

Justice David J. Brewer's Historical Analysis of America as a Christian Nation¹

as appeared in the Supreme Court Opinion of the *Church of the Holy Trinity v. the United States*, February 29, 1892

CHURCH OF THE HOLY TRINITY v. UNITED STATES.

No. 143.

SUPREME COURT OF THE UNITED STATES

143 U.S. 457; 12 S. Ct. 511; 1892 U.S. LEXIS 2036; 36 L. Ed. 226

Argued and submitted January 7, 1892.

February 29, 1892, Decided

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The case is stated in the opinion.

SYLLABUS: The act of February 26, 1885, "to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia," 23 Stat. 332, c. 164, does not apply to a contract between an alien, residing out of the United States, and a religious society incorporated under the laws of a State, whereby he engages to remove to the United States and to enter into the service of the society as its rector or minister.

COUNSEL: Mr. Seaman Miller for plaintiff in error.

Mr. Assistant Attorney General Maury for defendant in error submitted on his brief.

OPINION: MR. JUSTICE BREWER delivered the opinion of the court.

Plaintiff in error is a corporation, duly organized and incorporated as a religious society under the laws of the State of New York. E. Walpole Warren was, prior to September, 1887, an alien residing in England. In that month the plaintiff in error made a contract with him, by which he was to remove to the city of New York and enter into its service as rector and pastor; and in pursuance of such contract, Warren did so remove and enter upon such service. It is claimed by the United States that this contract on the part of the plaintiff in error was forbidden by the act of February 26, 1885, 23 Stat. 332, c. 164, and an action was commenced to recover the penalty prescribed by that act. The Circuit Court held that the contract was within the prohibition of the statute, and rendered judgment accordingly, (36 Fed. Rep. 303;) and the single question presented for our determination is whether it erred in that conclusion.

¹ Copied word-for-word from the original opinion. Legal arguments intentionally removed for space. Long paragraphs broken for readability.

[LEGAL ARGUMENTS FOUND HERE REMOVED FOR SPACE.]

We find therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the reports of the committee of each house, all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor.

But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The commission to Christopher Columbus, prior to his sail westward, is from "Ferdinand and Isabella, by the grace of God, King and Queen of Castile," etc., and recites that "it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered," etc. The first colonial grant, that made to Sir Walter Raleigh in 1584, was from "Elizabeth, by the grace of God, of England, [France]² and Ireland, queen, defender of the faith," etc.; and the grant authorizing him to enact statutes for the government of the proposed colony provided that "they be not against the true Christian faith now professed in the Church of England."

³The first charter of Virginia, granted by King James I in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: "We, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters-Patents, graciously accept of, and agree to, their humble and well-intended Desires."

Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant. The celebrated compact made by the Pilgrims in the Mayflower, 1620, recites: "Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid."

The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-1639, commence with this declaration: "Forasmuch as it hath pleased the [Almighty] God by the wise disposition of his [divine] prudence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and vapor the River of [Connecticut] and the Lands thereunto [adjoining]; And well knowing where a people are gathered together the word of God requires that to maintain the peace and union of such a people there should be an orderly and decent [Government] established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; doe therefore associate and [conjoin] our [souls] to be as one [Public] State or [Commonwealth]; and do, for our [souls] and our Successors and such as shall be adjoined to us at any time hereafter, enter into Combination and Confederation together, to maintain and pressure the liberty and purity of the gospel of our Lord Jesus which we now profess, as also the discipline of the Churches, which according to the truth of the said gospel is now [practiced] amongst [us]."

² Old spellings replaced with modern words in brackets.

³ Paragraph divided for readability.

In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: "Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare," etc.

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 People of these Colonies, solemnly publish and declare," etc.; "And for the 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 States⁴ 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 well being 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, Article 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:

⁵That 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 to 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.

⁴ At the time of this court decision, there were 44 states in the United States.

⁵ Paragraph divided and block indent added.

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

⁶It 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 1, 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. The 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 *The 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:

⁷The 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

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free, equal and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and recurred; 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, 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 every where 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?

Suppose in the Congress that passed this act some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and priest; or any Episcopal church should enter into a like contract with Canon Farrar; or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent Rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute.

⁸The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute.

The judgment will be reversed, and the case remanded for further proceedings in accordance with this opinion.

⁸ Paragraph divided for readability.