AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Religion/Free Exercise/Religion in Public Schools

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Donahoe v. Richards, 38 Me. 379 (1854)

Bridget Donahoe, a fifteen-year-old Catholic, refused to read from the English Protestant Bible as required by public schools in Ellsworth, Maine. Donahoe offered to read from the Catholic-sanctioned Douay Bible. School officials refused that suggestion. After Donahoe was expelled, her father sued the school district. He claimed that the practice of reading from a Protestant Bible unconstitutionally favored Protestants and that his daughter had a right to be excused from that exercise because the reading violated her religious beliefs. The local trial court referred the legal issues to the Supreme Judicial Court of Maine.

The Supreme Judicial Court of Maine unanimously upheld the expulsion. The judges ruled that the school committee had the power to select texts for instruction and to expel disobedient students. Chief Judge Appleton stated that government schools could use the Bible for literacy and moral instruction. All instructors had a duty to teach their charges "love of country" and such virtues as industry, chastity, and temperance. Government officials could choose to accommodate religious dissenters, but citizens had no right to religious exemptions from generally applicable rules.

Consider two explanations for the result in Donahoe v. Richards. *First, Protestant judges supported Protestants against Catholics. Second, justices made a good faith decision that the King James Bible was a valuable source of inspiration and that religious students did not have a right to exemptions from generally applicable rules. Which explanation strikes you as more accurate? To what extent might being a Catholic or a Protestant influence what constituted a good faith interpretation of the constitution?*

CHIEF JUDGE APPLETON

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The power of selection is general and unlimited. It is vested in the committee of each town. It was neither expected nor intended that there should be entire uniformity in the course of instruction or in the books to be used in the several towns in the State. . . . The power of selection includes that of making injudicious and ill-advised selections, but there being no right of appeal, the selection is binding and conclusive.

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The use of the Bible as a reading book is not prohibited by any express language of the constitution.

Is its use for that purpose in opposition to the spirit and intention of that instrument?

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The common schools are not for the purpose of instruction in the theological doctrines of any religion, or of any sect. The State regards no one sect as superior to any other—and no theological views as peculiarly entitled to precedence. It is no part of the duty of the instructor to give theological instruction—and if the peculiar tenet of any particular sect were so taught it would furnish a well grounded cause of complaint on the part of those, who entertained different or opposing religious sentiments.

But the instruction here given is not in fact, and is not alleged to have been, in articles of faith. No theological doctrines were taught. The creed of no sect was affirmed or denied. The truth or falsehood of

the book in which the scholars were required to read, was not asserted. No interference by way of instruction, with the views of the scholars, whether derived from parental or sacerdotal authority, is shown.

The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief, than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or an affirmance of the pagan creeds. A chapter in the Koran might be read, yet it would not be an affirmation of the truth of Mahomedanism, or an interference with religious faith. The Bible was used merely as a reading book, and for the information contained in it, as the Koran might be, and not for religious instruction; if suitable for that, it was suitable for the purpose for which it was selected. No one was required to believe or punished for disbelief, either in its inspiration or want of inspiration; in the fidelity of the translation or its inaccuracy—or in any set of doctrines deducible or not deducible therefrom.

It is made . . . the duty of all the instructors of youth whether in public or private institutions, "to take diligent care and exert their best endeavors, to impress on the minds of children and youth committed to their care and instruction the principles of morality and justice, and a sacred regard to truth; love to their country, humanity and universal benevolence; sobriety, industry and frugality; chastity, moderation, and temperance; and all other virtues, which are the ornaments of human society." It will not be insisted that this duty, so beautifully set forth, is other than in entire conformity with the constitution. Neither is it claimed that the Bible, in any of its translations, is adverse to sound morality or those virtues here designated as proper to be inculcated.

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The controversy seems to resolve itself into the inquiry whether there is any thing in the constitution, which in case of different translations of a work fitting and proper for schools, forbids the requirement of the use of a particular version as a reading book by those who may conscientiously believe it to have been, in some respects, erroneously made. If so, it is obvious that the particular version must be entirely prohibited, for if the plaintiff has a constitutional right to be absolved from a regulation of the school requiring its reading, because it is in conflict with her religious conscientious belief, it is not easy to perceive why she has not an equally valid ground of objection to hearing it read. If so, as others may have their consciences, it follows, not merely that no translation of the Bible can be used, but that no book can be used which may contain any proposition opposed to the conscientious belief of any scholar.

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The clause in the constitution upon which reliance is specially placed, is, that "no one shall be *hurt, molested* or *restrained* in his person, liberty or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience, nor for his *religious professions* or *sentiments,* provided he does not disturb the public peace, nor obstruct others in their religious worship." The object of this clause was to protect all—the Mahomedan and the Brahmin, the Jew and the Christian, of every diversity of religious opinion, in the unrestrained liberty of worship and religious profession, provided the public peace should not thereby be endangered nor the worship of others obstructed. It was to prevent pains and penalties, imprisonment or the deprivation of social or political rights, being imposed as a penalty for religious professions and opinions.

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Another clause in the constitution, upon which reliance is placed, is, "that no *subordination nor preference* of any sect or denomination to another shall ever be established by law."

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This clause obviously provides for the equality of all sects, and forbids the preference of one over another. . . . The selection of a school book is no preference within this clause. The choice is left entirely to the popular will. One set of town officers may make one selection, and another may make an entirely different one. The most unrestrained liberty of choice is given. It would be a novel doctrine that learning to read out of one book rather than another, or out of one translation rather than another, of a book conceded to be proper, was a legislative preference of one sect to another, when all that is alleged is, that the art of reading only was taught, and that without the slightest indication of or instruction in theological doctrines.

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The Jews and the seventh day Baptists regarding Saturday as divinely set apart for rest, find legal impediments to labor on the Christian Sabbath, when they believe it may be lawfully done, and conscientious scruples to their laboring on the preceding day, so that between the law and their consciences they are compelled to abstain from labor on both days; yet this is not regarded as hurting, molesting or restraining them in their persons, liberties or estates, within the meaning or constitutional prohibitions similar to our own; nor as creating a subordination or preference of one sect over another. Much more, then, should not the selection of the Bible as a book in which reading only is to be taught, be regarded as in the slightest degree in conflict with this portion of the bill of rights.

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If the claim is, that the sect of which the child is a member has the right of interdiction, and that any book is to be banished because under the ban of her church, then the preference is practically given to such church, and the very mischief complained of, is inflicted on others.

If Locke and Bacon and Milton and Swift are to be stricken from the list of authors which may be read in schools, because the authorities of one sect may have placed them among the list of heretical writers whose works it neither permits to be printed, nor sold, nor read, then the right of sectarian interference in the selection of books is at once yielded, and no books can be read, to the reading of which it may not assent. Because Galileo and Copernicus and Newton may chance to be found in some prohibitory index, is that a reason why the youth of the country should be educated in ignorance of the scientific teachings of those great philosophers? If the Bible, or a particular version of it, may be excluded from schools, because its reading may be opposed to the teachings of the authorities of any church, the same result may ensue as to any other book. If one sect may object, the same right must be granted to others. This would give the authorities of any sect the right to annul any regulation of the constituted authorities of the State, as to the course of study and the books to be used. It is placing the legislation of the State, in the matter of education, at once and forever, in subordination to the decrees and the teachings of any and all sects, when their members conscientiously believe such teachings. It at once surrenders the power of the State to a government not emanating from the people, nor recognized by the constitution.

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The right as claimed, undermines the power of the State. It is, that the will of the majority shall bow to the conscience of the minority, or of one. If the several consciences of the scholars are permitted to contravene, obstruct or annul the action of the State, then power ceases to reside in majorities, and is transferred to minorities. . . .

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The Legislature establishes general rules for the guidance of its citizens. It does not necessarily follow that they are unconstitutional, nor that a citizen is to be legally absolved from obedience, because they may conflict with his conscientious views of religious duty or right. To allow this would be to subordinate the State to the individual conscience. A law is not unconstitutional, because it may prohibit what a citizen may conscientiously think right, or require what he may conscientiously think wrong. The State is governed by its own views of duty. The right or wrong of the State, is the right or wrong as declared by legislative Acts constitutionally passed. It may pass laws against polygamy, yet the Mormon or Mahomedan cannot claim an exemption from their operation, or freedom from punishment imposed upon their violation, because they may believe, however conscientiously, that it is an institution founded on the soundest political wisdom, and resting on the sure foundation of inspired revelation. It may establish a day of rest, as a civil institution, though the effect of it may be to deprive the Jew of one sixth of his time, for purposes of labor or of business.

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. . . Large masses of foreign population are among us, weak in the midst of our strength. Mere citizenship is of no avail, unless they imbibe the liberal spirit of our laws and institutions, unless they become citizens in fact as well as in name. In no other way can the process of assimilation be so readily and thoroughly accomplished as through the medium of the public schools, which are alike open to the children of the rich and the poor, of the stranger and the citizen. It is the duty of those to whom this

sacred trust is confided, to discharge it with magnanimous liberality and Christian kindness. While the law should reign supreme, and obedience to its commands should ever be required, yet in the establishment of the law which is to control, there is no principle of wider application and of higher wisdom; commending itself alike to the broad field of legislative, and the more restricted one of municipal action—to those who enact the law, as well as those who, enjoying its benefits and privileges, should yield to its requirements, than a precept which is found with almost verbal identity in the versions which, from education and association, are endeared to the respective parties in litigation, "All things whatsoever ye would that men should do to you, do ye even so to them, for this is the law and the prophets."

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