is a standard that had previously been used to "interpret the federal statute exempting conscientious religious objectors from military conscription, finding that the definition serves equally well for the purposes of Title VII (...) The broad definition applies to all religious beliefs

However, this measure is in evaluation of the relationship between the individual and the strength of their belief, as well as its incorporation into the individual's daily life[38]. It is not in criticism of the validity or rational truthfulness of the belief itself, which will echo in the analysis of several controversial modern religions later on. Although the proposed definition harkens to the *Adeyeye* ruling that a "genuinely held belief involves matters of the afterlife, spirituality, or the soul, among other possibilities", the greatest difference is in the focus of a form of deity or deities into the belief system for it to be proven legitimate[39]. The *Seeger* test does not require the existence of an omnipotent being but it is critical that the proposed definition illustrated above does do so. After all, if a religion does not revolve around the worship of some entity to which the belief is dedicated to, the differentiation between its religious nature and the consideration of philosophy is too amorphous to suffice officially acknowledged legal protection.

The American judicial system seems to adhere to the same line of thinking regarding the ambiguity of Scientology's focal Supreme Being. The court in *Church of Scientology v. State Tax Com.* ruled that the "term religious worship in the commonly accepted sense includes as a necessary minimum a belief in the Supreme Being of the universe", and generally entails expression through "expressed by prayers, reverence, homage and adoration paid to a deity (...) the seeking out by prayer and otherwise the will of the deity for divine guidance"[40]. The question at hand, however, is whether such worship amounts to the existing test for sincerity to qualify as a legitimate religion. For the practices of an organization to amount to religious worship or otherwise expression of religious belief, it is necessary for its followers to participate in what the court deems as sincere "reverence or devotion for a deity; religious homage or veneration (...) a church service or other right showing this," and yet, Scientology prove any of this activity that is considered a "minimum requirement [in the] belief [of a] Supreme Being"[41].

that are sincerely held: In such an intensely personal area, of course, the claim of the registrant that his belief is an essential part of a religious faith must be given great weight. The validity of what he believes cannot be questioned" *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013).

38 *Peterson v. Wilmur Communs., Inc*., 205 F. Supp. 2d 1014 (E.D. Wis. 2002).

39 *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013).

40 *Mo. Church of Scientology v. State Tax Com*., 560 S.W.2d 837 (Mo. 1977).

41 "Religion is defined as belief in a divine or superhuman power or powers to be obeyed and worshiped as the creators and rulers of the universe (...) The constitutional and statutory term religious worship of Mo. Const. art. X, § 6 and Mo. Rev. Stat. § 137.100 (1969) embodies as

However, Scientology fails to prove the integral nature of their practices to the extent of being focal to their individual personal dogma in a way comparable to the existence of God in conventional Christian faith; and thus, fails the proposed framework for governmental legitimacy as a religion.

In 1977, the Missouri Supreme Court also ruled that the Church of Scientology failed to sufficiently prove their status as a religion, finding that "religious worship as contemplated by Mo. Const. art. X, § 6, and Mo. Rev. Stat. § 137.100 embodies as a minimum requirement a belief in the Supreme Being", and that Scientology's "espousal of moral principles, without theistic foundation, to which a membership openly express[ing] belief, [was] insufficient to constitute religious worship for tax exemption purposes"[42]. However, while the theoretical validity of Scientology may have been repeatedly challenged by the courts, they have nonetheless become a tax exempt organization that reaps the benefits of state advantage through direct negotiation with the IRS by leader David Miscavige in 1991[43]. This was possible through circumvential processes written into the legislation regarding taxation relief such that "with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church" satisfied the bureau's requirements, the organization would be deemed eligible for exemption "from state, county and local taxation, all property, real and personal, actually and regularly used exclusively for religious worship, for schools and colleges, or for purposes purely charitable and not held for private or corporate profit"[44], which is precisely how Scientology began to utilize governmental assets, despite having been denied religious status by the courts[45]. Unfortunately, the Church of Scientology manifests a perfect example of how a system of belief that had not passed even the bare minimum of the State's definition regarding sincerity and obligation to the general public can still circumvent First Amendment procedure to exploit governmental resources as a religious organization. The fact that it was able to do so alludes to chilling repercussions for exploitation

a minimum requirement a belief in the Supreme Being" *Mo. Church of Scientology v. State Tax Com.*, 560 S.W.2d 837 (Mo. 1977).

42 *Mo. Church of Scientology v. State Tax Com.*, 560 S.W.2d 837 (Mo. 1977).

43 *What is Scientology...*

44 26 U.S.C.S. § 7611 (LexisNexis, Lexis Advance through Public Law 117–214, approved October 19, 2022).

45 "All property, real and personal, not held for private or corporate profit and used exclusively for religious worship, may be exempted from taxation by general law" *Mo. Church of Scientology v. State Tax Com.*, 560 S.W.2d 837 (Mo. 1977).

of State accommodations, draining them from genuinely practiced beliefs that do actually qualify for legal acknowledgement.

4.2. Pastafarianism

While it is possible that some believers of Scientology may honestly pass the sincerity analysis, the entire premise of Pastafarianism is a sardonic criticism of established religion at its core. A system of belief that is founded fundamentally on making light of religion, Pastafarianism or the so-called Church of the Flying Spaghetti Monster originated as a social movement condemning Christian teaching of intelligent design in public school curriculums[46]. As a representative of the phenomenon once claimed, the faith aims to "scrutinize ideas and actions but ignore general labels" and purports principles of "anti-crazy nonsense done in the name of religion"[47]. In contrast to Scientology, Pastafarianism has a clearly established central deity – the Flying Spaghetti Monster as a stand-in for the omnipotent Christian perception of God – as well as an expressly identifiable ultimate goal, the criticism of hyper-religious conservative ideology. Surprisingly, the organization also fulfills other requisite elements as proposed, with published works of gospel such as "The Holy Book of the Church of the Flying Spaghetti Monster" among many others and also employs a structural hierarchy with officially ordained ministers that are permitted to ceremonially marry other members of the faith[48].

Their presence has been felt even in the judicial system, as the question of whether to legally recognize Pastafarianism ("FSMism") as a religion has been a hotly debated topic. The court of *Cavanaugh v. Bartelt* explicitly dismissed the claim brought by a Nebraska State Penitentiary inmate, ruling that "FSMism is not a 'religion' within the meaning of the relevant federal statutes and constitutional jurisprudence. It is, rather, a parody, intended to advance an argument about science, the evolution of life, and the place of religion in public education"[49]. However, other legal opinions, such as was brought forth in *Kitzmiller*, found that FSMism's primary criticism of intelligent design could very much so qualify as a theological argument for there "is as much scientific evidence for a Flying Spaghetti Monster as any

[46] J. Durando, *Pastafarian...*
[47] J. Durando, *Pastafarian...*
[48] B. Henderson, *The Gospel...*
[49] *Cavanaugh v. Bartelt*, 178 F. Supp. 3d 819 (D. Neb. 2016).

other creator"[50]. Although the courts have recognized FSMism's clever navigation of the First Amendment's religious exercise rights, it has primarily concluded that FSMism qualifies mostly as "a comedic extrapolation of the philosophical argument known as 'Russell's Teapot': it rejects the idea that a hypothesis can be proved by an absence of evidence disproving it"[51].

While the humorous nature of Pastafarianism is not lost on any legal professional, their claim for religious recognition does present a concerningly valid case. If courts cannot "presume to determine the plausibility of a religious claim"[52], should a genuinely sincere worshiper of any logically infallible belief present their case, how would the government address the legitimacy of this religion without being "unduly exclusive of new religions that do not fit the criteria derived from known religious beliefs"?[53] The *Cavanaugh* court proposed a half-measure similar to the proposed definition of religion given above, which would limit an legitimate system of belief to one that "addresses fundamental and ultimate questions having to do with deep and imponderable matters", "comprehensive in nature", and is able to be "recognized by the presence of certain formal and external signs"[54]. While this standard may be applicable in denying FSMism's claim for religious accommodation in the specific case, it nonetheless raises the perturbing question of how the State will address new, uncharted religious incompatible to traditional evaluations of faith.

4.3. LaVeyan Satanism

The final and perhaps most controversial subject to be discussed is the belief of LaVeyan Satanism. Established by founder Anton LaVey, LaVeyan Satanism is difficult to classify as a religion, and possibly more suited to be considered an anti-religion. The principles purported by this system of faith revolve around the notion of free will, preferring to be completely atheistic and refusing to conform to the conventional ideologies of Christianity weaved into American society. A rather egregious misnomer, LaVeyan Satanism does not idealize any Judeo-Christian conceptions of Satan, but rather utilizes

[50] "The conceit of FSMism is that, because intelligent design does not identify the designer, its 'master intellect' could just as easily be a 'Flying Spaghetti Monster' as any Judeo-Christian deity" *Kitzmiller v. Dover Area Sch. Dist*., 400 F. Supp. 2d 707 (2005).

[51] *Cavanaugh v. Bartelt*, 178 F. Supp. 3d 819 (D. Neb. 2016).

[52] *Burwell v. Hobby Lobby Stores, Inc*., 134 S. Ct. 2751, 2778, 189 L. Ed. 2d 675 (2014).

[53] *United States v. Meyer*s, 906 F. Supp. 1494 (D. Wyo. 1995).

[54] *Cavanaugh v. Bartelt*, 178 F. Supp. 3d 819 (D. Neb. 2016).

the imagery partially for shock value in representing their desire to break out of mainstream conservative society, and has been increasingly popular among inmates for their rejection of the government's institutional control.

As for the subject's applicability to the proposed definition of a legally recognizable religion, there are several factors to be considered. For one, there is an evident hierarchy as the organization of LaVeyan Satanism is led by a series of High Priests and Priestess with Peggy Nadramia as the current head of the Church of Satan[55]. Furthermore, the religious body revolves around the descendants of the founder Anton LaVey as a kind of theocratic royal family, which is comparable to Islamic notions of Mohammed the Prophet and sects that especially revere his descending family as religious figures. The belief also employs codified rites that can be found in their many holy books, all of which are often deemed political works of literature rather than those of faith, and which purport a lifestyle of freedom as well as empowerment of the individual man as his or her own "beneficent deity"[56]. But perhaps the most interesting question posed by LaVeyan Satanism is the following: does the rejection of religion qualify as a religion in itself?

The courts answered yes, stating that the "incorporation of some form of deity or deities into a belief system is not required for Title VII of the Civil Rights Act of 1964 protection, which recognizes atheism as a religion" in *Adeyeye v. Heartland Sweeteners*[57]. However, the fatal factor in rejecting the Church of Satan's claims for legal legitimacy stemmed from policy concerns and a failure to perform according to the constraints of the Establishment Clause, as LaVeyan teachings of anti-governmental quasi-anarchy were deemed contrary to governmental interests of public safety[58]. Other rulings on the matter "recognized that much of the [Satanic Bible] advocates preying on the weak in any way possible for one's own gratification", and was inherently dangerous – so much so that concerns of religious freedom were not enough to prevent the State from actively restricting prisoners from accessing books of the faith for fear of prison security issues and violent rioting by inmates against the penitentiary system[59]. While this is the case in America as this religion fails to satisfy the scope of both the Constitution and the

[55] Church of Satan, < https://www.churchofsatan.com/ >, access: 10 October 2023.

[56] M. Gilmore, *The Satanic...*

[57] *Adeyeye v. Heartland Sweeteners*, LLC, 721 F.3d 444 (7th Cir. 2013).

[58] *Johnson v. Williams*, No. 3:07-cv-1659-HZ, 2011 U.S. Dist. LEXIS 148445 (D. Or. Dec. 22, 2011).

[59] "Restrictions of constitutional rights that are a rational response to a clear prison security problem will be upheld" *Goode v. Warden*, CV010805819S, 2001 Conn. Super. LEXIS 1606 (Super. Ct. June 1, 2001).

Civil Rights Act, there is potential in LaVeyan Satanism being recognized in Europe under Article 9 of the ECtHR as it may constitute a conviction even if their religious nature remains disputable.

Thus, while Scientology proved a fault in the State's ability to preserve governmental resources for more deserving bodies of religious faith and Pastafarianism raised an alarming concern for the State's rejection of neutrality in the face of clearly contrarian systems of belief, the Church of Satan is possibly the only example among the three subjects that paints a more optimistic view of the current ambiguity regarding the definition of a legally acknowledged religion. The contemporaneous boundaries around what is and what is not considered a legitimate religion are clearly amorphous and are unabashedly deserving of criticism. The courts are faced with administrative inefficiency and even when they rule against the recognition of a faith-based organization as was the case for the Church of Scientology, legislative loopholes exist that allow for exploitation of tax exemptions and other State-sponsored benefits. However, in contemplation of the fact that the primary concern of the First Amendment and Title VII is to prevent discrimination, there may be no alternative that sufficiently preserves the sanctity of religious freedom than for the government to assess the validity of each individual religion on a case-by-case evaluation.

5. Conclusion

The liberty to practice, express, and manifest a religion as a personal freedom is undoubtedly an integral component of the American experience. However, there is no universally accepted definition of religion that is ubiquitous to all legislative interpretation, American or otherwise. In criticizing the ambiguity plaguing the class of freedoms at hand, the presented paper is not endorsing the limitation of faiths by the United States government nor by its courts. Instead, it seeks to refocus the conversation on how the lack of definition in the boundaries of what constitutes a legitimate belief in the eyes of the law has opened the door for disingenuous organizations to satiate their greed through state resources reserved for the protection and proliferation of sincere communities of worshippers.

Analysis of the three subject matters of Scientology, Pastafarianism, and LaVeyan Satanism manifest both the benefits and detriments of religious freedom in the American legal context. For one, it is evident that one of the focal purposes in defining religion so broadly as in the US Bill of Rights

and the Civil Rights Act is to cater to administrative concerns regarding the need for adjudication on "which particular beliefs and practices qualify as a religion" and avoid excessive entanglement between church and state as prohibited by the First Amendment[60]. Furthermore, case law in the United States courts have illuminated further details on the boundaries of what is acknowledged as religion within the meaning given by Title VII through explanation of how pivotal the moral or ethical components of a belief is in weighing its sincerity as a religious conviction. Outside of America, legal protections have extended beyond what is conventionally considered religious freedom to include other personal dogma that holds similar positions in individuals' lives; however, this kind of liberal thinking has yet to manifest concretely in the examination of US decisional law, as this assessment has continued to be made on a case-by-case basis that is "greatly dependent on the factual record in each case"[61].

In the social sphere, modern systems of belief pose a challenge to the perception of religion as a whole. Thus, it is quintessential to wonder how they are likely to be viewed through the perspective of more traditional religions such as Catholicism, Judaism, or Islam; are they considered "real" – for lack of a better word? Are atypical beliefs – such as Pastafarianism especially – fundamentally disrespectful to existing and established faiths? Existing religious analysis is predominantly Euro- and Christian-centric, calling for even further doubt on the true depth of its examination. It is impossible to genuinely venture into what qualifies a belief system as a bonafide religion without first acknowledging that social standards for what defines a religion in the first place are fundamentally based in the values of the Western world.

One would venture to state that for the case of Pastafarianism and LaVeyan Satanism, specifically, the notion of being dismissive of tradition is actually key to its core values. Whether or not the given subject religions are truly sincere, and whether they are "in the believer's own scheme of things, religious", it is undeniable that the practitioners understand how they are viewed in the eyes of a greater society[62]. New, unconventional systems of faith challenge existing definitions of religion, thus forcing courts to move to an inquiry in sincerity as a failsafe. Hence, perhaps it is in evaluation of

60 42 C.F.R. § 1605.1.

61 *Andrews v. Va. Union Univ.*, Civil Action No. 3:07cv447, 2008 U.S. Dist. LEXIS 40001 (E.D. Va. May 15, 2008).

62 *Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.*, 213 F. Supp. 3d 377 (E.D.N.Y. 2016).

the courts' treatment of such atypical systems of faith that the US legal system is genuinely tested on its ability to refuse inquiry into the "verity of a religious belief", and instead focus its examination on the "analysis of the sincerity of someone's religious beliefs in both the free exercise context and (...) Title VII"[63].

As discussed prior, the government is expressly banned from restricting the scope of the freedom to express one's faith by the First Amendment, save for instances that involve them directly such as in the penitentiary system. This phenomenon is very much an intentional curtailing of the powers of the state, stemming from the expulsion experienced by the nation's own forefathers – the pilgrims – due to religious persecution at the hands of their European governments. Thus, when faced with the precarious issue of how to balance protecting resources through the establishment of boundaries on what is properly and formally recognized as a religion by the courts, it is pivotal that this definition protects individual – and especially those of a social minority – faiths from the potential of a governmental bias, despite the fact that these two interests may seem innately contrary. Yet this is precisely the task construed upon.

Analysis of judicial trends seem to indicate that the government must not only protect religious manifestations that are acknowledged as mandatory for its respective faith, but also personal individual doctrine as has been the case in courts outside of America. This raises certain implications for the future of an ever-evolving consideration of faith, as legal systems around the world begin to dictate more liberal attitudes towards previously stringent aspects such as workplace dress codes and resources for incarcerated populations. However, it is critical to understand that such factors had historically been regulated and constitutionally permitted to be regulated because individual, non-mandatory manifestations of religious freedom were not legislatively protected by the State. Furthermore, there is the looming question of administrability, for constructively standardizing what and who can define a religion is highly likely to infringe on basic constitutional freedoms, even with the enticing incentive of optimizing government resources.

The relationship between Church and State in the United States is unique from its international counterparts in that the United States government is constitutionally forbidden from excessive entanglement between the two authorities, yet still participates in relatively large State subsidization of

[63] *Protos v. Volkswagen of Am., Inc.*, 797 F.2d 129 (3d Cir. 1986).

religious finances through funding and tax exemptions. Hence, the delicate balance of maintaining neutrality while issuing religious accommodations realistically results in a concerningly close relationship of influence between the idea of religious freedom and the government. After all, although both federal and state administrations are prohibited from outlawing religious worship, discriminating against any single system of faith, or forcing a person to disclose their religion, the same governments are still expected to enforce the right to freedom of creation and operation in terms of establishing faith-based organizations.

Thus, even though the proposal of a standard of elements necessary to a legitimate religion may be an arduous attempt at something fundamentally abstract, the implications of this analysis support the notion that it is critical for the State to utilize a form of ubiquitous evaluatory measure in deeming whether each faith entailed sufficiently legitimate beliefs systems such that they are genuinely entitled to recognition. In discussion, it is evident that Scientology is the epitome of an a-religious organization exploiting government resources for economic measures rather than to propagate their sincere religious motives. Furthermore, LaVeyan Satanism recognizes themselves to be a philosophical entity rather than a faith-based scion in worship of some higher power; and in doing so, draws attention to how confusing it is for the courts to determine a difference between the two classifications. And finally, Pastafarianism is fundamentally a manifestation of sardonic criticism regarding the failures of the legal system in properly determining what core elements are necessary to exist as a valid religion in the US.

Yet, despite the clear challenges the three religions pose to the stability of long-held conventions of what a religion ought to look like, all of them continue to benefit from administrative advantages contemporaneously. It is deeply concerning that all three of the given faith systems fail to conform to the theorized standard in accordance to the most common tenets of traditional religions and their use of religious freedoms, most of all that Scientology is only able to satisfy the requirements that overlap with those evident in a business model instead of in a church. Hence, it is ever more clear that the courts must urgently reconsider their willingness to rule on shaping the boundaries of what the state recognizes as a valid faith-based community. After all, theorizing a standard of limitations regarding the definition of religion serves not only the government interest of optimizing resources but also the lofty goal of preserving rights for truly deserving those whose lives genuinely are impacted by the protection of their religion without dilution.

Abstract

Modern problems require modern solutions; in the same vein, modern religions pose unconventional points of contention regarding the role of the government and whether they should – or should *not* – regulate what constitutes a legitimate religion. This analysis will discuss the ever evolving world of faith in the United States, the argument for restricting new belief systems' access to institutional advantages, the conventional metrics for differentiating a secular versus non-secular organization, and the potential consequences for lax governmental interference. At the helm, three "modern" religions as well as their primary legal controversies are assessed: Scientology in its quest for religious tax exemptions, Pastafarianism in how a satirical organization fulfills all traditional tenets of religion, and finally, LaVeyan Satanism in what separates faith from philosophy.

Keywords: religion, freedom, speech, discrimination, governmental advantage, US constitutional law

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