

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Hurtado v. California, 110 U.S. 516 (1884)*



"The system thus established," says Mr. Justice Stephens, 1 Hist. Crim.Law of England, 252,

"is simple. The body of the country are the accusers. Their accusation is practically equivalent to a conviction, subject to the chance of a favorable termination of the ordeal by water. If the ordeal fails, the accused person loses his foot and his hand. If it succeeds, he is nevertheless to be banished. Accusation, therefore, was equivalent to banishment, at least."

For almost five centuries, it was appealed to as the decisive authority on behalf of the people, though commonly so far only as the necessities of each case demanded."

This court, speaking by Mr. Justice Miller in *Loan Association v. Topeka*, 20 Wall. 655-662, said:

"It must be conceded that there are such rights in every free government beyond the control of the State. **A government**

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which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is, after all, but a despotism. It is true, it is a despotism of the many, of the majority, if you choose to call it so, but it is nevertheless a despotism. It may be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many."