
Public versus Private: What is Government's Role in Religion?

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First Amendment cases often spark a lot of controversy regarding both the government's ability to regulate private versus public life, as well as the category under which religion should fall. In *Church of Lukumi Babalu Aye v. Hialeah, Florida*, the citizens of Hialeah, Florida wished to pass ordinances that would prevent ritual animal slaughter following the establishment of a house of Santería worship in their city. The parishioners of the Church of Lukumi Babalu Aye argued that their First Amendment rights to free exercise were being violated by the local government's passage of its anti-slaughter regulations. Upon hearing the case, the Florida District Court ruled in favor of the city of Hialeah on the grounds that there were "compelling government interests in preventing health risks and cruelty to animals."¹ However, the Supreme Court later overturned this ruling in favor of the church, stating that the ordinances were neither neutral, nor of general applicability and were clearly motivated only by the suppression of a religious practice. Additionally, the justices stated that the ordinances did not hold up under the strict scrutiny required to establish that there was a compelling governmental interest in upholding them.² The following essay will explore the nature of the Supreme Court's decision and attempt to demonstrate that it rightly supports the First Amendment rights of a religious group.

¹ *Church of Lukumi Babalu Aye v. Hialeah, Florida*, 508 U.S. 520 (1993).

² *Id.*

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The case of the *Church of Lukumi Babalu Aye v. Hialeah, Florida* was based upon Santería, an Afro-Caribbean religion whose animal sacrifices are believed to venerate spirits.³ During these ritual sacrifices, the animals to be killed are sometimes cooked and eaten. In April 1987, when a church announced that it would be opening a house of Santería worship in Hialeah, Florida, the city council immediately held a public meeting to adopt ordinances that would curtail the practice of ritual animal sacrifice.⁴ The first set of resolutions passed centered upon the notion that animal sacrifices would be in conflict with both “public morals, peace, or safety,” as well as animal cruelty laws in the state of Florida.⁵ Several months later, the Hialeah city council adopted yet another resolution that prohibited the “possession, sacrifice, or slaughter of an animal with the intent to use such animal for food purposes.”⁶ This resolution was to hold regardless of whether or not the animal that was slaughtered was actually consumed. It also prohibited the sacrifice of animals, defining it as “the unnecessary killing of an animal in a public or private ritual or ceremony not for the primary purpose of food consumption.”⁷

Following the passage of these ordinances, the Church of Lukumi Babalu Aye went to the United States District Court in Florida, claiming that the city of Hialeah was violating its rights of free exercise under the First Amendment. The District Court ruled in favor of the city, claiming that the passage of the ordinances, although not “religiously neutral,” had an effect on the religion of Santería that was merely “incidental to the ordinances’ secular purpose and effect.”⁸ This was followed by the claim that the city had a compelling interest to prohibit ritual slaughter so as to avoid health risk, emotional trauma, and unnecessary animal cruelty. However, the United States Supreme Court followed up on the case of *Lukumi Babalu* and actually reversed the lower

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

courts' ruling. The general consensus of the justices was that the ordinances did not maintain neutrality and were directly aimed at the suppression of religious practice. The justices believed that the ordinances were fully motivated by religious belief and that they did *not*, in fact, further the compelling interest of the state because they were “a) underinclusive to a substantial extent with respect to each of the interests that the city asserted, and b) it was only conduct motivated by religious conviction that bore the weight of the governmental restrictions.”⁹ Finally, the justices agreed that the ordinances were invalid under the free exercise clause of the First Amendment. So, although the city masked its ends – preventing animal cruelty and protecting public safety – in a secular light, it was clear that the pursuit of these ends was religiously targeted and therefore violated the free exercise of religion.

The free exercise and establishment clauses of the First Amendment have caused a good deal of controversy over the years regarding religious rights and freedoms as well as their interference with the public sphere. The free exercise clause allows individuals to choose and exercise any religion that they want; however, this does not always mean that the *practices* themselves are protected, just the individual. Protection for the individual's rights within the religion is the goal of the free exercise clause. Nevertheless, when the government yields to the free exercise of religion on behalf of a group, this is sometimes equated with religious establishment, or to the state endorsing a particular religion. In the case of *Lukumi Babalu*, the city of Hialeah attempted to bar a religious practice by masking it with a secular explanation. In determining whether or not the church's right to free exercise had been compromised, the Court had to decide if the city of Hialeah actually did have compelling interest in its banning ritual sacrifice. The final decision of the case showed that the Supreme Court did not believe that the state had a compelling interest in prohibiting animal sacrifice.

It seems as though the Supreme Court made the correct decision when it came to the *Church of Lukumi Babalu Aye v. Hialeah, Florida*. The city council of Hialeah made its decision

9 *Id.*

to forbid animal sacrifice solely on the basis of religion following the church's decision to move into Hialeah, clearly violating the free exercise clause.¹⁰ The Court claimed that the city's concerns for animal cruelty and public safety were unfounded and merely a secular "excuse" attempting to cover the religious reasoning behind their decision. The individuals practicing Santería have a right to worship how they so choose, which happens to be through ritual sacrifice. An individual holds this right so long as it does not interfere with the natural rights of another individual. In the case of Santería's practices, they do not directly infringe on the natural rights of others as they are done in the private realm and do not directly affect any outside individuals. Perhaps if the practitioners of Santería were performing their rituals in a public space or if they threatened the animals owned by Hialeah residents the case would not have been decided in favor of the religion.

Regardless of whether or not the decision was religiously motivated, Hialeah's ban on animal sacrifice was intended to discourage the religion of Santería from ever taking root there. For practitioners of Santería, animal sacrifice is tied to their conception of the good life and their feelings of obligation within their religion. Similarly, those who practice Catholicism find receiving the Eucharist to be within their conception of the good. This comparison offers the point that although animal sacrifice may offend some, it does not directly affect those outside the religion, and therefore cannot necessarily be considered an infringement upon the public. Those who practice Santería and take part in ritual sacrifices are simply maintaining their own conception of the good by showing their devotion to the spirits to which they pray. By telling the worshippers that they could no longer be allowed to practice this certain ritual, the state would be rejecting the Santería worshipper's conception of the good. This would also violate the First Amendment by allowing the state to make a value judgment and create different rules for different religions.

On the other hand, critics of the Supreme Court's decision may argue that allowing the religion of Santería to keep its

10 *Id.*

tradition of animal sacrifice is a form of favoring that religion or at least endorsing it. Further, some would claim that the Court is giving a special privilege to Santería to engage in this practice and that, if it allowed for animal sacrifice for Santería, then it should also allow for other provisions for all other groups as well. However, religious practice is a right, not a privilege, which is bestowed upon American citizens and protected by the Constitution; the same does not apply for those who are in groups and voluntary organizations. Thus, a worshipper of Santería could practice ritual sacrifice, but a member of a white supremacy group could not carry out acts of violence against a minority. The idea that religion is not voluntary has been argued by many, including political theorist Michael Sandel. Religion, according to Sandel, is not a choice, but a community that people are generally born into and feel bound and obligated to as such.¹¹ It is not a community that one has voluntarily contracted into; rather, it is a community that is *a priori* to choice. Many people literally are born into the religion of their parents and feel an obligation and connection to that religious community. Therefore, based on this notion, a religious group should not be viewed as a voluntary organization, and the choices made by those in the group regarding their religion should not necessarily be viewed as voluntary choices, but rather as obligations that they are bound to based upon their religious associations. In this model, practitioners of Santería are merely adhering to their religious obligations as members of a certain community; they are not simply engaging in ritualistic animal slaughter for sadistic purposes. Looking at the individuals in this light, the city of Hialeah would not only have been violating the church's right to free exercise, it also would have been impeding on the rights of the individuals to make choices regarding their conception of the good that did not directly affect the natural rights of others.

However, many would argue that it is the role of the

11 Sandel, Michael J., *Freedom of Conscience or Freedom of Choice*, ARTICLES OF PEACE: THE RELIGIOUS LIBERTY CLAUSES AND THE AMERICAN PUBLIC PHILOSOPHY, 88 (1990).

government to shape the private as well as the public sphere, and that it is in the compelling interest of the government to create generations of democratic citizens that are all imbued with appropriate morals and values. Many, like Richard J. Arneson, a philosopher, and Ian Shapiro, a political scientist, see no division between public and private spheres and feel that there should be no distinction between values in one sphere from another. Arneson and Shapiro would likely argue that it is the duty of the state to intervene if one group, regardless of religious affiliation, was involved in a practice that did not necessarily mesh with the morals and values of a true “democratic” citizen.¹² In this case, the state would not be allowed to turn a blind eye to a religious practice and defend it as a constitutional right of free exercise that belongs in the private sphere. Though, if this were the case, then the state would still be forced to bring up a compelling interest against the ritual slaughter in the Santería religion. The animals were being slaughtered for sacrifice and occasionally for consumption, and one of the issues taken with the sacrifice was that it was being performed outside of a slaughterhouse facility. So, if the state could regulate where the slaughter took place, ensuring that it took place in a safe environment and was performed with humane methods, it would allow for the state to have regulated the practice of slaughtering animals while neither establishing nor prohibiting the religion.

The past two and a half centuries of American legislation have, for the most part, strongly advocated for the complete separation of church and state. Jefferson, though he did not coin the term, frequently referenced the “wall of separation between church and state” (Jefferson, *Letter to the Danbury Baptists*).¹³ This came from a desire to avoid the conflicts that erupted so frequently in Europe between the 15th and 18th centuries, which had frequently focused on religion and religious intolerance. Nonetheless,

12 Richard J. Arneson & Ian Shapiro, *Democratic Autonomy and Religious Freedom: A Critique of Wisconsin v. Yoder*, POLITICAL ORDER: NOMOS XXXVIII, 377 (1988).

13 THOMAS JEFFERSON, LETTER TO THE DANBURY BAPTISTS (1802).

religion has infiltrated the American way of life and the diversity of religions that has accumulated has made it impossible to truly have a wall of separation. It has been the general consensus that religion should remain in the private sphere and that the private sphere should remain out of the sight of the government. This was to be regulated by the First Amendment and the free exercise and establishment clauses to keep the government from interfering in religion or establishing a religion. When the First Amendment was adopted, America was a more or less Christian nation.¹⁴ Now, with the plethora of religions that are practiced in the United States, it is much more difficult to determine what constitutes an infringement upon religious rights or an act that may be construed as establishing religion. This is complicated by the fact that most of the norms and values that constitute a good citizen stem from Christian traditions and do, in fact, maintain somewhat religious connotations. Thus, when cases go to court that involve religion, especially those minority religions that are seen as unfamiliar, they are almost going up against another religion because Christian tradition has infiltrated most areas of the American social sphere. America is a country founded on Christian traditions that remain entrenched in some of the key institutions of the nation. This begs the question whether or not any decision made by the courts regarding religion is really unbiased. The plurality of religion in America was intended to prevent the United States from becoming a one-religion state (which would lead to tyranny) or a two-religion state (which would lead to civil war). Nevertheless, the idea of religious plurality calls into question more notions of “good” and “bad” than the traditional American (read: Christian) morals and values. Each religion has its own distinct conception of the “good” and what it means to live a good life; however, at times these conceptions may come into conflict.

So, when the Church of Lukumi Babalu Aye goes to court to contest the city of Hialeah’s new ordinances, is the case really a church of Santería against a city in Florida, or is it the religion

14 RONALD F. THEIMANN, *RELIGION IN PUBLIC LIFE: A DILEMMA FOR DEMOCRACY*, 28 (1996).

of Santería versus Christian morals and values? It seems to be impossible to truly extricate Christianity from the fundamental values and traditions of America. Regardless, the Court has had to make a good many decisions regarding religious establishment and free exercise, a great deal of which have been similar to the decision made about the Church of Lukumi Babalu Aye. When the government decided to stay relatively silent on the question of religion, it naturally opened up a void that a multiplicity of religions filled, causing an eruption of questions regarding the proper exercise of these religions. This has made it necessary to determine what really constitutes promoting religion versus promoting religious freedom, or what free exercise is versus an infringement upon the rights of others.

The case of the *Church of Lukumi Babalu Aye v. Hialeah, Florida* certainly blurs the boundaries between a public and private decision, because the action that is being contested takes place in a private realm, yet the citizens of Hialeah feel as though it is a public issue. The Court was asked to weigh in on an issue that is directly related to free exercise of religion, but Hialeah's city council argued for protection of their conception of a good life (for those who do *not* practice Santería), which would invariably not include the ritual animal slaughter associated with Santería. However, the government does not have a right to regulate how individuals pursue their own conception of a good life, which also includes religious practices. In the end, this case was won by the Church of Lukumi Babalu Aye because it was found to be unconstitutional for the city council of Hialeah to prohibit a practice that was central to only their religion. The only way the city of Hialeah would have been successful would have been if it was able to find a strong enough case for compelling interest that would have allowed the state to ban the practice. However, the only compelling interest brought by Hialeah was found to be "underinclusive" and generally lacking in enough substance to be considered compelling interest.¹⁵ This led the Supreme Court to rule in favor of the church on the basis of upholding its right to free

¹⁵ *Church of Lukumi Babalu Aye, supra* note 1.