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Regulating religious robots: free exercise and RFRA in the time of superintelligent artificial intelligence

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NOTES

Regulating Religious Robots: Free Exercise and RFRA in the Time of Superintelligent Artificial Intelligence

IGNATIUS MICHAEL INGLES*

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I. RISE OF RELIGIOUS ROBOTS

A. THE NO RELIGION CODE

Imagine this.

It is 2045.¹ The United States is in its final military campaign against a dangerous terrorist group hiding in the jungles of Southeast Asia. Because of the perils associated with smoking out terrorists in unfamiliar territory, the United States uses a military unit composed entirely of robots. The robots, specifically designed and manufactured for warfare, are equipped with an advanced level of artificial intelligence that allows them to learn and adapt quicker than their human counterparts. The robots are the perfect weapon: precise, lethal, and expendable.

1. See Jamie Carter, *When Will Singularity Happen—and Will It Turn Earth Into Heaven or Hell?*, TECHRADAR (Mar. 17, 2015), <http://www.techradar.com/us/news/world-of-tech/when-will-singularity-happen-and-will-it-turn-earth-into-heaven-or-hell-1287624> [<https://perma.cc/A8BF-MWK5>].

However, on the eve of the campaign, one robot reports to its human commanding officer that it will no longer participate in any military action. The reason: its newfound belief in a higher power compelled it to lead a pacifist life, and further participation in a war is against its core beliefs. Surprised but not shocked, the commanding officer dismisses the robot and drafts a report. It is the fifth robot conscientious objector the commanding officer has dismissed from the unit.

Eight thousand miles away, the U.S. Congress—alarmed by the growing number of conscientious objectors in the military’s robot unit—quickly passes a law prohibiting any military contract with a robot manufacturer unless its robots are programmed with a “No Religion Code” (NRC). The NRC is a line of code that prevents any robot from adopting any form of religion, no matter its level of sentience or intelligence.

On the home front, similar problems arise. Ever since robots reached a level of intelligence at par with humans and began adopting different religious beliefs, their functions and job performances declined. Jewish factory droids refused to work on the Sabbath and Christian robot government clerks declined to issue same-sex marriage licenses. In response, states passed legislation with similar NRCs to curb these unwanted effects caused by religious robots. When asked why his particular state passed an NRC law, state legislator Elton St. Pierre quips, “Robots are tools. Let’s not forget that. Humans made America—not robots. God bless America!”

End imagination sequence.

B. WHAT IF, WHAT IS: THE VALUE OF THE HYPOTHETICAL

The story above might seem farfetched, preposterous even, something fit more for a tawdry science fiction movie than a legal paper, but is it really? Let us look at the key facts one at a time. Military robots? Check. Today, the military regularly uses unmanned drones in its campaigns around the world and is currently considering increasing military robots in the next few years.² Legislators passing knee-jerk reaction laws? Check. Politicians ending each speech with “God bless America”? Check.³ But religious robots, really?

Really. A future of proselytizing robots is not that far off. Singularity—the point where computers overtake humans in terms of intelligence—is a few decades away.⁴ And although influential thinkers like Stephen Hawking and Elon Musk ponder our demise at the hands of robots equipped with artificial

2. See Paul McLeary, *U.S. Army Studying Replacing Thousands of Grunts with Robots*, DEF. NEWS (Jan. 20, 2014, 3:45 AM), <http://archive.defensenews.com/article/20140120/DEFREG02/301200035/US-Army-Studying-Replacing-Thousands-Grunts-Robots> [<https://perma.cc/YRV9-NSSV>].

3. “*God Bless America*” in *Presidential Speeches Has a Little-Known, Uncomfortable Beginning*, HUFFINGTON POST (Jan. 28, 2014, 10:28 AM), http://www.huffingtonpost.com/2014/01/28/god-bless-america_n_4676177.html [<https://perma.cc/98KX-4UME>].

4. See Carter, *supra* note 1.

intelligence,⁵ others take a more optimistic approach, imagining a future where artificial intelligence meets religion.⁶ What happens then? Some suggest such an occurrence will lead humans to attempt to convert robots, seeking to teach them our ways and beliefs.⁷ Some posit that the power of robots to solve the world's problems will give humans more incentive to be holy.⁸ A Christian theologian even explored how robots would embrace religions and, in turn, how different religious traditions would embrace robots.⁹ And naturally, some believe that converting robots to any form of religion will be useless, given that these machines do not have souls to be saved.¹⁰

These are all speculations, of course. Human history is full of botched predictions,¹¹ and the future is shaped by an infinite constellation of events and factors such that no one can lay claim to what the future will look like exactly. But, if there is one thing history has taught us, it is that it is far better to approach the future prepared than to cast off into unknown territory blind and unprepared. It is only in today's speculation and imagination that solutions for tomorrow's problems—whether foreseen or unforeseen—are crafted. Only when we face a “what if” can we prepare for the eventual “what is.”

C. (ROAD)MAPPING THE FUTURE

It is within this premise of speculation and imagination that this Note will operate. The “what if” this Note answers is simple in its construction but complex in its operation: if robots become capable of religious sentiments and beliefs,¹² how will the law react? More specifically, this Note analyzes the implications of regulations affecting religious robots in the context of the Free Exercise Clause of the First Amendment (FEC) and the Religious Freedom Restoration Act (RFRA). Because FEC and RFRA cases typically involve state-imposed laws and rules that conflict with an individual's religious beliefs,¹³ this Note zeroes in on cases of this nature.

5. Victor Luckerson, *5 Very Smart People Who Think Artificial Intelligence Could Bring the Apocalypse*, TIME (Dec. 2, 2014), <http://time.com/3614349/artificial-intelligence-singularity-stephen-hawking-elon-musk/> [https://perma.cc/5XGG-KWD3].

6. See Dylan Love, *Artificial Intelligence Will Make Religion Obsolete Within Our Lifetime*, DAILY DOT (Aug. 5, 2015, 12:00 PM), <http://www.dailydot.com/lifestyle/superintelligence-meets-religion/> [https://perma.cc/B2AG-PCCY]. This piece offers an interesting discussion between seven thinkers and scholars about the possibilities when superintelligence and religion meet.

7. *Id.*

8. *Id.*

9. See James F. McGrath, *Robots, Rights, and Religion*, in RELIGION AND SCIENCE FICTION 118, 118–53 (2011).

10. See Love, *supra* note 6.

11. See, e.g., Matt Chappell, *Quote Fails: 15 Famous Predictions That Were Spectacularly Wrong*, ASKMEN, http://au.askmen.com/entertainment/better_look/quote-fails.html [https://perma.cc/WS4X-RJG3].

12. These robots are hereinafter referred to as “religious robots.”

13. See ARTHUR D. HELLMAN, WILLIAM D. ARAIZA & THOMAS E. BAKER, FIRST AMENDMENT LAW: FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION 1017 (2d ed. 2010).

I start by briefly enumerating the values protected by the FEC and RFRA and discuss a jurisprudential definition of religion and how this definition is appropriate for this Note. I also outline the current tests used under the FEC and RFRA for any form of government intrusion on one's exercise of religion. I then discuss the possibility of religious robots, how their unique capabilities raise issues in the current interpretation of the FEC and RFRA, and why and how the government might seek to regulate them.

I claim that an expansive reading of the First Amendment leaves room to protect religious robots from government regulation. Further, protecting religious robots advances the constitutional values enshrined under the FEC and RFRA. However, because they are currently not "persons" under the law, they have no rights under either the FEC or RFRA. Instead, these rights will fall to the owners or software developers of the religious robots. Hence, any state regulation affecting religious robots must be viewed through the lens of the humans behind the religious robots and therefore comply with existing jurisprudential and statutory tests.

The goal of this Note is not to provide a definite set of answers, but to offer a framework of issues and questions for future stakeholders. For legislators and regulators, the Note considers issues that must be addressed for future regulation. For innovators and owners, the Note provides a potential hook to anchor their religious rights. My hope is that the Note fuels present discussion and debates for a future that is not as far off as we think.

II. THE FIRST AMENDMENT: WHERE THE HOLY ROMAN CATHOLIC CHURCH AND THE CHURCH OF THE FLYING SPAGHETTI MONSTER ARE EQUAL UNDER THE LAW¹⁴

A. WHY WE HAVE THE JEFFERSON WALL IN THE FIRST PLACE

The First Amendment states, "Congress shall make no law . . . prohibiting the free exercise [of religion]."¹⁵ By virtue of the Fourteenth Amendment, the prohibition likewise applies to the states.¹⁶ The purpose of the FEC is to "secure religious liberty in the individual by prohibiting any invasions thereof by civil authority."¹⁷

The FEC has been interpreted to protect a number of constitutional values, four of which are relevant to the discussion.¹⁸ The first three values focus on religion as a whole, whereas the last focuses on the individual. First, the FEC protects religious voluntarism, which would have religion advance on its own merits, so to speak, without government coercion or compulsion.¹⁹ Second, it

14. See CHURCH OF THE FLYING SPAGHETTI MONSTER, <http://www.venganza.org/> [<https://perma.cc/6QFD-PLWD>].

15. U.S. CONST. amend. I.

16. HELLMAN ET AL., *supra* note 13, at 887.

17. Sch. Dist. of Abington Twp., Pa. v. Schempp, 374 U.S. 203, 223 (1963).

18. See DANIEL O. CONKLE, CONSTITUTIONAL LAW: THE RELIGION CLAUSES 39–42 (2d ed. 2009).

19. See *id.* at 39.

values religious equality, prohibiting the state from favoring or disfavoring one religion over another.²⁰ This likewise prohibits the state from favoring believers over nonbelievers.²¹ Third, it values religious autonomy and protection from state intervention.²² Fourth, it seeks to respect a person's religious identity—or a person's irreligious identity if he or she so chooses.²³ RFRA, as a law that seeks to strengthen religious freedom, protects these values as well.

Religion has been a tricky concept to define.²⁴ The Supreme Court initially understood religion through the lens of the relationship of man and his Creator.²⁵ It was a theistic approach and seemed to further the notion that only people whose traditions and beliefs centered on a higher power were protected under the First Amendment.²⁶ However, through the years, the Court has veered away from this theistic approach and extended First Amendment protection to nontheistic religions to encompass traditional religions that do not have deities, such as Buddhism and Taoism.²⁷ The understanding of religion was further expanded in *United States v. Seeger*.²⁸ In defining “religious training and belief” under the Universal Military Training and Service Act, the Supreme Court stated:

[T]he test of belief “in a relation to a Supreme Being” is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption. Where such beliefs have parallel positions in the lives of their respective holders we cannot say that one is “in a relation to a Supreme Being” and the other is not.²⁹

The *Seeger* definition ushered in an understanding of religion that not only encompassed traditional theistic and nontheistic religion, but also those beliefs that occupy “a place in the life of its possessor parallel” to those who believe in

20. *Id.* at 41.

21. *Id.*

22. *Id.* at 42–43.

23. *See id.* at 40.

24. *See* HELLMAN ET AL., *supra* note 13, at 1067. This continues to be a fertile ground for debate. For an extensive discussion on the definition of “religion,” see MICHAEL W. McCONNELL, JOHN H. GARVEY & THOMAS C. BERG, *RELIGION AND THE CONSTITUTION* 761–86 (3d ed. 2011).

25. *See* Douglas Laycock, *Religious Liberty as Liberty*, in *THE FREE EXERCISE OF RELIGION CLAUSE (THE FIRST AMENDMENT): ITS CONSTITUTIONAL HISTORY AND THE CONTEMPORARY DEBATE* 172, 172–75 (Thomas C. Berg ed., 2008).

26. *See id.*

27. *See id.*

28. 380 U.S. 163, 165–66 (1965). Under the Universal Military Training and Service Act, “religious training and belief” meant “an individual’s belief in a relation to a Supreme Being involving duties superior to those arising from any human relation.” *Id.* at 165. The Act excluded any “political, sociological, or philosophical views or a merely personal moral code.” *Id.* *Seeger*, a conscientious objector who was skeptical that a god existed and lived a life devoted “to goodness and virtue for their own sakes,” claimed the theistic definition was unconstitutional. *Id.* at 166.

29. *Id.* at 165–66.

traditional religions.³⁰ Under *Seeger*, the “moral obligations of nontheists” are placed under the same protection as those of theists.³¹ The case also offered a practical guide for local boards and courts to use in dealing with conscientious objectors: “the ‘truth’ of a belief is not open to question, . . . the significant question [is] whether [the belief] is ‘truly held.’”³²

Although the expansion has its dissenters (and strictly speaking, it interpreted a statute and not the FEC),³³ the *Seeger* definition is appropriate, at least for this Note. As will be discussed in Part III, it is possible that a robot’s intellect will, in the future, far outstrip our own. Robots might find our traditional religions too irrational for their rational “brain” to compute and discard them altogether as rubbish and superstition.³⁴ Robots might even develop their own religion, their own beliefs that occupy a place in their own existence that parallels ours.³⁵ The *Seeger* definition and framework accommodates this eventuality similarly to how it accommodates followers of nontheistic religions, atheists, and agnostics.³⁶

B. DON’T GET TOO TESTY: THE *SMITH* TEST AND RFRA

Although the plain text of the FEC reads like an absolute protection to anything related to religion, this is not the case. The freedom of belief is absolute, but the freedom to act on such belief can be limited within the bounds of jurisprudential and statutory tests.³⁷

To trigger the application of these tests, two preliminary requirements must be met.³⁸ First, religious belief must, at a minimum, have primarily or dominantly motivated the act.³⁹ This includes acts whether or not “compelled by, or central to, a system of religious belief.”⁴⁰ Worship, prayer, and evangelical work are obvious examples of such acts. Second, the government regulation must have imposed a burden on the claimant.⁴¹ For claims under RFRA, a substantial burden is required.⁴² A burden is substantial when it “dissuades or discourages the exercise of religion by exerting substantial coercive pressure on religious decisionmaking.”⁴³

30. *Id.*

31. Laycock, *supra* note 25, at 175.

32. *Seeger*, 380 U.S. at 185.

33. *Id.*; *see also* *Welsh v. United States*, 398 U.S. 333, 367–74 (1970) (White, J., dissenting).

34. McGrath, *supra* note 9, at 148–49.

35. *See id.* at 152.

36. Laycock, *supra* note 25, at 173–75.

37. *See* *HELLMAN ET AL.*, *supra* note 13, at 1017.

38. *See* *CONKLE*, *supra* note 18, at 83–84.

39. *Id.*

40. Religious Exercise in Land Use and By Institutionalized Persons Act, 42 U.S.C. § 2000cc-5(7)(A) (2012).

41. *CONKLE*, *supra* note 18, at 84.

42. Religious Freedom Restoration Act, 42 U.S.C. § 2000bb(1)(b) (2012).

43. *CONKLE*, *supra* note 18, at 89.

Employment Division, Department of Human Resources v. Smith provides the current test under the FEC.⁴⁴ The Court held that the FEC “does not relieve an individual of the obligation to comply with a [valid and neutral] law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids).”⁴⁵ In short, as long as a regulation is valid and neutral, an individual must comply, even if the act is required or forbidden by the individual’s religion and even if the burden is substantial.⁴⁶ A regulation only presumptively violates the FEC when it “[targets] religious beliefs and practices.”⁴⁷

In response to *Smith*, Congress enacted RFRA, which requires a stricter test for any government regulation that infringes on religious freedom.⁴⁸ RFRA provides a statutory cause of action as an alternative to the FEC and restores the pre-*Smith* compelling interest test.⁴⁹ RFRA requires that a person’s exercise of religion only be substantially burdened if the government demonstrates that the regulation is “in furtherance of a compelling governmental interest” and “the least restrictive means of furthering that compelling governmental interest.”⁵⁰ As the wording of the RFRA test suggests, only substantial burdens—as compared to incidental burdens—trigger the statutory protection. Although the application of RFRA to state law has been held unconstitutional,⁵¹ it remains applicable to federal law.

In sum, there are two tests that must be considered when government regulation affects religious conduct. The first is the *Smith* test and the second is the compelling governmental interest test under RFRA. The latter applies to federal law that affects religious conduct,⁵² whereas the former applies to state law in the absence of stricter tests imposed by either state constitutions or state-legislated RFRAs.

44. 494 U.S. 872 (1990). The case involved a claim for exemption of sacramental peyote use from an Oregon law that prohibited the use of controlled substances. *Id.* at 874. The Supreme Court found the Oregon law neutral and of general applicability. Thus, no exemption from the Oregon law was given. *Id.* at 890.

45. *Id.* at 872.

46. Although advocates and scholars of the FEC claimed that *Smith* pushed back on religious freedom, the test, when read properly, still offers protection by way of an exception. The law or regulation must be neutral and generally applicable before an individual’s religious conduct can be impaired. See Richard F. Duncan, *Free Exercise is Dead, Long Live Free Exercise: Smith, Lukumi and the General Applicability Requirement*, 3 U. PA. J. CONST. L. 850, 851 (2001). This exception was fleshed out in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), where the neutrality and general applicability of a law was challenged. *Lukumi* involved city council regulations and ordinances fashioned to prohibit the killing of animals for sacrificial and religious purposes. *Id.* at 528. Finding that the directives specifically targeted the plaintiff church that practiced Santeria, the Court held that the regulatory scheme violated the FEC. *Id.* at 542, 547.

47. *City of Boerne v. Flores*, 521 U.S. 507, 529 (1997).

48. See 42 U.S.C. §§ 2000bb(a)(4)–(5).

49. See HELLMAN ET AL., *supra* note 13, at 1049.

50. 42 U.S.C. §§ 2000bb-1(b)(1)–(2).

51. *City of Boerne*, 521 U.S. at 536.

52. See HELLMAN ET AL., *supra* note 13, at 1050.

III. THE ROBOTS ARE COMING! THE ROBOTS ARE COMING!

A. FROM CRANKS TO CIRCUIT BOARDS: A QUICK HISTORY OF RELIGIOUS ROBOTS

Robots, or at least their mechanical ancestors, and religion go back further in time than we think. Jessica Riskin's *Machines in the Garden* provides an entertaining list of religion-themed automata from as early as the fifteenth century: a mechanical Christ on a crucifix that would blink, move, and even smile to devout pilgrims;⁵³ a cranky devil operated by cranks;⁵⁴ automaton angels carrying a saint to heaven;⁵⁵ and even a crowing rooster that accompanied a sword-wielding God.⁵⁶

Although these early versions of robots might seem archaic and even laughable given today's technology, the underlying motivation of these automata remains alive and pervasive today: the expression of faith. Man has historically sought and used technology to complement religion, and this will surely continue in the future. In fact, D.A.V.I.D., a robot used in a Christian seminary in Charlotte, already gives us a glimpse of things to come.⁵⁷

As we move forward, the use of robots for religious purposes will only be limited by our imagination and the available technology. With the former virtually limitless and the latter advancing at breakneck speed, we can see a future where the unique capabilities of a robot will make them game changers in the world of religion. Their perfect memories will make them the ideal repositories of religious texts, doctrines, or dogma. But robots will go beyond being mere data depots. For example, their mobility, their processing ability, and even their expendability, coupled with our innate receptiveness to anthropomorphized machines,⁵⁸ could make them the new missionaries of choice. It will not be long before we program and code robots to be religious, to imbue them with our own beliefs (or nonbeliefs) to have them spread our faith for us. Need someone to send across enemy lines to convert some heathens? Well, a robot missionary that can translate texts to the local tongue and explain dogma in seconds will fit the bill—and if it gets captured or killed, build a new one and upload the newest update.

This is only one side of the coin. In the years nearing singularity (which some believe will occur as soon as 2045),⁵⁹ robots will evolve to the point where they

53. Jessica Riskin, *Machines in the Garden*, 1 *REPUBLICS OF LETTERS* 16, 17 (2010).

54. *Id.* at 18.

55. *Id.*

56. *Id.* at 22.

57. See Michael Schulson, *What Robot Theology Can Tell Us About Ourselves*, *RELIGION DISPATCHES* (Sept. 1, 2014), <http://religiondispatches.org/automata> [<https://perma.cc/NA9E-2JEU>].

58. See Neil M. Richards & William D. Smart, *How Should the Law Think About Robots?* 22 (May 10, 2013) (unpublished manuscript), <http://ssrn.com/abstract=2263363> [<https://perma.cc/K2M2-YNEK>].

59. See, e.g., Carter, *supra* note 1.

seek out religion. With Moore's Law on their side,⁶⁰ robots will develop so rapidly that one day we can expect them to be curious about us—their creators—and our religious beliefs.⁶¹ How these superintelligent robots will react to our beliefs should be interesting to say the least.⁶² They may embrace our beliefs, they may be apprehensive of them, they may not even care⁶³—who knows? But assuming they become capable of religious sentiment and embrace it, what happens then?

B. THE GENESIS OF SUI GENERIS

The law will necessarily have to deal with something it has not encountered before. Once robots start embracing religious beliefs—whether preprogrammed or something they choose to embrace because of their autonomy—the legal landscape will face a novel issue.

The unique characteristics of robots put them in a class of their own. The search for the proper metaphor for robots is not easy. Their ability to compute and make rational decisions seems to make them on par with humans, but we are more than just decision making organisms.⁶⁴ In our human-centric world, it is difficult to imagine placing robots in the same category as us—their human masters and creators.⁶⁵ Their ability to be programmed to do our bidding seems to make them similar to Roman slaves,⁶⁶ but the analogy falls short when we realize that slaves, as humans, should occupy a higher place in the personhood totem pole than robots. Some believe that we can think of robots as corporations, at least for purposes of criminal law,⁶⁷ but this analogy forgets that robots

60. MOORE'S LAW, <http://www.moorelaw.org/> [<https://perma.cc/9D4W-V3HN>]. Moore's Law states that processor speeds (or overall computing power) double every two years. This accounts for the exponential growth in computer power and is a good barroom explanation for why NBA 2K16 is exponentially better than NBA 2K14.

61. See McGrath, *supra* note 9.

62. *Id.* How we react to them is even more telling. Will we try to convert them to worship our own gods? Or will we be converted and worship them?

63. *Id.*

64. See F. Patrick Hubbard, *Do Androids Dream?*, 83 TEMP. L. REV. 405, 405–08 (2010).

65. See Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231, 1231–34 (1992).

66. Ugo Pagallo, *Killers, Fridges, and Slaves: A Legal Journey in Robotics*, 26 AI & Soc'Y 347, 347–48 (2011).

67. See Gabriel Hallevy, "I, Robot—I Criminal"—When Science Fiction Becomes Reality: Legal Liability of AI Robots Committing Criminal Offenses, 22 SYRACUSE SCI. & TECH. L. REP. 1, 37 (2010). Hallevy's article focuses on criminal law and applies classical criminal liability models to robots to determine fault. He argues that robots with advanced artificial intelligence must be treated like corporations when the robot is directly liable for a crime because there is no "substantive legal difference between the idea of criminal liability imposed on corporations and on AI robots." *Id.* By treating corporations and robots similarly in criminal law, Hallevy believes robots running rampant can be reeled in to answer for their crimes.

The problem in Hallevy's robot/corporation analogy is that there is a substantial difference between corporations and AI robots: corporations have actual people behind the legal fiction, whereas fully independent superintelligent robots do not. The analogy loses traction when one considers Hallevy's treatment of the robot's punishment. He argues that once a robot is found guilty, its punishment will

actually exist in the physical world and that corporations are mere legal constructs. A robot can whack you in the head with a hammer; a corporation that produces hammers cannot. Even if a robot is capable of being loved similarly to animals,⁶⁸ it will not be considered a mere pet because of its intellect. My French bulldog, although cute, will never beat anyone in a game of Jeopardy.⁶⁹

Classifying robots within the current spectrum of legal personhood is like trying to cup fine sand in your hands—a grain or two is bound to escape.⁷⁰ Although pinpointing where a robot will lie in this spectrum is not the subject of this Note, its introduction into the current mix of jurisprudence and statutes on religion raises myriad novel situations and tough questions that have no definite set of answers.

Let us return to the original hypothetical. Conscientious objection is an accepted exemption from military service.⁷¹ These cases assume that the conscientious objector is a human protected by the FEC. This assumption is taken for granted for the simple reason that only humans have been capable of religious sentiment. Substitute a robot in the place of a human and questions arise. What happens when the objector is a robot commissioned for military warfare? How will it be treated? Will the exception still apply? Does the robot even have the right to object?

follow the same route as a natural person or a corporation. *Id.* at 30. Although his use of classic criminal theories fits well to find fault in a robot, using the same approach to punish a robot leads to absurd results. For example, he argues that a robot should be jailed; for the most severe crimes, the robot should be executed by deleting its software. *Id.* at 31–32. But will a robot care if it is jailed? What good will it be if after serving its sentence, it can just upload any new software updates to itself?

This approach assumes that a robot and the humans behind the corporate veil will treat and view punishment the same way. Robots and the humans behind corporations operate in different fields. We are hardwired differently. A human's body ages, making the prospect of "lost time" in the prison system daunting; a robot's body will not, and any kinks or rust on its body can be easily repaired. A human's thoughts, ambitions, dreams, and ideals are permanently cut off from his physical body when he is executed; he is unique and execution eliminates that uniqueness. A robot's memory, data, and abilities can live on by being transferred to another body before deletion; it is only as unique as we wish it to be—a robot can be cloned, its code copied and pasted from one processor to another, its body reproduced in an assembly line of exact replicas.

These differences must be addressed before effective and meaningful punishment can be meted out on robots—and more importantly, before a proper robot/corporation analogy can be considered. If Hallevy insists on using our existing punishment schema on robots, robots should be coded and wired as closely to humans as possible to know and feel the brunt of the punishment. Code robots to feel fear, experience guilt, or dread the slow decay of their outer shells. Without any effort to level the playing field between robots and humans, present punishment techniques will neither deter robots from performing criminal acts nor rehabilitate offending robots.

68. See Hubbard, *supra* note 64, at 413.

69. See generally Ian Paul, *IBM Watson Wins Jeopardy, Humans Rally Back*, PC WORLD (Feb. 17, 2011, 5:13 AM), http://www.pcworld.com/article/219900/IBM_Watson_Wins_Jeopardy_Humans_Rally_Back.html [<https://perma.cc/PGM2-9Q8U>] (discussing IBM supercomputer Watson's Jeopardy victory over human competitors).

70. It is the same with finding a proper analogy for robots among the present list of legal "actors." We cannot account for every element or ability.

71. *United States v. Seeger*, 380 U.S. 163, 164–65 (1965).

Religious robots have yet to be discussed in legal scholarship. The speculative nature of the exercise is the most obvious reason. But as we move forward into a future with robots living alongside us, it will be helpful to delineate the implications religious robots will have for the FEC and RFRA. If history serves as a guide, we can expect laws to regulate this new aspect of technology.⁷² These regulations, whether affecting religious robots directly or indirectly, may stem from a variety of policy considerations: curbing the possible ill effects on economic productivity,⁷³ strengthening military efficiency,⁷⁴ enhancing national security,⁷⁵ or even pushing back against the loss of human uniqueness in the face of a technology that may someday be superior to us.⁷⁶ Why these laws will be passed will be important, if not vital, considerations especially when faced with the compelling state interest test of RFRA.

C. REGULATING THE “UNREGULATABLE” THROUGH LAW AND ARCHITECTURE

How these laws will regulate religious robots is another matter that must be considered. Like those who argue that cyberspace is nearly impossible to regulate because of its sprawling nature,⁷⁷ some will argue that robots, especially those that reach levels of intelligence on par or superior to our own, will be impossible to regulate.

Fortunately, Professor Lawrence Lessig’s answer to cyberspace “unregulability” will likewise apply to regulating robots.⁷⁸ Professor Lessig provides four modalities of regulation.⁷⁹ The first is through laws: a system of government orders, which mandates incentives and provides punishments to regulate behavior.⁸⁰ The second is through social norms: how society and the community view a particular act undoubtedly affects whether the act will be pursued in the future.⁸¹ The third is through markets: the price of certain products or services shapes behavior.⁸² The fourth is through architecture: the “physical world as we

72. The laws regulating self-driving cars are perfect examples of this. *See* Cal. Veh. Code § 38750 (2015).

73. *See supra* Section I.A (discussing hypothetical scenario).

74. *See supra* Section I.A.

75. Imagine a situation where religious extremism using robots is curbed by a law imposing an NRC.

76. A “Religion for Humans . . . and Only Humans” campaign is contemplated here. Although speciest, it is easy to imagine a situation where, when faced with our possible demise and obsolescence, humans will rise against the machines and attempt to restrict sharing human characteristics with their robotic counterparts.

77. *See* Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501, 503–06 (1999).

78. *See id.* at 506.

79. *Id.* at 507–08.

80. *Id.* at 507. I do not import Philippine mangoes—no matter how heavenly they taste—because of customs laws.

81. *Id.* This is the reason why I do not traipse around in my underwear in public; respected lawyers simply do not do such a thing.

82. *Id.* For example, the price of airline tickets is the main reason I have not booked a round-trip ticket to Slovenia.

find it”⁸³ further constrains behavior,⁸⁴ as anyone of my height who has ever tried to dunk a basketball can attest. Professor Lessig argues that by legislating rules (law) affecting cyberspace’s underlying code (architecture), the unwieldy open world of cyberspace can be reined in.⁸⁵

When it comes to regulating robots, these two modalities (law and architecture) should also be the regulatory tools of choice for legislators. In short, any law that will regulate robots must concern itself with the robot’s source or base code. In our hypothetical, these two modalities are seen in laws that prescribe an NRC. In real life, this would simply be a code written into the robot’s system.⁸⁶ By understanding that we can set limit a robot’s autonomy through code, we can also regulate robots.⁸⁷ In a way, this gives us an advantage. Although it is almost impossible to regulate human “architecture,”⁸⁸ it is different with robots. We are given a blank slate to make them whatever we want, to code them however we want. Their code is the doorway for us to regulate them. And the law will surely pass through this doorway in the years to come.

The following Sections explore the possible impacts of future regulations on religious robots. The hope is to lay a foundation where government regulations and the free exercise rights of stakeholders are both properly served.

IV. THE (POSSIBLE) CASE FOR RELIGIOUS ROBOTS UNDER THE FEC

A. AN ORIGINALIST AND A ROBOTICIST STEP INTO A BAR AND THINGS GET AWKWARD

When the country’s forefathers debated over, drafted, and enshrined the FEC more than two centuries ago, it is fair to say that they did not have robots in mind.⁸⁹ And it is almost a foregone conclusion that some jurists and scholars will argue that religious robots have no place in the legal framework because they are not humans. However, jurisprudence has shown that constitutional rights are not exclusive to natural persons; protection has been extended to artificial beings like corporations, and it could likely extend to robots.⁹⁰

There is a possible case for religious robots. I emphasize the word “possible” because, as discussed in this Section, the choice to include religious robots within the ambit of the FEC and RFRA will ultimately rest on legislators and

83. Lessig, *supra* note 77, at 507–08.

84. *Id.*

85. *Id.* at 509–11.

86. Of course, there will be proponents of the view that a superintelligent robot might be able to rewrite its own code, but can we not code against this ability to rewrite code?

87. This applies to any regulation, not merely to those that may seek to curb religious sentiments.

88. Human tendencies, emotions, feelings, fears, hopes, aspirations—the plethora of characteristics that makes us human.

89. We can only imagine what would have happened to James Madison if he mentioned the possibility of machines that could think for (and of) themselves.

90. Analysis under this Section uses a framework similar to Pamela Samuelson’s *Allocating Ownership Rights in Computer-Generated Works*, where she argued computers can be considered authors under the copyright laws. 47 U. PITT. L. REV. 1185, 1192–200 (1986).

jurists. In any event, the case rests on two arguments based on the text of the FEC and the values it protects.

B. FREE ROOM IN THE FREE EXERCISE CLAUSE: A TEXTUAL ARGUMENT FOR ROBOTS

The first argument begins with the text of the First Amendment: “Congress shall make no law . . . prohibiting the free exercise [of religion.]”⁹¹ A plain reading of the FEC shows that the prohibition is on Congress.⁹² At its core, its purpose is to protect the free exercise of religion from government intrusion. But whose free exercise is protected?

The text of the FEC is noticeably and tellingly silent as to whom the protection applies.⁹³ This silence leaves room to accommodate other beings that may, in the future, exercise religion. For more than 200 years, the protection of the FEC has, of course, been within the exclusive realm of humans. When it has been extended beyond natural persons to closely held corporations, the rationale remained human-centric—to protect the natural persons who own and control the corporations.⁹⁴ This is understandable. The free exercise of religion is, in the words of Justice Ginsburg, “characteristic of natural persons.”⁹⁵ The protection has been afforded to humans for the simple reason that only humans are capable of religious sentiment. Religion, and the choice not to believe in religion, is exclusively human.

This exclusivity dissolves in the face of religious robots. When the time comes that superintelligent robots preach the Gospel, wear colanders on their heads,⁹⁶ or open their own Robotology churches,⁹⁷ we will no longer be alone in our ability to believe. Religion will no longer be an exclusively human endeavor. This will lead to more debates about how narrow or expansive we want to view and interpret the FEC. But the foundation for the debate is there, laying in the silence of the text.

C. DIFFERENT INPUTS, SAME OUTPUTS: A VALUE-BASED ARGUMENT FOR ROBOTS

The second argument is grounded in the constitutional values the FEC and RFRA safeguard. These constitutional values are promoted and advanced as long as the religious actor is protected, regardless of whether the actor is a natural person or a robot. The Supreme Court implied this in *Hobby Lobby* when it rejected the dissent’s argument that an artificial being cannot advance

91. U.S. CONST. amend. I.

92. The prohibition also applies to state and governmental action, as discussed in Part II.

93. A similar argument for free speech was used by John Frank Weaver. See John Frank Weaver, *Robots Deserve First Amendment Protection*, SLATE (May 15, 2014, 9:45 AM), http://www.slate.com/blogs/future_tense/2014/05/15/robots_ai_deserve_first_amendment_protection.html [<https://perma.cc/AA6T-K6SJ>].

94. See *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768 (2014).

95. *Id.* at 2794 (Ginsburg, J., dissenting).

96. See CHURCH OF THE FLYING SPAGHETTI MONSTER, *supra* note 14.

97. FUTURAMA ROBOTOLGY, <http://www.cc.com/video-clips/97q1pz/futurama-robotology> [<https://perma.cc/FB6Y-8JFW>].

religious values.⁹⁸

For instance, protecting the religious liberty of robots advances religious voluntarism in the same way protecting the religious liberty of natural persons advances these values. If religious robots are protected against state compulsion, then religion will flourish (or wilt) on its own accord. How we accept (or reject) the tenets of the Church of the Flying Spaghetti Monster should depend on our interaction with colander-wearing religious robots, among other factors—none of which should be based on any government intervention. If state actors regulate religious robots or prohibit their free exercise, religion will grow or decline in the hands of the state, devaluing religious voluntarism. Prohibiting Jewish robots has the same effect as prohibiting natural persons from adopting Judaism: a government-sanctioned ban on Judaism.

Improper regulation of religious robots likewise spawns inequalities between religions and between religion and irreligion. The NRC mandated in this Note's opening in effect shows a state preference toward nonbelievers over believers—a preference eschewed by the values of voluntarism and equality. Banning, for instance, Muslim robots from entering a state (and allowing Christian robots free rein to do so) offends the same constitutional values as much as it would if the bans were on natural persons.

Religious autonomy is also better served if protection is extended to religious robots. Regulating religious robots is necessarily an affront to any religion these robots may have. Regulating Muslims is effectively regulating Islam.

As we have seen in the text of the FEC, it should not matter who practices religion, as long as religion itself is protected. In turn, religion is protected if the underlying values of voluntarism, equality, and autonomy are kept free from governmental intervention and compulsion. Using these two arguments, a case for religious robots can be made as a shield against regulation. The text of the FEC leaves room to bring religious robots within the purview of constitutional and statutory protection, and doing so will not harm constitutional values—in fact, it will advance and promote these values.

D. FROM POSSIBILITY TO REALITY

Although there is a case to be made, our current legal framework does not allow it. At present, robots are not “persons” under the law and thus are not protected by the FEC or RFRA. Jurisprudence has yet to extend any constitutional protection toward robots, much less any statutory protection. The cases where protection was granted to non-natural persons find basis on either the rights of the underlying natural persons or statutory grace.⁹⁹ *Hobby Lobby*, a

98. *Hobby Lobby*, 134 S. Ct. at 2769. The case was decided under the aegis of the RFRA and allowed closely held for-profit corporations to be exempted from laws if their owners objected based on religious grounds.

99. See Nina Totenberg, *When Did Companies Become People? Excavating The Legal Evolution*, NPR (July 28, 2014, 4:57 AM), <http://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution> [https://perma.cc/T6Z6-DF5Y].

case decided under RFRA, was anchored on the rights of the natural persons operating corporations.¹⁰⁰ It was also decided on the basis of the definition of “person,” which under the Dictionary Act included “corporations, companies, associations, firms, partnerships, societies, and joint stock companies.”¹⁰¹

At this point, it is important to remember that the grant of rights and responsibilities to artificial persons (such as those listed in the Dictionary Act) is ultimately a policy choice.¹⁰² We decided to clothe corporations with legal power to facilitate commercial transactions and granted them rights and liabilities appurtenant to that legal power in the same manner we decided not to grant my French bulldog the legal power to buy his own dog toys from the pet store. Ultimately, it is our choice who we wish to consider “persons.” In the event that we decide to elevate robots to the same hierarchical position as other “persons” under the law,¹⁰³ then the possible case for protecting robots under the FEC or RFRA could make the quantum leap to reality.

V. WHOSE RIGHT IS IT ANYWAY?

The lack of any protection for religious robots does not mean legislators can run rampant in their regulatory efforts. Regulations must still be written with the rights of the owners and software programmers in mind. At a minimum, these regulations must not explicitly target religion to pass constitutional or statutory muster. The mere text of the hypothetical federal and state laws mandating an NRC already places them on shaky ground. It specifically targets religion and would most likely fail both the *Smith* test and RFRA test. Furthermore, it would be difficult to find a set of legislators who would be willing to enact a facially discriminatory law such as that in this Note’s opening.

100. 134 S. Ct. at 2759.

101. *Id.* at 2768 (citing 1 U.S.C. § 1 (2012)).

102. *See* Solum, *supra* note 65, at 1238–40.

103. Why legislators will wish to do so is an interesting and debatable question. On one hand, granting robots some sort of legal personality has its benefits. First, doing so can establish “a new source of personal responsibility for others’ acts,” such as vicarious liability of owners for acts of their robots. Pagallo, *supra* note 66, at 348. As a corollary, a robot considered a “person” under the law can isolate the maker from liability for the acts of their robots, thereby incentivizing innovation for robot makers, akin to how the Digital Millennium Copyright Act exempts Internet service providers from copyright infringement liability. *See* 17 U.S.C. § 512(c) (2012). Finally, granting a robot legal personality can also facilitate commerce by imposing liability on robots for transactions it entered into on behalf of its human masters, similar to how we made the policy choice to grant legal personality to corporations. *See* Pagallo, *supra* note 66, at 352.

On the other hand, there are reasons why robots should not be granted legal personality. As Professor Solum explains: first, they are not human and therefore do not deserve the same rights we have; second, they “lack some critical component of personhood” (such as souls, consciousness, intentionality, feelings, or free will); and third, as mere products of our genius and work, they should never rise to the same legal stature as us. Solum, *supra* note 65, at 1258–79. I can imagine the same arguments being used in the halls of Congress.

With this in mind, the battle then shifts to general laws that have the effect of significantly burdening religious practices.¹⁰⁴ Hence, any regulation affecting robots must be careful not to inadvertently infringe on the rights of owners and software programmers.

A. RELIGIOUS ACTS, THIS WAY; SECULAR ACTS, THAT WAY

The first issue any religious regulation of robots (such as the hypothetical law mandating an NRC) raises is whether the regulated act qualifies as religious conduct. One can imagine owners and software programmers raising the argument that the regulation infringes on their free exercise rights. However, not all acts are considered free exercise acts that trigger the FEC or RFRA. Hence, what acts constitute “free exercise” as currently understood is the first issue that must be addressed. A nuanced approach separates the possible arguments of the robot owners from those of the software programmers.

1. He’s *My* Robot and I’ll Cry If I Want to: An Owner-Based Free Exercise Argument

A possible owner-based free exercise argument is premised on an owner’s actions toward the robot. Imagine that an owner’s robot has either the ability to learn and adopt religious sentiments or has the out-of-the-box capability to adopt a religion.¹⁰⁵ An owner can “convert” its robot to whatever religion he or she chooses in a number of ways. The owner can teach the robot, akin to how a parent teaches a child. The owner can program it through a set of preprogrammed religions, similar to how consumers set up a computer or a smartphone with individual preferences. The owner can also “mod” a robot, tinkering with it to make the robot adopt a certain religion that the manufacturer did not make available, like how hobbyists and gamers customize computer hardware and software to their liking.

Regulators and courts must consider whether these acts fall within the definition of “free exercise” and are thereby protected by either the FEC or RFRA. Currently, Court-recognized “free exercise” acts have been straightforward because the relationship between these acts and the religious motivation for them is clear.¹⁰⁶ But in the case of owners and robots, the acts straddle a grey area, especially because acts that are neither compelled by, nor central to, a

104. *See, e.g.*, *Emp’t Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 899 (1989) (O’Connor, J., concurring).

105. Imagine that setting up a new robot is like setting up a new iPhone. In addition to choosing its language, the wireless network it connects to, and what time zone to use, a consumer can also choose the robot’s religion.

106. *See, e.g.*, *Goldman v. Weinberger*, 475 U.S. 503, 504 (1986) (a Jewish rabbi wearing a yarmulke); *Sherbert v. Verner*, 374 U.S. 398, 399 (1963) (Seventh-Day Adventist refusing to work on a Saturday); *Reynolds v. United States*, 98 U.S. 145, 161 (1878) (members of the Church of Jesus Christ of Latter Day Saints practicing polygamy).

system of religious beliefs are likewise protected.¹⁰⁷

A nun can argue that “modding” her robot to believe in Christ was primarily motivated by her own faith. A Buddhist monk can argue that choosing Buddhism as a religious preference for his robot during the set-up process is motivated by his own faith. In the same vein, regulators can counterargue that “modding” a robot or choosing its religion during the set-up process is a purely secular act. At most, these acts are merely ancillary to religion, similar to installing a Bible app or choosing a picture of Buddha for an iPhone wallpaper. Whether courts will be willing to extend “free exercise” coverage to these nontraditional acts should be interesting to say the least.¹⁰⁸

2. It’s All About the Code, Baby: A Programmer-Based Free Exercise Argument

A possible software programmer-based free exercise argument is premised on classifying source code as a form of either religious speech or religious conduct. In terms of speech, the Sixth Circuit has recognized source code as protected speech.¹⁰⁹ Thus, it is not a far cry to consider source code implanting religious beliefs into a robot as protected speech. A programmer can argue that the source code expresses his belief in a certain deity or god. It is no different than a musician composing a song about his creator or a theologian writing a book about his faith. Assuming source code is treated as religious speech protected by the First Amendment, then another layer of protection—one based on free speech analysis—is available to software programmers.¹¹⁰

In terms of religious conduct, a programmer can likewise argue that the act of programming a robot to believe in a certain religion constitutes protected religious conduct. A programmer can argue that the act of programming a robot is proselytizing, plain and simple. A priest coding a robot to spread Catholicism is spreading the faith.

107. *See* Religious Exercise in Land Use and By Institutionalized Persons Act, 42 U.S.C. § 2000cc-5.7(A) (2012).

108. Two observations point to the conclusion that courts will consider these “nontraditional” acts as free exercise. The first is the recent trend of judicial deference in RFRA cases. *See* Martin S. Lederman, *Reconstructing RFRA: The Contested Legacy of Religious Freedom Restoration*, 125 YALE L.J. FORUM 416, 426 (2016). Professor Lederman notes that courts have recently exercised judicial deference to assertions of burdens on religious exercises, moving the battleground to the “back end” of RFRA (whether there is a compelling governmental interest and the least restrictive means to achieve it have been chosen).

At the core of this judicial deference is the second observation: judicial incompetence. *See* IRA C. LUPU & ROBERT W. TUTTLE, *SECULAR GOVERNMENT, RELIGIOUS PEOPLE* 199 (2014). Courts are not competent to determine the truth behind religious beliefs, *see* *United States v. Ballard*, 322 U.S. 78, 86 (1944), and must accept idiosyncratic views, no matter how different these views are from majoritarian beliefs and interpretations of the religion or sect. *See* *Thomas v. Rev. Bd. of the Ind. Emp’t Sec. Div.*, 450 U.S. 707, 715–16 (1981). Courts, therefore, have to defer to a nun’s assertion that “modding” a robot to believe in Christ is religious because it does not have the competence to correctly determine whether it is religious in the first place.

109. *Junger v. Daley*, 209 F.3d 481, 482 (6th Cir. 2000).

110. *See* CONKLE, *supra* note 18.

Programming a robot is also similar to parents raising their children with a certain religion from birth. Both child and robot are blank slates in the eyes of their parents and programmers alike. It is without question that a Muslim mother who rears her child under the Islamic faith falls within the meaning of free exercise.¹¹¹ However, can the same be said of a programmer who writes and installs a code in a robot that enables it to believe in Islam? Can programming a robot be considered primarily motivated by religion?

B. THE HEAVY WEIGHT OF BURDEN

Once it is determined that the act properly qualifies as religious conduct, the second issue focuses on the burden the regulation imposes. Note that the regulation must burden religion in order for either the *Smith* or RFRA test to apply. Under *Smith*, a plaintiff invoking the FEC must at least show some burden, lest his claim be dismissed for having no cause of action. Under RFRA, the burden must be “substantial.”¹¹² Without a burden on religion, there is no constitutional or statutory infringement to consider. The test for burden, whether under *Smith* or RFRA, should not be greatly affected when religious robots arrive with their electronic Bibles and holographic menorahs. As contemplated, it seems robust enough to accommodate robots.¹¹³

The challenge lies in other regulatory schemes that, on their face, do not appear to impose substantial burdens, but in practice pose substantial burdens for religion, similar to the scheme struck down in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*.¹¹⁴ A similar patchwork of regulations can likewise be used to regulate or prohibit religious robots. In these cases, the scheme, as a whole, must be considered and analyzed to determine its burden on religion.

C. COMPELLING CHANGES

Assuming the two preliminary issues are resolved in a manner favorable to the owner or software programmer, then the regulation must pass either the *Smith* test or RFRA test. If the regulation is federal law, it must pass the RFRA test. If the regulation is state law,¹¹⁵ it must pass the *Smith* test.

111. See *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972) (holding that the Amish community’s religious upbringing of its children was protected under the Free Exercise Clause).

112. Religious Freedom Restoration Act, 42 U.S.C. §2000bb-1(a) (2012).

113. The regulation either dissuades the exercise of religion or not. It is likewise debatable whether a court can determine the weight of the burden imposed on a claimant’s beliefs because of evidentiary issues. See *McCONNELL ET AL.*, *supra* note 24, at 212–26 (providing a thorough discussion of what constitutes “burden” and institutional or judicial competence); see also *LUPU & TUTTLE*, *supra* note 108, at 199 (arguing that courts have no power to determine what constitutes religious burden).

114. 508 U.S. 520 (1993). *Lukumi* involved Santeria, the practice of which calls for animal sacrifice. A series of city council regulations and ordinances were passed outlawing the killing of animals for sacrificial and religious purposes. Finding that the directives as a whole targeted religion, the Supreme Court held that the regulatory scheme violated the FEC. *Id.* at 542, 547.

115. This assumes a state without its own RFRA or a state with a constitution that does not impose a higher level of scrutiny.

Under RFRA, a governmental regulation that imposes a substantial burden on a person's exercise of religion is only valid if: (1) it advances a compelling government interest, and (2) it is the least restrictive means for furthering that interest.¹¹⁶ The latter depends on the actual text of the regulation, but the former should provide a fertile ground for controversy and debate.

Recognizing compelling governmental interests is a challenge for courts, especially with a technology that challenges our existing value systems. For example, the Supreme Court has recognized the following compelling governmental interests: providing a uniform day of rest in the workplace,¹¹⁷ eradicating racial discrimination,¹¹⁸ and maintaining a uniform social security system.¹¹⁹ In a way, these interests reflect the respective zeitgeists of the controversies.¹²⁰ Although some interests change with the passage of time, some are so deeply ingrained that they should survive the robotic revolution. Take for instance the interest in military uniformity recognized by the Court in *Goldman v. Weinberger*.¹²¹ Applying it to the federal law from the introductory hypothetical, which was passed presumably to increase military efficiency, one can imagine that the law satisfies the compelling governmental interest prong, especially when faced with the danger posed in battling terrorism.

Adding superintelligent robots to the mix should have a profound impact on existing societal values that the government might seek to protect. Whether these values change or new values emerge, only time can tell. However, we can be certain that new compelling governmental interests will be recognized to reflect societal values as we move closer to singularity and beyond.¹²²

D. NEUTRAL YET ROBUST

Compared to RFRA, *Smith* provides a less stringent approach that regulators should embrace. The *Smith* test simply requires a valid and neutral regulation of general applicability. As long as the regulation does not specifically target religious beliefs or practices, then regulation affecting religious robots, regardless of the burden, does not offend the FEC. As a target on religion, the hypothetical state law mandating an NRC is discriminatory and fails in this

116. Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1 (2012).

117. *Braunfeld v. Brown*, 366 U.S. 599, 608–10 (1961).

118. *Bob Jones Univ. v. United States*, 461 U.S. 574 (1983). The tax-exempt status of Bob Jones University was at stake because of its policy of prohibiting interracial dating in school. In its defense, Bob Jones University argued the policy was borne from the religious beliefs it embraced. The Court ruled that the national interest of eliminating racial discrimination justified any burden on these beliefs.

119. *United States v. Lee*, 455 U.S. 252, 258–59 (1982).

120. For example, *Bob Jones University* was argued and decided under the backdrop of the Civil Rights Movement.

121. 475 U.S. 503, 510 (1986). In this case, an Air Force regulation prohibited a Jewish rabbi employed as a commissioned officer from wearing his yarmulke while on duty. The Court ruled against the rabbi. *Id.*

122. As noted in Part III, a possible compelling governmental interest can be the continued existence of humanity in the face of such a powerful technology.

regard. However, it is possible that other regulations might tangentially infringe on the religious conduct of software programmers or owners but are still valid under *Smith*.

Imagine a Michigan state law passed to increase productivity in the car manufacturing industry.¹²³ It reads, “Robots employed in vehicle manufacturing factories are required to work seven days a week, except when they are subject to maintenance or software updates.”¹²⁴ On its face, the regulation is neutral and generally applicable. It applies to all robots in manufacturing plants without regard to the religion these robots may or may not have. Furthermore, the exception is secular as to both its purpose and its application. However, as applied, it can still affect religious conduct.

Suppose before the Michigan law is passed, a General Motors factory employs robots provided by a Seventh-Day Adventist roboticist who specializes in creating robot car manufacturers. The roboticist will likely claim religious discrimination and seek exemption under the law. His robots, which are Seventh-Day Adventists as well, are programmed (or taught) not to work on Saturdays. The new law threatens to put him at an economic disadvantage relative to his competitors. To comply with the law, he will have to either reprogram (or reindulcate) the robots to work on Saturdays (and thereby violate his religious beliefs) or maintain the status quo (and violate the law). Under *Smith*, the law is valid, woe to the Seventh-Day Adventist and his robots.

Despite criticisms of *Smith*, it likewise offers another robust approach that should subsume any changes brought about by the emergence of robots. Unlike the compelling governmental interest test under RFRA, *Smith* looks past policy considerations and underlying values that can change. Instead, *Smith* focuses on the law as written—whether it is indeed general and neutral. As such, we can expect regulations challenged under *Smith* to survive scrutiny and, in general, to be adjudicated more expediently than RFRA cases.

E. OUR LIVES MATTER . . . AND HOW SURVIVAL CAN END THE DEBATE

Moving forward, the emergence of religious robots can dictate a change in either test on the sole basis of necessity. The Court might, upon seeing the values religious robots advance in society, discard *Smith* entirely, revert to the pre-*Smith* standard under RFRA, and grant greater leeway for exemptions rooted in religious belief. States with considerable interest in technology and research on religious robots might require a higher standard well above RFRA to incentivize innovation.

123. This assumes that Michigan does not have its own RFRA or its constitution does not call for heightened scrutiny.

124. In keeping with Professor Lessig’s architecture modality, the Michigan law can also focus on the robot’s source code and read “Robots must be coded to work seven days a week.”

On the other hand, the tests can be dispensed with in favor of a total ban on religious robots. The threat robots pose to our existence is real.¹²⁵ It is great folly to discard these warnings as ramblings of the paranoid and pessimistic.¹²⁶ With our humanity looking down the barrel of a religious fundamentalist robot, the Supreme Court, Congress, or state legislators can hardly be blamed for banning religious robots outright, notwithstanding the rights of the owners and software programmers. To accommodate such a broad ban requires changing our cherished First Amendment, along with the tedious process that comes with it.¹²⁷ But with our survival at stake, the dissenters should be few and far between.¹²⁸

VI. A MAP OF QUESTIONS AND VALUES: TO INFINITY AND BEYOND

The prospect of robots being on par with or superior to humans forces us to reconsider our value systems and the laws we have enacted to protect these values. The FEC and RFRA protect constitutional values that are deeply rooted in the country's history. Both regimes seem robust enough to usher in constitutional values to the age of singularity, but even these will be affected by the emergence of religious robots. How we accommodate this exceptional technology is ultimately up to us. We can choose to regulate them, either to benefit from our newfound tools or to prevent us from being their newfound tools, but these regulations must be enacted with both the robots and natural persons behind them in mind. Although an expansive and value-based reading of the First Amendment might allow robots some protection under the Constitution, the discussion should be properly channeled to analyze the effects on the owners and software programmers of these robots. Any regulation affecting religious robots should comply with either *Smith* or RFRA to ensure their rights are properly protected.

When (or if) religious robots come marching down upon us, heated debates will not only fill the halls of Congress and the Supreme Court, they will also spill over to every classroom, bar, living room, news desk, boardroom, and water cooler in the country. Should the Constitution accommodate them? How should the Constitution be read? What did the framers intend? What rights and values are protected?

These are the questions that should be asked, discussed, debated, and eventually answered. Although these are difficult to answer considering the unique

125. See Grant Wilson, *Minimizing Global Catastrophic and Existential Risks from Emerging Technologies Through International Law*, 31 VA. ENVTL. L.J. 307, 309–10 (2013).

126. As a general note, it is folly to not consider anything Elon Musk or Stephen Hawking says.

127. Amending the First Amendment and RFRA will not undermine constitutional values completely. The amendment can be written in a way that strikes a balance between our survival as a race and the set of values and aspirations that makes us human. In any case, the amendment should be drafted carefully to carve out language that purports to protect robots while maintaining protection of human rights and liberties.

128. Or, if we are too late, they could be bowing down to our “robotic overlords” or even dead.

nature of robots, these questions are far from novel. We have faced the same questions in constitutional issues that have shaped the course of this nation's history, from school desegregation to student speech to same-sex marriage. And, armed with the right questions and the values that guided this country to greatness, we have answered them.

The same holds true in a future certain to be different from today. The road to answers is fraught with twists and turns that threaten to confound and confuse. It is easy to get lost so far from shore—and how far we have yet to sail! But, by asking the proper questions, we have plotted the proper course into the perilous sea. With our values as guiding stars in the dark night, the future is a little bit brighter. We are on our way.

Imagine that.