CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"

Church of the Holy Trinity v. United States, 143 U.S. 457 (1892)

In its opinion, the Court says:

"**All laws should receive a sensible construction**. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always therefore be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edw. II which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.' And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder."

The following cases may also be cited: *Henry v. Tilson*, 17 Vt. 479; *Ryegate v. Wardsboro*, 30 Vt. 743; *Ex Parte Ellis*, 11 Cal. 220; *Ingraham v. Speed*, 30 Miss. 410; *Jackson v. Collins*, 3 Cowen 89; *People v. Insurance Company* 15 Johns. 358; *Burch v. Newbury*, 10 N.Y. 374; *People v.*

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Commissioners of Taxes, 95 N.Y. 554, 558; *People v. Lacombe*, 99 N.Y. 43, 49; *Canal Co. v. Railroad Co.*, 4 G. & J. 152; *Osgood v. Breed*, 12 Mass. 525, 530; *Wilbur v. Crane*, 13 Pick. 284; *Oates v. National Bank*, 100 U. S. 239.

Among other things which may be considered in determining the intent of the legislature is the title of the act. We do not mean that it may be used to add to or take from the body of the statute, *Hadden v. Collector,* 5 Wall. 107, but it may help to interpret its meaning. In the case of *United States v. Fisher,* 2 Cranch 358, 6 U. S. 386, Chief Justice Marshall said:

"On the influence which the title ought to have in construing the enacting clauses much has been said, and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends that the title of an act can control plain words in the body of the statute, and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived, and in such case the title claims a degree of notice, and will have its due share of consideration."

And in the case of *United States v. Palmer,* 3 Wheat. 610, 16 U. S. 631, the same judge applied the doctrine in this way:

"The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them. Did the legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas? The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this act is 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the legislature intended by this law to punish. "

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Coming nearer to the present time, the declaration of independence recognizes the presence of the Divine in human affairs in these words:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by **their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. . . .** We therefore the Representatives of the united states of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good these Colonies, solemnly publish and declare,"

etc.;

"And for the

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support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

If we examine the constitutions of the various states, we find in them a constant recognition of religious obligations. Every Constitution of every one of the forty-four states contains language which, either directly or by clear implication, recognizes a profound reverence for religion, and an assumption that its influence in all human affairs is essential to the wellbeing of the community. This recognition may be in the preamble, such as is found in the Constitution of Illinois, 1870:

"We, the people of the State of Illinois, grateful to Almighty God for the civil, political, and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations,"

etc.

It may be only in the familiar requisition that all officers shall take an oath closing with the declaration, "so help me God." It may be in clauses like that of the Constitution of Indiana, 1816, Art. XI, section 4: "The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God." Or in provisions such as are found in Articles 36 and 37 of the declaration of rights of the Constitution of Maryland, 1867:

"That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty, wherefore no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace, or safety of the state, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness or juror on account of his religious belief, *provided* he

believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come. That no religious test ought ever to be required as a qualification for any office of profit or trust in this state, other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed by this constitution."

Or like that in Articles 2 and 3 of part 1st of the Constitution of Massachusetts, 1780:

"It is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. . . . As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality, therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power

to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic or religious societies to make suitable provision at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily."

Or, as in sections 5 and 14 of Article 7 of the Constitution of Mississippi, 1832:

"No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this state. . . . Religion morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this state."

Or by Article 22 of the Constitution of Delaware, (1776), which required all officers, besides an oath of allegiance, to make and subscribe the following declaration:

"I, A. B., do profess

faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore, and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration."

Even the Constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the First Amendment a declaration common to the constitutions of all the states, as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof," etc., and also provides in Article I, Section 7, a provision common to many constitutions, that the executive shall have ten days (Sundays excepted) within which to determine whether he will approve or veto a bill.

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons. They are organic utterances. They speak the voice of the entire people. While, because of a general recognition of this truth, the question has seldom been presented to the courts, yet we find that in *Updegraph v. Commonwealth*, 11 S. & R. 394, 400, it was decided that

"Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men."

And in *People v. Ruggles*, 8 Johns. 290, 294-295, Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said:

"The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice, and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. . . . The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious

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subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the Constitution, as some have strangely supposed, either not to punish at all, or to punish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama, and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply engrafted upon Christianity, and not upon the doctrines or worship of those impostors."

And in the famous case of *Vidal v. Girard's Executors*, 2 How. 127, 43 U. S. 198, this Court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: "It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania."

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find everywhere a clear recognition of the same truth. Among other matters, note the following: the form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, "In the name of God, amen;" the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation. In the face of all these, shall it be believed that a Congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation?

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