

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” *Cummings v. Missouri, 71 U.S. 277, 4 Wall. 277 (1866)*



Whenever prosecutions arise under these provisions, there will, doubtless, be granted, in Missouri, to the accused, all these guarantees of constitutional liberty. The State cannot deny them to one of its citizens without denying them to all; and to suppose a people so lost to common sense as to deprive themselves, voluntarily, of these great and essential rights, necessary to a condition of freedom, is to suppose them incapable of self-government. But an objection is also urged which is well calculated to excite interest. **The rights of conscience are sacred rights.** They are too often confounded, however, with the unrestrained

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license to corrupt, from the pulpit, the public taste or the public morals. However this may be, the American people are exceedingly sensitive on the subject of religious freedom; and whenever, the people are told, as they have been in this case, *that the indefeasible right to worship God according to the dictates of conscience is about to be invaded, the public mind at once arouses itself to repel the invasion.* The first article of the amendments to the Constitution is in these words: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'

“This results from the rule of the Constitution, that the instrument itself, and the laws made in pursuance of it, are the supreme law of the land; and whatever obstructs or impairs, or tends to obstruct or impair, their free and full operation is unconstitutional and void.”

“What is punishment? The infliction of pain or privation. To inflict the penalty of death, is to inflict pain and deprive of life. To inflict the penalty of imprisonment, is to deprive of liberty. To impose a fine, is to deprive of property. **To deprive of any natural right, is also to punish. And so is it punishment to deprive of a privilege.”**

“Let us turn now to the other prohibition, that against passing any 'bill of attainder.' This expression is generic, and includes not only legislative acts to punish for felonies, but every legislative act which inflicts punishment without a judicial trial. If the offence be less than felony, the act is usually called a bill of pains and penalties.”

Thoughts, Words and Actions for Plaintiff’s Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause

The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State.'

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"No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

"A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties."

"Among the constitutional guarantees against the abuse of Federal power thrown around the American citizen, are these three: First, he cannot be punished till judicially tried; second, he cannot be tried for an act innocent when committed; and, third, when tried he cannot be made to bear witness against himself."

"Two of these guarantees, and the last two, are set also against the abuse of State power. The prohibition to pass an ex post facto law is, in the sense of the Constitution, a prohibition to pass any law which 'renders an act punishable in a manner in which it was not punishable when it was committed.' The question in the present case, therefore, becomes simply this: Is it a punishment to deprive a Christian minister of the liberty of preaching and teaching his faith?"

"Depriving Mr. Cummings of the right or privilege, whichever it may be called, of preaching and teaching as a Christian minister, which he had theretofore enjoyed, and of acting as a professor or teacher in a school or educational institution, *was in effect a punishment.*"

"What is this thing we call punishment for crime in this country? Punishment under our institutions, legally considered, must affect person or property. It must take the 'life' of an individual, impose restraints on his 'liberty,' or deprive him of his 'property.' Common sense teaches us that no man is punished by the loss of something that never was his absolute property. If I retake from my neighbor what I had granted him during my pleasure, I inflict no loss on him. He loses nothing. I gain nothing. The thing may be of value, but it is mine. If the thing taken has no value, although he may not have received it of me, he does not suffer. Punishment is to inflict suffering."

To punish one, then, is to deprive him of life, liberty, or property. To take from him anything less than these, is no punishment at all. These are natural rights, and to take them away is what we properly call punishment. All other rights are conventional, and may at any time be resumed by the public, in the most summary way, without any regard to due process of law. Hence, public offices have always been taken away from the incumbents, by the sovereign act of the people, without consulting the incumbents, without informing them, without hearing them in their defence, and yet

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nobody ever supposed this to be a punishment of the incumbents.