

[The Ravenous Bugbladder Beast of Traal is] a mind-bogglingly stupid animal, it assumes that if you can't see it, it can't see you--daft as a brush, but very very ravenous.

The Hitchiker's Guide to the Galaxy by Douglas Adams

Human history has an odd relationship with dangerous creatures. While humans are generally terrified at the notion of staring down a lion, tiger, or other such beast, human history teems with stories of marauding creatures neutralized, outwitted, or otherwise overcome by the very brave or very lucky. Followers of the various snake-handling churches in the South, however, have a higher calling. They seek to "confirm the Word¹" as mentioned in the New Testament of the Bible--that the truly faithful can "take up serpents; and if they drink any deadly thing, it shall not hurt them."² These practitioners, armed with arguably little training and no protection other than the Holy Spirit, handle deadly snakes as part of religious ceremonies in a relatively small number of churches that dot the American South. Given a long colored history of injury and occasional death in these practices, various state governments have engaged the blunt instrument of legislation in the presumed guise of halting this practice within their boundaries. The one major constitutional test of anti-snake handling legislation to date has affirmed the law's ability to step in if needed. With this relatively shallow test of the law, however, the question at hand consists of three components: Does the positive right to life trump the negative right to liberty? Where does the balance of power lie in the *de legis* battle between the First Amendment and public safety? Finally, what is the *de facto* way in which society treats such practitioners? A review of both the issues and the law implies that, while these states have both the power and the obligation to protect snake handlers and their audiences from themselves, the law and those that enforce it have afforded snake handlers a great amount of *de facto* leeway in performing their sacred tasks.

While the First Amendment generally allows for freedom of religious expression, it does

1 Covington p214. Similar references on pp 184, 230. Also mentioned in State ex rel. Swann v Pack.

2 KJV Bible: Mark 16:18, noted in State ex rel. Swann v Pack.

not indemnify practitioners from the results of their actions. In the case of *State ex rel. Swann v. Pack*, the Tennessee Supreme Court determined that, "belief is always protected, but that conduct or action is subject to regulation."³ In simpler language, the Court determined that anyone can believe anything they want, but that a person's actions can result in punishment if s/he breaks the law. In particular, the Court, "[justified] the state's interference with an individual's self-destructive conduct on the basis of the state's interest in that person's contribution to the common good and to the strength of the state."⁴ The Court clearly believed that the positive right to life outweighs the freedom to practice snake handling with impunity, despite the conviction of the practitioners.⁵ In doing so, they affirmed the constitutionality of the law as written and used tests from previous cases to refine the precise location of that line between life and freedom. In particular, the Court indirectly cites the 1940 Supreme Court decision on *Cantwell, et al v Connecticut*, whose unanimous opinion stated:

*[The First] Amendment embraces two concepts, -- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.*⁶

The decision, similar to the *Swann* decision, holds that actions can be regulated and that such regulations do not inherently violate the First Amendment. Both the Tennessee Supreme Court and the US Supreme Court thus took the pragmatic approach that, if the right to life generally trumps that of the free exercise of religion, the religious protections afforded by the First Amendment have limits.

These anti-snake handling laws not only fall under the good graces of Constitutional interpretation; they also have subtle side effects. Such side effects generally exhibit *de facto* behavior and a rational discussion thereof would not typically see the light of day in such a somber venue as the interplay between life and liberty. A well-documented analogue of such

3 "Survey of Tennessee Constitutional Law in 1976-77."

4 *ibid*

5 *ibid*. The article notes that Justice Henry "characterized the church group as unconventional but enduring and sincere."

6 *Cantwell, et al v Connecticut*

side effects with a visible debate does exist, however, and lies in the various local public urination laws passed in the last twenty years. These laws exist as a redundancy, typically behaving as a kinder, gentler proxy for a much more general, harsher law. If, for example, a new year's reveler in a locality without public urination laws has trouble accessing the facilities and is caught relieving himself, the police have no choice--they must charge the reveler with indecent exposure. If convicted, the guilty party is now a sex offender and must register as such for life. In localities with public urination laws, however, the penalty for this reveler would require neither a hefty prison term nor a modern-day Scarlet Letter. The public urination law itself may have passed under the auspices of dealing with a health problem or reducing vagrancy, but this side effect protects petty criminals from inappropriate punishment. By passing a public urination law, a given locality *trivializes* the crime, making the specific crime far less severe than the more generic one.

Similar to the trivialization side effect evident in anti-public urination legislation, anti-snake handling laws also trivialize their associated crime. Table 1 lists the various generic and specific crimes and punishments associated with snake handling (along with the Tennessee statutes' punishment for littering for comparison).⁷ While a snake handler may still face charges for reckless endangerment, attempted murder and so on based on circumstance, local law enforcement need no longer feel compelled to bring out the "big guns" of generic law in every case. In balancing the political pressure exerted by the large non-snake-handling majority in these states, trivialized punishments allow the legislators to appear effective to their constituents while minimizing First Amendment argumentation and living in the spirit of religious tolerance. The legislature affects this tolerance in a highly pragmatic fashion, providing for the least amount of divisiveness possible in an otherwise highly polarized debate. While first examination of these laws seems to imply the overt condemnation of the snake handlers, the *de facto* reality of

⁷ Table based on Alabama code: Act No. 45 General and Local Acts 1950 (early snake-handling act), Act No. 519 General and Local Acts 1953 (later snake-handling act), 1975 revised code §13A-6-24 (modern reckless endangerment) and §13A-5-7 (punitive terms). Tennessee code §39-17-101 (snake handling), §39-13-103 (reckless endangerment), §39-14-503 (littering) and §40-35-111 (punitive terms).

a grudging form of tolerance appears on deeper analysis.

Further proof that these laws constitute a backhanded protection for snake handlers lies in both the history and content of the laws themselves and the jurisprudence demonstrated in related, less immediately-critical matters. In the Alabama laws, for example, the 1950 version had vastly harsher

Crime	Date/Place	Punishment
Reckless Endangerment	Alabama, Today	Class A Misdemeanor, 6-12 months in prison and/or up to \$6,000
Snake Handling	Alabama, 1950	Felony, 1-5 years in prison
	Alabama, 1953	Misdemeanor, \$50-\$150, <= 6 months
Reckless Endangerment	Tennessee, Today	Class A Misdemeanor or Class E Felony, 6-72 months and/or \$500-\$50,000
Snake Handling	Tennessee, Today	Class C Misdemeanor, up to 30 days and/or \$50
Littering (up to 5 lbs)	Tennessee, Today	Class C Misdemeanor, up to 30 days and/or \$50

Table 1: Comparison of Various Criminal Offenses

penalties than the 1953 version. The original version clearly responded to political conditions in the state until anti-snake handler fervor fell to a more reasonable level. At that point, the revised law and its relatively paltry penalties seized jurisdiction over the crime of snake handling. The Kentucky law elucidates its function more clearly, stating that the use of "any kind of reptile in connection with any religious service or gathering shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) .⁸" In comparison, wanton endangerment⁹ could land a non-religious snake handler in jail for 3-12 months and/or a fine of up to \$500. Kentucky's wording can certainly imply a certain exclusivity toward religion, but this particular knife cuts both ways--both condemning religion and granting it special sanction. Finally, a custody decision in *Harris v Harris* affirmed that the fact that the law shall not separate an otherwise fit mother from her child just because she attends a snake-handling church.¹⁰ Thus the legislature and the courts both agree that the snake handlers deserve a fair amount of latitude in how they worship while nominally applying the "criminal" moniker to the practice.

8 Kentucky Revised Statutes §437.060
 9 *ibid* §508.070 and §532.020
 10 *Harris v Harris*, Mississippi Supreme Court.

Though the various anti-snake handling laws in the deep South persist in a *de legis* sense on the same principle of pragmatism that enables other First Amendment exceptions, their very existence enables the best form of religious tolerance available to this tiny minority. Historically, attempts to legislate behavior--particularly religious behavior--of people generally result in disaster, but these laws allow the free practice of religion to all those willing to defy them, balancing the needs of both the many and the few. The practice of snake handling confounds mainstream society, and requires a level of bravery and faith not found among potential casual practitioners. These laws keep the curious and the uncommitted at bay while allowing the zealous to continue in the practice. They simultaneously provide a counter-incentive for law enforcement, since community backlash from any enforcement would likely exceed any notoriety gained from the scant penalties imposed. Police simply will not bother in the normal course of their work, preferring instead to go after the proverbial "low-hanging fruit." While the bulk of the world can simply not understand or condone the snake handler's dauntless feats of faith, the states' legislatures of the South have done their best to appease the masses while supporting the spirit of the First Amendment as best they can. Humanity has certainly not normalized its relationship with these dangerous creatures, but snakes will likely continue as the fodder of these ceremonies for many years to come.

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Miscellaneous Notes

The relevant Alabama, Tennessee, and Kentucky statutes were retrieved via <http://findlaw.com> and confirmed on LexisNexis.