

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era — Individual Rights/Religion/Free Exercise/Bible Reading

Wilkerson v. City of Rome, 152 Ga. 762 (1922)

J.T. Wilkerson was a member of the Board of Education of Rome, Georgia. That city had an ordinance with provided that “the board of education shall require some portion of the King James version of the Bible . . . to be read and prayer offered to God in the hearing of the pupils of the public schools . . . daily.” Wilkerson and other members of the board refused to implement that decree in part because they believed the measure required religious instruction inconsistent with the protections for religious freedom in the state constitution. Acting on behalf of Rome citizens, E.E. Lindsay brought a lawsuit asking the courts to compel the Board of Education to perform their statutory duty. When the local trial court ruled the ordinance constitutional, Wilkerson appealed to the Supreme Court of Georgia.

The Supreme Court of Georgia sustained the lower court ruling. Judge Gilbert ruled that Bible reading was consistent with state constitutional provisions protecting the free exercise of religion and forbidding state funds from supporting religious sects. Gilbert began his opinion by insisting that the United States was a Christian nation. What role did that assertion play in his opinion? How did he understand religion? Did Judge Hines dispute that definition of religion or did he have a different understanding of freedom of religion?

JUDGE GILBERT

. . . The founders and early settlers of America consisted in large part of persons who fled from the religious persecutions of the old world to the shores of the new world in search of religious freedom. In establishing a government for themselves founded upon principles of religious liberty, they were by no means ungodly or insensible to the benefits of Christianity. There is abundant historical evidence, as well as the opinions of eminent statesmen and jurists, for the statement that the pioneers in the formation and conduct of American colonial governments did not have it in mind to bring about a complete separation of church and state.

. . .
The provision in the colonial statute of Massachusetts was substantially identical with the ordinance of Rome, Ga., now under consideration, except that the former, in addition to providing for the reading of the Bible and prayer, also provided “that the pupils learn the Ten Commandments and repeat them once a week.” In this case, *Commonwealth v. Cooke*, decided in 1859, . . . a son of the complainant, eleven years of age, a pupil in a public school, was chastised by the teacher for a refusal to comply with the requirements of the school in the matter. . . . The court elaborately discussed the question, and, rejecting the contention of the complainant, said in part:

“Our schools are the granite foundation on which our republican form of government rests. They were created and are now sustained by our Constitution and laws, and the almost unanimous voice of the people. But a pupil in one of them has religious scruples of conscience, and cannot read or repeat the Commandments, unless from that version of the Bible which his parents may approve. . . . If the plea of conscience and his constitutional rights would protect him from reading the Bible, is it not equally clear that he could not be compelled to hear it read? If, then, these are constitutional rights, secured

to the children in our common schools, at any time when one pupil can be found in each public school in the commonwealth with conscientious scruples against reading the Bible, or hearing it read, the Bible may be banished from them, and so the matter of education may be taken from the state government and placed in the hands of a few children. Not Roman Catholic children alone. For if the plea of conscience is good for one form of sectarian religion, it is good for another. The child of a Protestant may say, 'I am a conscientious believer in the doctrine of universal salvation. There are portions of the Bible read in school which it is claimed by others tend to prove a different doctrine; my conscience will not allow me to hear it read, or to read it.' Another objects as a believer in baptism by sprinkling. 'There are passages in the Bible which are believed by some to teach a different doctrine. I cannot read it; conscience is in the way.' Still another objects as a believer in one God. 'The Bible, it is claimed by some, teaches a different doctrine; my conscience will not allow me to read it or to hear it read.' And so every denomination may object for conscience sake, and war upon the Bible and its use in common schools. Those who drafted and adopted our Constitution could never have intended it to meet such narrow and sectarian views. That section of the Constitution was clearly intended for higher and nobler purposes. It was for the protection of all religions—the Buddhist and the Brahmin, the Pagan and the Jew, the Christian and the Turk—that all might enjoy an unrestricted liberty in their religion, and feel an assurance that for their religion alone they should never, by legislative enactments, be subjected to fines, cast into prison, starved in dungeons, burned at the stake, or made to feel the power of the inquisition."

... Christianity entered into the whole warp and woof of our governmental fabric. Many of the statesmen of this country treated Christianity as a part of the law of the land. In the Declaration of Independence, God, as our creator, was acknowledged as follows:

"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," 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."

... [T]he framers of our Constitutions have never intended to declare the policy of this state to be unreligious or unchristian. They did intend, in the Constitution of 1877, to prohibit taxation for the support of any church, denomination, or sectarian institution maintained as a state institution. Indeed, the protection afforded by the Constitution is a protection to individuals, and not to churches; and this theory is in accord with the ablest thinkers on the subject. It is not specifically contended here that the religious beliefs of any individual, certainly not of any adult citizen, is interfered with in an unconstitutional way by the ordinance in question. It is contended that the enforcement of the ordinance would be to instruct the school children in the teachings of the Bible in a manner contrary to the beliefs of the Roman Catholic Church and of those of the Jewish faith. But assuming, for the sake of argument, that the contention is broad enough to include individual members of the church, we think that certainly as to paragraphs 12 and 13 of the Constitution, relating to religious freedom of conscience and freedom of civil status, there can be no merit in the contention. It would require a strained and unreasonable construction to find anything in the ordinance which interferes with the natural and inalienable right to worship God according to the dictates of one's own conscience. The mere listening to the reading of an extract from the Bible and a brief prayer at the opening of school exercises would seem far remote from such interference. It would be equally difficult to find anything in the ordinance which could in any way molest any inhabitant of this state in person or property, or prohibit him from holding any public office or trust, on account of religious opinions. Finally, when it is noted that pupils whose parents or guardians so request may, under the terms of the ordinance, be excused from attendance on Bible reading and prayers, the whole contention of plaintiffs in error ... must crumble into nothingness.

. . . Judge Cooley has dealt directly with this subject, and has expressed reasons so sound and convincing as to entitle them to the careful study of all who are in pursuit of truth and correct principle, and what was said by him so fully conveys our own views that we offer no apology for transferring it at length to this opinion: "But thus careful to establish, protect, and defend religious freedom and equality," says this eminent author, "the American Constitutions contain no provisions which prohibit the authorities from such solemn recognition of a superintending Providence in public transactions and exercises as the general religious sentiment of mankind inspires, and as seems meet and proper in finite and dependent beings. Whatever may be the shades of religious belief, all must acknowledge the fitness of recognizing in important human affairs the superintending care and control of the Great Governor of the Universe, and of acknowledging with thanksgiving His boundless favors, or bowing with contrition when visited with the penalties of His broken laws. No principle of constitutional law is violated when thanksgiving or fast days are appointed; when chaplains are designated for the army and navy; when legislative sessions are opened with prayer or the reading of the Scriptures, or when religious teaching is encouraged by a general exemption of the houses of religious worship from taxation for the support of state governments. Undoubtedly the spirit of the Constitution will require, in all these cases, that care be taken to avoid discrimination in favor of or against any one religious denomination or sect; but the power to do any one of these things does not become unconstitutional simply because of its susceptibility to abuse." Our Constitution, while it takes away the temptation and power to make such discrimination either in favor of or against any one religious denomination or sect, leaves it open to the Legislature to encourage religious instruction by exempting from taxation . . .

. . .
In our opinion the ordinance in question is no more a discrimination under the Constitution against those of the Jewish faith than those of the Roman Catholic belief. The mere reading of extracts from the New Testament or the Bible in the public schools cannot in any legitimate sense be considered as an appropriation of public moneys to the support or establishment of a system of religion or a sectarian institution. It is true that the teachers of the public schools are paid from the proceeds of public taxation, and that an insignificant fraction of their time would be consumed in the reading. If the theory contended for could once be established, it might easily be carried to an absurd extent. For instance, it might, as an inference from such a ruling, be contended that the inclusion in the school curriculum of books containing denials of the teachings of Darwin, Brahma, Buddha, or Confucius, and the like, would be teaching sectarian doctrines, and therefore in conflict with the Constitution of Georgia. . . .

. . .
No one is required to believe, or punished for disbelief, either in its inspiration or want of inspiration, in the fidelity of the translation or its accuracy, or in any set of doctrines deducible or not deducible therefrom. The plaintiffs, in the trial court, admitted that the reading of the King James version of the Bible was contrary to the beliefs, opinions, and teachings of the Roman Catholic Church, and that the reading of the New Testament is likewise contrary to the beliefs of those citizens holding the Jewish faith. This can have no effect on the meaning of the Constitution, which, as we hold, fails to show any violation of constitutional rights.

JUDGE HINES

I dissent from the opinion of the majority in this case. I do so with considerable misgiving, as I am without the aid and comfort of a single one of my Associates; but, being committed with my whole soul to the doctrine of religious freedom, including freedom from molestation in matters of conscience, I feel in duty bound to give vent to my inability to agree to the conclusion reached by my able Associates.

This ordinance violates the rights secured by [the provisions protecting religious freedom in the state constitution], and therefore is unconstitutional and void. The first provision declares the natural and inalienable right of the individual to worship God according to the dictates of his own conscience; and guarantees and safeguards this sacred right of conscience by declaring that no human authority, not even the board of commissioners of the city of Rome, shall in any case control or interfere with such right of

conscience. Yet this ordinance provides a system of worshipping God, consisting of reading the King James version of the Scriptures and prayers, and names the principals of the Rome schools, or the persons selected by them as the ministers of the system. This ordinance established a system of worship for the schools of Rome, and thus in this case controls or interferes with the individual worship of God. . . . Religious freedom includes the right not to worship God at all. All the pupils of the Rome public schools, unless their parents or guardians, in writing, request that they be excused, are bound to attend these religious exercises. The unexcused children are bound to attend and listen to this worship. It will not do to say that parents or guardians, having conscientious objections to the Rome system of worship, can exempt their children or wards from attendance thereon, and that this exception saves the constitutionality of this ordinance. The exemption of certain classes from the operation of an unconstitutional enactment will not save its face.

The second provision of the state Constitution, above set out, provides that “No inhabitant of this state shall be molested in person or property . . . on account of his religious opinions.” To “molest” is to vex, worry, or disturb. Anything which vexes, worries, or disturbs a person in body mind, or soul falls within the meaning of this language.

The religious opinions of the Catholics proscribe the King James version of the Scriptures. The beliefs of the Jews condemn the teachings of the New Testament, which constitutes a part of this version of the Bible. Various branches of the Protestant Church base their peculiar tenets upon certain texts of the New Testament found in this version. The reading of this version offends and molests the Catholics and the Jews. The reading of certain texts of this version will molest certain sects of Protestants. The system of worship provided for in this ordinance will offend the deists, atheists, and agnostics. This molestation of these various sects will or may come from the enforcement of this ordinance, and on account of their religious beliefs; and falls within the condemnation of this provision of our state Constitution. Parents and guardians who may be deists, atheists, or agnostics, and even Christians with strong convictions, may be loath to disclose their objection to this worship, for fear they might be subjected to criticism, if they were to request in writing that their children or wards be excused from attendance.

...
We cannot disguise the fact that making the reading of the King James version of the Bible a part of the worship of the public schools puts municipal approval upon that version, and thus discriminates in favor of and aids the Protestant sects of the Christian religion. So the selection of the Douay Bible would put the stamp of municipal approval on it and thus discriminate in favor of and aid the Catholics. The public schools are supported by taxation. Members of all denominations of religionists contribute to the funds by which they are supported. No public funds can be lawfully taken from the public treasury and used in any manner which aids any sect or denomination. The use of such funds, in running public schools, in which a curriculum exists and which aids any sect, is forbidden by this provision.

I recognize the perils of the public schools to morals and religion, due to the lack of moral instruction; and the importance of supplying the teaching of morals and religion. Yet this must be accomplished by methods which keep the state and church separate, which protect the natural and inalienable right of any individual to worship, or not to worship, God according to the dictates of his own conscience, and under which no aid is given to any sect or denomination.