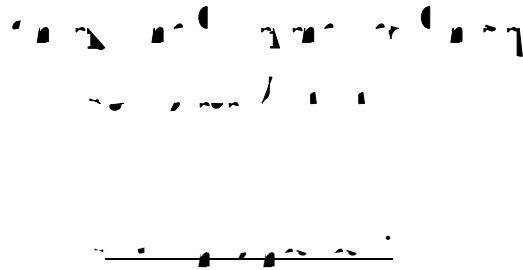


Symposium on Religion and Politics

The Civil War Era



BOISI CENTER
FOR RELIGION AND AMERICAN PUBLIC LIFE



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98 U.S. 145 (____)

REYNOLDS

v.

UNITED STATES.

Supreme Court of United States.

1879

151*151 Mr. George W. Biddle and Mr. Ben Sheeks for the plaintiff in error.

The Attorney-General and the Solicitor-General, contra.

153*153 MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The assignments of error, when grouped, present the following questions:—

1. Was the indictment bad because found by a grand jury less than sixteen persons?
2. Were the challenges of certain petit juries by the accused im

been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church."

Upon this proof he asked the court to instruct the jury that if they found from the evidence that he "was married as charged — if he was married — in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be `not guilty.' This request was refused, and the court did charge "that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that was right, — under an inspiration, if you please, that it was right, — deliberately married a second time, having a first wife living, the want of consciousness of event — the want of understanding on his part that he was committing a crime — did not excuse him, but the law inexorably in such case implies the criminal intent."

Upon this charge and refusal to charge the question is raised, whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned. The question to be determined is, whether the law now under consideration comes within this prohibition.

The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and Tc TdbTc 0.19692j 0 Tc 0.0174 Tw 19.y cosubres.80. Pun the theg

should be published and distributed, and that the people be requested "to signify their opinion respecting the adoption of such a bill at the next session of assembly."

This brought out a determin

tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties."

Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

the principles on which the government rests, rests. Professor Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 KenCom. 81, note (e). An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and places over which the United States have exclusive control. This being so, the only question which remains, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a

law. The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion: it was still belief, and belief only.

In [Regina v. Wagstaff \(10 Cox Crim. Cases, 531\)](#), the parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of manslaughter, while it was said the contrary would have been the result if the child had actually been starved to death by the parents, under the notion that it was their religious duty to abstain from giving it food. But when the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far.

Meditation on the Divine Will
Washington, D.C.
September, 1862

This fragment was found and preserved by John Hay, one of President Lincoln's White House secretaries.

The will of God prevails. In great contests each party claims to act in accordance with the will of God. Both may be, and one must be, wrong. God cannot be for and against the same thing at the same time. In the present civil war it is quite possible that God's purpose is something different from the purpose of either party -- and yet the human instrumentalities, working just as they do, are of the best adaptation to effect His purpose. I am almost ready to say that this is probably true -- that God wills this contest, and wills that it shall not end yet. By his mere great power, on the minds of the now contestants, He could have either saved or destroyed the Union without a human contest. Yet the contest began. And, having begun He could give the final victory to either side any day. Yet the contest proceeds.

Source: Collected Works of Abraham Lincoln, edited by Roy P. Basler.

THE GETTYSBURG ADDRESS

Fourscore and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting-place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we cannot dedicate...we cannot consecrate...we cannot hallow...this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us...that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; and that government of the people, by the people, for the people, shall not perish from the earth.

Second Inaugural Address

Washington, D.C.

March 4, 1865

Brooks also observed, "But chiefly memorable in the mind of those who saw that second inauguration must still remain the tall, pathetic, melancholy figure of the man who, then inducted into office in the midst of the glad acclaim of thousands of people, and illumined by the deceptive brilliance of a March sunburst, was already standing in the shadow of death."

At this second appearing to take the oath of the presidential office, there is less occasion for an extended address than there was at the first. Then a statement, somewhat in detail, of a course to be pursued, seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention, and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself; and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago, all thoughts were anxiously directed to an impending civil war. All dreaded it--all sought to avert it. While the inaugural [sic] address was being delivered from this place, devoted to the purpose of

all which may achieve and cherish a just and lasting peace, among ourselves, and with all nations.

Source: Collected Works of Abraham Lincoln, edited by Roy P. Basler.

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Letter to Thurlow Weed

Abraham Lincoln
March 15, 1865
Washington

My dear Sir.

Every one likes a compliment. Thank you for yours on my little notification speech, and on the recent Inaugural Address. I expect the latter to wear as well as——perhaps better than——any thing I have produced; but I believe it is not immediately popular. Men are not flattered by being shown that there has been a difference of purpose between the Almighty and them. To deny it, however, in this case, is to deny that there is a God governing the world. It is a truth which I thought needed to be told; and as whatever of humiliation there is in it, falls most directly on myself, I thought others might afford for me to tell it.

Yours truly

A. LINCOLN

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