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RELIGIOUS FREEDOM IN THE CORRECTIONAL INSTITUTION*

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Incarcerated persons are subjected to various deprivations as a consequence of being imprisoned. When a prisoner alleges that his freedom to practice his chosen religion is being limited or denied, to what extent and under what circumstances will a court examine the allegations and grant relief? Concentrating on cases litigated by Black Muslims, the author describes situations in which courts have been forced to decide whether a sought-after religious practice is compatible with or detrimental to reasonable prison discipline. The author believes that the courts have drawn a legitimate distinction between freedom of thought and freedom of action.

Traditionally a variety of rights and privileges are lost upon conviction of a felony. A convicted offender has no absolute right to do any of a multitude of things that the rest of society takes for granted. Wide discretion is allowed prison administrators to define the conditions of imprisonment.

> "They determine the way in which the offender will live for the term of imprisonment; how he is fed and clothed; whether he sleeps in a cell or a dormitory; whether he spends his days locked up or in relative freedom; what opportunity he has for work, education, or recreation. They regulate his access to the outside world by defining mailing and visiting privileges. They define rules of conduct and the penalties for such rules.[1] "

Courts have only recently begun to show some concern for the imprisoned offender. Certain limitations on a prisoner's behavior by correctional authorities have been upheld by the courts; for example, limitations on conjugal visits,[2] carrying on business affairs such as attempting to secure the publication of books written during incarceration,[3] securing education through correspondence courses,[4] purchasing of books,[5] and sending and receiving of mail.[6] In other areas the courts extended some of the rights of prisoners. It has been held that prisoners cannot be disciplined for filing suit against prison officials,[7] or for making allegedly false statements in petitions before the merits of the petition have been decided by the courts.[8] Courts have upheld the right of access to legal advice[9] and materials.[10] And in *United States v. Muniz*[11] the Supreme Court held that federal prisoners could sue under the Federal Tort Claims Act for injuries caused by the negligence of prison authorities.

APPLICATION OF THE FIRST AMENDMENT IN PRISON

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ."

These opening words of the First Amendment to the Constitution have led to a long series of cases involving restrictions on the religious practices of prison inmates.

Practically all prisons have developed an extensive religious program for inmates. Large prisons have both a Catholic and Protestant chaplain. The chaplains perform a wide pastoral function among the inmates and are trained to act as counselors to

* The views expressed herein are solely those of the author. They do not necessarily reflect the views, official opinion, or policy of the Wisconsin Department of Health and Social Services.

[1] PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: CORRECTIONS 84 (1967).

[2] Payne v. District of Columbia, 253 F.2d 867 (D.C. Cir. 1958).

[3] Stroud v. Swope, 187 F.2d. 850 (9th Cir.), *cert. denied*, 342 U.S. 829 (1951).

[4] Numer v. Miller, 165 F.2d 986 (9th Cir. 1948).

[5] Grove v. Smyth, 169 F. Supp. 852 (E.D. Va. 1948).

[6] Adams v. Ellis, 197 F.2d 483 (5th Cir. 1952); Ortega v. Ragen, 216 F.2d 561 (7th Cir. 1954), *cert. denied*, 349 U.S. 940 (1955).

[7] Cleggett v. Pate, 229 F. Supp. 818 (N.D. Ill. 1964).

[8] *In re* Riddle, 22 Cal. Rptr. 472, 372 P.2d 304 (1962).

[9] Brabson v. Wilkins, 45 Misc. 2d 286, 256 N.Y.S.2d 693 (Sup. Ct. 1965).

[10] Bailleaux v. Holmes, 117 F. Supp. 361 (D. Ore. 1959), *rev'd sub nom.*, Hatfield v. Bailleaux, 290 F.2d 632 (9th Cir.), *cert. denied*, 368 U.S. 862 (1961).

[11] 374 U.S. 150 (1963).

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inmates who request help with their personal problems.

Historically, religion was believed to have great rehabilitative potentialities. State legislatures granted or even commanded religious services in prisons. One early religious service held in an American prison was delivered by a guard on the speakers platform standing next to a loaded cannon pointing toward the captive audience.[12]

This obvious "establishment of religion" in prisons has never been challenged in the courts. Indeed there is much precedent for assistance to religion by the government in many areas. Consider the recitation of prayers by government-paid chaplains in the House and Senate, compulsory chapel in service academies, the inclusion of the words "under God" in the Pledge of Allegiance, exemption of organizations of a religious nature from federal income tax, and postal privileges for religious organizations.

It may be further argued that if government did not provide religious services, chaplins, and chapels in prisons, free exercise of religion by the inmates would be infringed.[13] Mr. Justice Brennan, concurring in *Abington School District v. Schempp*,[14] argued that since government has deprived prisoners of their opportunity to practice their faith at places of their own choosing, the state may, in order to avoid infringing upon their freedom of religious exercise, provide substitutes in prison.

It has been in the area of restrictions on the free exercise of religion by inmates that has brought numerous suits against prison wardens. The courts have traditionally maintained a "hands off" policy when dealing with questions involving prison regulations and disciplinary measures. In a 1944 case one court ruled:

> "The acts of prison officials, vested with a rather wide discretion in safekeeping and securing prisoners committed to their custody and charged with the right and duty to maintain discipline among the inmates, should be upheld if reasonably necessary to effectuate the purposes of imprisonment.[15] "

Previous to the mid-1950's few cases involving restrictions on the free exercise of religion were brought to court.

In a 1957 case, a Catholic inmate claimed that he was being subjected to cruel and unusual punishment as well as being deprived of his right of free exercise of his religion.[16] The petitioner was serving a life sentence at the State Prison in New York as a habitual offender. He was placed in the segregation wing in the Prison in October, 1952 and remained there until October, 1956 when he filed a petition in the Chancery Division asking that an order to show cause be issued. Testimony revealed that he had been segregated in 1952 because of his part in a riot and had remained there following fifteen additional violations during the four years. Inmates in segregation do not have contact with each other except in the segregation exercise yard and do not at any time have contact with the general prison population. They are not allowed to accompany the general inmate population to chapel for religious services, but a chaplain of each faith is available to them for spiritual guidance. The Catholic chaplain stated that his offers of advice, guidance and counsel, as well as Holy Communion, had been consistently refused by the inmate. In holding that the denial to attend Mass was not cruel and unusual punishment nor a deprivation of a constitutional right of free exercise of religion, the court stated:

> "The social interest involved in depriving plaintiff of the opportunity to attend Mass with the rest of the prison population can only be the preservation of order and discipline in the prison. If plaintiff has lost any right it has come about by his own hand. The interest of an orderly society that required his imprisonment insists only that he be privileged to worship God to the extent that his conduct in prison permits.[17] "

The Problem of Black Muslims in Prison

During the last ten years Black Muslim prisoners have brought numerous suits against prison

[12] Barnes & Teeters, New Horizons in Criminology 491 (1943).

[13] Judge Elmo B. Hunter, sitting in district court in Kansas City, Mo., recently ruled that the authorities at the medical center for federal prisoners in Springfield, Mo., must arrange for Harold Konigsberg, "one of the biggest loan sharks in New York," to attend Jewish services at the center. N.Y. Times, May 14, 1968, p. 51, col. 4 (city ed.).

[14] 374 U.S. 203, 297–98 (1963) (Brennan, J., concurring opinion).

[15] Kelly v. Doud, 140 F.2d 81, 83 (7th Cir.), *cert. denied*, 321 U.S. 784 (1944). "Prison discipline is necessarily peremptory and is not the subject of judicial review except in cases of gross excess." 41 Am. Jur. *Prisons & Prisoners* §36 (1938).

[16] McBride v. McCorkle, 44 N.Y. Super. 468 (1957).

[17] *Id.* at 887.

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authorities alleging unwarranted restrictions and discriminatory practices against their religious practices. Most of the charges of discrimination were well-founded and were, in fact, admitted by prison officials. The officials justified certain restrictions on the members of the Muslim faith (receipt of newspapers, having time of prison meals determined by Muslim procedure in order to allow their Ramadan fasting, obtaining copies of the chosen version of the Koran, holding unsupervised meetings) on two basic grounds: first, it was felt that the inflammatory doctrines of the Muslims were an incitement to violence, and second, that the Muslim movement is, in reality, a social and political, rather than a religious, movement.

In bringing suits against alleged discrimination in prison, the Muslims faced certain problems. The major obstacle was the "hands-off" doctrine of the courts concerning the internal administrative functions of prison authorities.

> "Ordinarily, a jailor or like prison official is vested with a certain amount of discretion with respect to the safe-keeping, security, and discipline of his prisoners; and his acts, in this respect, should be upheld, if reasonably necessary to effectuate the purpose of imprisonment, so that the courts will not interfere, where it does not appear that he has misused his power for the purpose of oppression.[18] "

The second problem was the exhaustion of remedies doctrine: " 'exhaustion' applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course." [19] Following persistent legal proceedings by the Muslims the courts agreed to look into the complaints of those imprisoned. And in a 1961 case, the Supreme Court held that a state remedy need not be first sought and refused before a federal one is properly granted.[20]

There are at least three commonly available remedies to prison inmates who allege misconduct on the part of prison authorities:

The first is **mandamus,** to compel the performance of a clear, public, legal duty, owed by a public official. Mandamus is not available as a matter of right, but may be granted within the discretion of the court when no other appropriate relief is available.[21] The duty sought must be one arising from law and not from contract. This remedy was sought in only one case brought by the Muslims.[22]

The second remedy commonly sought is a **writ of habeas corpus.** Unlike other extraordinary writs, habeas corpus is a writ of right and its issuance is not subject to the discretion of the judge or court issuing it. The object of the writ is to relieve the illegally restrained prisoner in a jail or prison.[23] Habeas corpus may not be utilized as a corrective measure for alleged ill treatment[24] but may be used only to seek total release from an illegal detention.[25]

The third remedy, redress under the **Federal Civil Rights Act** of 1871,[26] has been much used in seeking relief by Muslim prisoners. Under this Act, the plaintiff may seek money damages, injunctive relief, or both—although in most cases, the Muslims have sought injunction only. Section 1983 of the Act provides for action against any individual who deprives another of due process of law under the fourteenth amendment. It is an effective remedy because it allows access to the federal courts without the procedural difficulties involved in securing habeas corpus. The Act has been held applicable by federal courts for alleged mistreatment by penal officials.[27]

Illustrative Cases

In one of the first Muslim cases, *Pierce v. LaVallee,*[28] the federal district court for the northern

[18] 72 C.J.S. *Prisons* §18(a) (1951).

[19] United States v. Western Pac. R.R., 352 U.S. 59, 63 (1956).

[20] Monroe v. Pape, 365 U.S. 167 (1961), *overruling* Siegel v. Ragen, 180 F.2d 785 (7th Cir.), *cert. denied,* 339 U.S. 990 (1950). *See* Recent Decisions, 60 Mich. L. Rev. 643 (1962).

[21] Schlagenhauf v. Holder, 379 U.S. 104 (1965).

[22] Tate v. Cubbage, 210 A.2d 555 (Del. Super. Ct. 1965).

[23] McNally v. Hill, 293 U.S. 131 (1934); Taylor v. United States, 179 F.2d 640 (9th Cir.), *cert. denied,* 339 U.S. 988 (1950).

[24] United States *ex rel.* Williams v. Tahash, 189 F. Supp. 257 (D. Minn. 1960), *cert. denied,* 366 U.S. 975 (1961).

[25] Williams v. Steele, 194 F.2d 32 (8th Cir.), *cert denied,* 344 U.S. 822 (1952); Snow v. Roche, 143 F.2d 718 (9th Cir.), *cert denied,* 323 U.S. 788 (1944). There has been some erosion to this rule: "A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some rights to which he is lawfully entitled even in his confinement." Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944).

[26] 14 U.S.C. §1343 (1964).

[27] Coleman v. Johnson, 247 F.2d 273 (7th Cir. 1957); McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955); Gordon v. Garrison, 77 F. Supp. 477 (E.D. Ill. 1948).

[28] 212 F. Supp. 865(N.D.N.Y.), *rev'd,* 293 F.2d 233 (2d Cir. 1961), *dism.,* 212 F. Supp. 865, *dism. aff'd,* 319 F.2d 844 (2d Cir. 1963).

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district of New York ruled that the Muslim Brotherhood in Clinton Prison was not a religion.[29] The segregation of three inmates who were considered leaders in the Brotherhood as necessary steps in the assurance of discipline and good order within the prison was upheld. The Muslims, according to the court, were dedicated to the formation of secret plans, strategy, and policies, and served as a likely fermenting point for the unrest and frustration of the other inmates.

In another federal case arising in 1963, a suit was brought under the Civil Rights Act of 1871 by Muslim inmates for relief for alleged discrimination by not allowing the purchase of certain religious publications and materials disseminated by the Black Muslim Movement.[30] The Attorney General of the State of Illinois asked the court to take judicial notice of certain social studies which allegedly showed that the Muslim Movement, despite its pretext of religious facade, was an organization that, outside of prison walls, has for its object the overthrow of the white race, and inside prison walls, had an impressive history of inciting riots and violence. The Attorney General asked the court to take notice of an official study by the Security Section, Intelligence Division, Bureau of Inspectional Services of the Chicago Police Department, entitled "Muslim Cult of Islam—Nation of Islam, 5335 So. Greenwood Ave., Chicago, Ill." The report stated in part:

> "Federal and State prisons continue to have serious problems involving Muslim inmates. The State Prison in Fulton, New York, has a 50% Negro population. Twenty-five per cent of this number claim Muslim membership insisting on religious recognition and special privileges which would obviously break down discipline. Muslim violence also took place at Federal prisons in Terre Haute, Ind., and at Atlanta, Ga. Stateville and Joliet penitentiaries in Illinois continue to have some Muslim activity amongst their inmates. This situation is being closely observed to contain any incident that could arise.[31] "

The court did take judicial notice of the Chicago report (dated May 24, 1962) citing distinguished authorities for doing so.[32] Under the rule of *Beauharnais v. Illinois*,[33] the court held that a state may suppress movements that would otherwise be constitutionally protected when they had violence as their object or an even reasonably likely consequence.

Both of the preceding cases were reversed on appeal, since it seemed quite obvious to most constitutional authorities that under the rule of *Cantwell*[34] and *Ballard*[35] neither administrative nor judicial powers may make a determination as to what constitutes a bona fide religion.

Outside of prison walls the Muslims have generally been given the benefit of the doubt and have been treated as a legitimate religion. Their schools have been approved as parochial schools and both school and temple property have been adjudged tax exempt in most states.[36]

In re Ferguson[37] posed the problem of restrictions on religious activity of Muslim inmates in a California prison. The California Supreme Court held that the Muslim belief in black supremacy combined with their reluctance to yield to any authority exercised by "someone [who] does not believe in [their] God" presented a serious threat to the maintenance of order in a crowded prison environment. Prisoners do have a right to possess their religious beliefs, but assembling and discussing inflammatory Muslim doctrines in a prison situation must be considered to be action. Following from this premise, the court determined that prison officials would not be acting arbitrarily or unreasonably in withholding a version of any bible or other religious literature adopted by the Muslim group to support their doctrines of the supremacy of the black race and segregation from the white race.

In *Wright v. Wilkins*[38] the court faced the problem of determining what is the practice of religion. The inmate petitioner complained that he was not permitted to take his Arabic grammar with him into the prison recreation yard to use in studying the Arabic language which he maintained would

[29] 212 F. Supp. at 869. *But cf.* Cantwell v. Connecticut, 310 U.S. 296 (1940); United States v. Ballard, 322 U.S. 78 (1944).

[30] Cooper v. Pate, 324 F.2d 165 (7th Cir. 1963), *rev'd*, 378 U. S. 546 (1964).

[31] *Id.* at 167.

[32] Brown v. Board of Educ., 347 U.S. 483 (1954), 349 U.S. 294 (1955); West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937); Beauharnais v. Illinois, 343 U.S. 250 (1952).

[33] 343 U.S. 250 (1952).

[34] Cantwell v. Connecticut, *supra* note 29.

[35] United States v. Ballard, *supra* note 29.

[36] LINCOLN, THE BLACK MUSLIMS IN AMERICA, 210, 211 (1960).

[37] 55 Cal. 2d 663, 12 Cal. Rptr. 753, 361 P.2d 416, *cert. denied*, 368 U.S. 864 (1961).

[38] 26 Misc. 2d 1090, 210 N.Y.S.2d 309 (Sup. Ct. 1961).

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be helpful to him in advancing in his Islamic religious faith. The use of a grammar to study a foreign language, the court said, is not the practice of a religion. The inmate admitted that he was able to use his grammar in his cell but claimed that he wished to reserve this cell time for other reading. The court ruled that the New York Department of Correction had made provisions for the religious needs and welfare of the inmates of Attica Prison who claimed to be Islamic as was evidenced by the list of Islamic religious books translated into English that were available to the prisoners. The question of what materials a prisoner may take with him into the prison recreation yard or elsewhere in the prison is a matter of prison discipline entrusted by the legislature to the warden of the prison.

In *Fulwood v. Clemmer*,[39] the federal court ruled on a number of significant questions, stating that it is not a "function of the court to consider the merits or fallacies of a religion or to praise or condemn it, however excellent or fanatical or preposterous it may be. Whether one is right about his religion is not a subject of knowledge but only a matter of opinion". The court held that officials must allow Muslims to hold religious services since they had already allowed other religious groups to do so and religious medals must be supplied to the Muslims as it was the policy of the prison to supply such medals to other groups. However the court upheld the denial of correspondence with Elijah Mohammad (leader of the Black Muslim movement) and restrictions on receiving the *Los Angeles Herald Dispatch* which carried a column by Elijah Mohammad. The court stated that it lacked general supervisory powers over prisons, and in the absence of a showing of a violation of a legal right or of an abuse of discretion by prison officials, a court will not interfere.[40]

The court in *Brown v. McGinnis*[41] upheld the New York Corrections Law, Section 610, which confers upon prison inmates the right to religious services, spiritual advice, and ministration from a recognized clergyman, but also authorizes the reasonable curtailment of such rights if such action is necessary for the "proper discipline and management of the institution." The prison had refused to allow a Muslim to communicate with a local minister of an Islamic temple who had a prior criminal record, feeling that such communication would be inconsistent with good administration of the institution. The court reiterated that while freedom to believe is absolute, freedom to act is not.

The question of having the time of prison meals determined by Muslim procedure in order to facilitate the Muslim Ramadan fasting was decided in favor of the prison authorities in *Childs v. Pegelow*,[42] another federal case. The court ruled that the determination of dining hours and practices was a matter within the routine discretion of prison officials and no justiciable issue was presented by the inmates based on alleged denial of the right to practice their religion through fixing of dining hours and practices. The court again stated that except in extreme cases, courts will not interfere with the conduct of a prison, with enforcement of its rules and regulations, or with its discipline.

In *Banks v. Havener*[43] suit was filed under the Federal Civil Rights Act wherein several inmates of the District of Columbia youth center complained of discrimination on the basis of their Muslim faith. They claimed they were denied regularly designated places and times for religious services, correspondence with local Muslim ministers, religious meetings conducted by authorized ministers, subscriptions to publications and educational literature pertaining to their religion, granting of certain dietary considerations required by the tenets of their faith, permission to possess the Koran, and possession and display of religious medals. The Director of the Department of Correction stated that the above privileges were taken away following a riot in which the Muslims were allegedly involved as leaders. They were not permitted to engage in any religious activities because, the director reasoned, it constituted a clear and present danger to the security of the institution and its inmates, and because it created tension

[39] 206 F. Supp. 370, 373 (D. C. 1962).

[40] *Citing* White v. Clemmer, 295 F.2d 132 (D.C. Cir. 1961).

[41] 10 N.Y.2d 531, 536, 225 N.Y.S.2d 497 (1962).

[42] 321 F.2d 487 (4th Cir. 1963), *cert. denied*, 376 U.S. 932 (1964). The court held that prison authorities who had agreed to provide a pork-free diet for Muslim inmates before sunrise and after sunset during the Ramadan fast need not calculate the time of sunset according to Muslim procedure. "There is no charge here of discrimination against plaintiffs by way of interference with the practice of their religious beliefs. . . . The plaintiffs are, in fact, seeking special privileges because of their religious beliefs, privileges not extended to the other inmates." *Id.* at 490. Claims for dietary consideration were put forth in several cases, but the issue has never been decided. *See, e.g.* Banks v. Havener, 234 F. Supp. 27 (E.D. Va. 1964), discussed in the text *infra*.

[43] *Supra* note 42.

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which seriously jeopardized the therapeutic programs instituted for the rehabilitation of the prisoners. The court ruled that the authorities did not prove by satisfactory evidence that the teachings and practices of the sect created a clear and present danger to the functioning of the institution. But, the court cautioned:

> "[T]he practice of this right [religious freedom] in a penal institution is not absolute—it is subject to rules and regulations necessary to the safety of the prisoners and the orderly functioning of the institution. Adherents of the Muslim faith, or of any other religious sect, found guilty of violating established prison rules will not be heard to plead religious persecution, absent unusual circumstances.[44] "

In *Howard v. Smyth*,[45] the petitioner complained that he was placed in solitary confinement solely because of his refusal to identify to prison officials the other Muslim prisoners in the institution. There was no evidence of any disorder caused by the petitioner's refusal. The court, in holding for the petitioner, ruled that a prisoner is not bereft of all of his rights. "Included among those retained is an immunity from punishment for making a reasonable attempt to exercise his religion, even a religion that to some of us may seem strangely confused and irrational." [46] The court cautioned, however, that prison officials need not stand by if religious services or activities are used to undermine the warden's legitimate disciplinary authority.

Conclusions

In analyzing the preceding cases certain trends can be ascertained and pertinent conclusions drawn:

1. Even as a convicted and imprisoned felon who has lost certain civil rights and incurred certain liabilities[47] the individual still maintains an absolute right of religious belief and conviction.[48] The court has no authority to make a determination as to what constitutes a bona fide religion.[49]

2. There is a genuine difference between freedom to believe and freedom to act. The first is absolute, but the second cannot be.[50] The state retains an interest in the preservation and protection of peace and good order within its borders and particularly within its prisons.

3. The state should accord its prisoners the maximum religious freedom compatible with the maintenance of prison safety and discipline.[51] Courts are required to make accommodation between the constitutional guarantees as to religion and the exercise of state authority.[52]

4. Prison authorities must not discriminate in their treatment of religious groups within the institution. Acts of individuals of a particular religious sect cannot be construed to allow withdrawal of privileges and rights afforded to that particular sect as a whole.[53]

5. Rules and regulations should be drawn up by prison authorities to govern the practice of religion within the institution and to protect the rights of the adherents of particular faiths.[54]

Recommendations

1. Prison officials should be allowed discretion in coping with the myriad problems that arise

[44] *Id.* at 31.

[45] 365 F.2d 428 (4th Cir. 1966), *cert denied*, 385 U.S 988 (1967).

[46] *Id.* at 431. "Convictions and incarceration deprive him [the inmate] only of such liberties as the law has ordained he shall suffer for his transgressions." Coffin v. Reichard, 143 F.2d 443, 445 (6th Cir. 1944).

[47] See text accompanying notes 1–6 *supra*. Many of these restrictions may in certain cases be unwise from a correctional viewpoint. *See* discussion in President's Commission on Law Enforcement and Administration of Justice, *supra*, note 1, at 45–59, 84–85.

[48] *See* Brown, *Black Muslim Prisoners and Religious Discrimination: The Developing Criteria for Judicial Review*, 32 Geo. Wash. L. Rev. 1124, 1128 (1964). Inmates in most institutions are now allowed to change their religion. It had been previously believed that the prison environment was so unnatural and that such pressures could be placed upon inmates to change their religion, that it was best to require that an inmate remain with his original religious preference while serving his sentence. It is now generally felt that the prison administration is not in a position to dictate what a man should believe, if he demonstrates a sincere desire to change religions. *See* Barkin, *The Emergence of Correctional Law and the Awareness of the Rights of the Convicted*, 45 Neb. L. Rev. 669, 684 (1966).

[49] The concept of religious freedom "embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. . . . The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position." United States v. Ballard, 322 U.S. 78, 86–87 (1944).

[50] Cantwell v. Connecticut, 310 U.S. 296 (1940).

[51] *See generally*, Decisions, 28 Brooklyn L. Rev. 330–33 (1962).

[52] *See, e.g.*, Williford v. California, 217 F. Supp. 245 (N.D. Cal. 1963), *rev'd*, 352 F.2d 474 (9th Cir. 1965).

[53] *See, e.g.*, Banks v. Havener, 234 F. Supp. 27 (E.D. Va. 1964).

[54] SaMarion v. McGinnis, 253 F. Supp. 738 (D. N.Y. 1966). "While meaningful rules and regulations should recognize the full array of rights attending the practice of a religion, each of those rights is subject to such limitation as may be required to preserve prison discipline and security." *Id.* at 741.

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within the institution, including religious problems. This discretion, however, must be reviewable by a court when a fundamental constitutional right is involved.[55]

2. The Civil Rights Act of 1871 provides the most effective method of complaint for violations of federal constitutional rights made applicable to the states under the fourteenth amendment and should be available to both state and federal prisoners.

[55] *See* discussion in PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *supra* note 1, at 85.

3. The courts must open their doors to all who wish to call into question the actions of prison administrators. Rights guaranteed under the first amendment are not, as the court held in *Sostre v. McGinnis*,[56] "romantic or sentimental" impediments to the disciplinary regime established by prison administrators.

[56] 334 F.2d 906 (2d Cir.), *cert. denied*, 379 U.S. 892 (1964). "No romantic or sentimental view of constitutional rights or of religion should induce a court to interfere with the necessary disciplinary regime established by the prison officials." 334 F.2d at 908. This approach was widely accepted by courts in varying degrees.

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