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CHARLES E. GEORGE

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CHARLES E. GEORGE, Editor

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SEPTEMBER-OCTOBER, 1927

No. 5

ITA LEX SCRIPTA EST

*"To sin by silence when we should protest
Makes cowards out of men.
The few who dare must speak and speak again
To right the wrongs of men."*

WHO IS THE MAN?

Shortly some native born citizen of these United States will be selected to occupy the presidential chair at Washington for a period of four years. The arena of politics is being prepared for a gigantic contest. There are many receptive candidates who are hoping the political lightning will hit their uncovered heads.

The intensely nervous pace at which our present day civilization is traveling may result in the elimination of many who by reason of racial instincts and possibly religious attachments are giants in statesmanship and scientifically leaders in Nation's affairs. Will REAL leaders be named for the contest by the electorate or will bigotry, prejudice, tradition and narrow-mindedness succeed in the placing of a new dark horse in the field. Are we today in a state of political degeneration and how best to advance to constitutional vitality and moral legal solidarity are serious problems that the campaign of 1928 will undoubtedly settle.

Looking back over the record of the world's greatest civilization we are struck by the fact that the mentality of the electors' plays small part in the selection of the ablest law makers or representatives. Party label seems a pathological certainty in which the mob mass, live, move and react under control of ward heelers who are accepted as superior and dominant.

Who will lead the Nation's body of law makers? Who will be the leaders of the two dominant parties? Calvin Coolidge is out of the run-

ning. The tradition firmly imbedded in the American mind of no third term would probably have decided this issue had not the President seen fit to announce that with Washington, Jefferson and other leaders he did not "choose" to run in 1928.

A canvas made of the political leaders of both the Democratic and Republican parties by this publication shows wide diversity of opinions. Over ten thousand replies have been received to inquiries sent throughout the various States. It seems the actions of the two great conventions will depend upon principle rather than personality. The expressed will is here shown :

Governor Smith of New York is favored as the outstanding contender for the Democratic nomination. His personal qualities, abilities and efficiency in office are pointed out. He leads with 3,986 votes.

Governor Ritchie of Maryland is supported because of his stand in favor of State's Rights; over half of 2,800 votes for him come from states that are now Democratic.

Senator James A. Reed of Missouri is strongly supported with 2,756 votes, a majority of which come from States that are considered uncertain, but which it is claimed, he can carry by reason of his ability, broadness of mind and constructive statesmanship.

Out of this list of three we look to see the Democratic contender come girded for the fray.

The Republican selection is not so easy to discern. The Middle West indicates a choice for former Governor Lowden, with Senator Curtis of Kansas, a close second, and Longworth trailing. West of the Rockies Hoover is favorite, with Willis of Ohio fairly strong in the running. The Eastern and Middle States including Michigan and Pennsylvania, are for Secretary Mellon with Vice-President Dawes mentioned by many. The Northwest favors Lowden and Mellon first, with any liberal candidate who can carry New York and New Jersey second. We are of opinion that the Southern States—that great body of black and white administration creations and office holders, will in the end, be the cause and effect of the Republican nominee.

Strong men in each party will be selected. The reserved rights of States and the repeal or modification of the Volstead Act will be dominant issues in the campaign. It looks like a neck and neck, rather than one-sided race. Whoever wins will stand for education, a searching restriction of emigration, sound currency, collection of outstanding debts from foreign nations and the Laws' enforcement.

Rights of Religion and the Bible in Public and Private Schools

By Raymond M. Hudson of the Washington, D. C., Bar.

Representing a group of Christian clients, a brief was prepared on the above subject for use in two important cases pending in New York and Colorado wherein the questions were raised whether the State by appropriate legislation could require the reading or study of the Bible in public or private schools.

The following conclusions are in support of the proposition that the several States and sub-divisions thereof by appropriate legislation have the right to, and can require the readings or study of the Bible in public or in private schools and that they can likewise authorize religious instruction to the pupils so long as it is not restricted to any specific Church, Sect or denomination; nor can the States prohibit such reading or study of the Bible and its teachings. The subject is treated both from a legal and Christian viewpoint.

SUCH READING OR STUDY IS NOT PROHIBITED BY THE FIRST AMENDMENT OF THE CONSTITUTION, RATIFIED FINALLY IN 1791, AS IT IS ONLY A RESTRICTION OF THE POWER OF CONGRESS AND NOT OF THE SEVERAL STATES, AND ONLY APPLIES TO "ESTABLISHMENTS" OF RELIGION AS A SPECIFIC CHURCH, SECT, OR DENOMINATION.

This amendment is as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It was held by the United States Supreme Court in *Permoli v. First Municipality*, 3 How. 589, in 1845, that the Constitution of the United States makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State Constitutions and laws.

This was twenty-three years prior to the adoption of the 14th amendment in 1868, and there are cases cited hereinafter as authority that the States can not by constitution or law prohibit, since the adoption of the 14th amendment, the reading or teaching in public schools of the Bible or any other book unless it is dangerous to "the health, morals or understanding of the ordinary child."

Meyer v. Nebraska, 262 U. S. 390, 43 Sup. Ct. Rep., at 628.

The Constitution was adopted and is adapted to meet new conditions and circumstances, as was said in an early case by Justice Story:

“The Constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, *the events of which were locked up in the inscrutable purposes of Providence*. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interests should require.”

Martin v. Hunter, 1 Wheat. 326.

The historical origin may be considered, and historical evidence may be resorted to as aids in the construction and applications of words and provisions. What went before the adoption of the Constitution may be resorted to for the purpose of throwing light on its provisions in placing a construction upon an article of doubtful meaning, the safe way is to read its language in connection with the unknown conditions of affairs out of which the occasion for its adoption may have risen, and then to construe it in a way, so far as is reasonably possible, to forward the known purpose or object for which it was adopted.

Twining v. New Jersey, 211 U. S. 78.

Marshal v. Gordon, 243 U. S. 521.

South Carolina v. United States, 199 U. S. 457.

Williamson v. United States, 207 U. S. 425.

Appleyard v. Massachusetts, 203 U. S. 222.

Missouri v. Illinois, 180 U. S. 219.

Kendall v. United States, 12 Pet. 524.

It is a well-known matter of history that thousands of the Colonists in this country fled from religious persecution in England, France, Ireland, and other European countries, caused by the Established Church in those countries, and in Virginia the Established Church was endeavoring, through the States, to crush the Dissenters and all other denominations, and this was largely true as to all the colonies. This “Established Church” was controlled and supported by the State through taxation of all the people.

The real object of the First Amendment to the Constitution was not to countenance much less advance Mohammedism, or Judaism, or infidelity, by prostrating the Christian religion, but was to prevent any National Ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the National Government according to Story on Constitution, Section 1877.

We often forget the distinction between three sets of rights preserved by the Constitution, viz: Federal Rights, State Rights, and Rights reserved to all the People, which latter neither the State nor Federal Government can infringe or restrict.

10th Amendment, U. S. Constitution.

The rights reserved to all the people is to all the people of all the States of the United States, and not just the people of one particular State.

Thomas Jefferson requested that he be remembered by posterity simply as the "Author of the Declaration of Independence of the Statute of Virginia for Religious Freedom, and the Father of the University of Virginia," and his Statute of Religious Freedom in Virginia and to leave it free and open for all people to worship God according to the dictates of their own consciences, and the Act (12 Hennings Statutes, pp. 84-85-86), a copy of which is hereto attached, shows a strong faith in God and the Bible and in the religion that is accepted by the large body of American people.

The Virginia Bill of Rights, adopted June 12, 1776, provided
* * * *:

"16. That religion, or the duty which we owe to our Creator and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity toward each other."

The Spiritual Church of God and the Bible is a living organism and everything else is merely organization and the "establishment of religion," as stated in the Constitution, is limited by the history of our Country and Constitution to organizations as various denominations and does not apply to the living organism. The persecution of our forefathers for their faith and religious freedom was merely one organization fighting another organization and none of them fighting the living organism of the Bible, but one trying to force on the other its idea of how to worship the living organism and to construe the Bible, and our

whole history is filled with laws and statutes and constitutions, courts and legislatures and other organizations sustaining and upholding the Bible, but it forbids any one to force on any one, or any organization to force on another organization its own particular manner of worshipping God and construing the Bible.

In *Reynolds v. United States*, 98 U. S. 145 (1878), the United States Supreme Court held that Congress can prohibit polygamy and Mr. Chief Justice Waite states at page 162:

“Congress can not 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 tenents they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1794, the House of Delegates of that state having under consideration ‘a bill establishing provision for teachers of the Christian religion,’ postponed it until the next session, and directed that the bill 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 determined opposition. Amongst others, *Mr. Madison* prepared a ‘Memorial and Remonstrance,’ which was widely circulated and signed, and in which he *demonstrated* ‘that religion or the duty we owe to the Creator’, was not within the cognizance of civil government. *Semple’s Virginia Baptists*, Appendix. At the next session the proposed bill was not only defeated but another, ‘for establishing religious freedom,’ drafted by Mr. Jefferson, was passed. 1 *Jeff. Works*, 45, 2 *Howison Hist. of Va.* 298. In the preamble of this act (12 *Henning’s Stat.* 84), religious freedom is defined; and after a recital *that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy* which at once destroys all religious liberty. It is declared, ‘That it is time enough for the rightful purposes of civil government for its officers to interfere when principals break out into overt act against peace and good order.’ In these two sentences is found the true distinction between what properly belongs to the church and what to the State.

In a little more than a year after the passage of this statute the convention met which prepared the Constitution of the United States. Of this convention Mr. Jefferson was not a member, he being then absent as minister to France. As soon as he saw the draft of the constitution proposed for adop-

tion, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff. Works, 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. 1 Jeff. Works, 79. Five of the States while adopting the Constitution, proposed amendments. Three—New Hampshire, New York and Virginia—included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly, at the first session of the first Congress the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee on the Danbury Baptist Association (8 *Id.* 113), took occasion to say: 'Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his his worship; that the legislative powers of the Government reach actions only, and not opinions—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should make no law respecting an establishment of religion or prohibiting the free exercise thereof, thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the nation in behalf of the sentiments which 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.*"

Daniel Webster said in his great speech in the Girard College case:

"The generations that are gone before speak to it and pronounce it from the tomb. We feel it. All, all proclaim that Christianity, general, tolerant Christianity, Christianity independent of sects and parties, that Christianity to which the sword and fagot are unknown, general, tolerant Christianity is the law of the land."

7 Works of Daniel Webster 176.

In what is known as the "Christian Nation Case," decided in 1892, the United States Supreme Court has declared that ours is a Christian Nation and that we are a religious people, in a wonderful opinion in *Holy Trinity v. United States*, 143 U. S. 457, 12 *Sup Ct. Rep.* 511, where the Court held, that the alien contract labor law did not apply to or bar Ministers of the Gospel, and Mr. Justice Brewer, for the Court, said, page 514:

"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, made to Sir Walter Ralieggh in 1584, was from 'Elizabeth by the Grace of God, of England, France and Ireland, queen, defender of the faith,' etc., and that grant authorizing him to enact statutes of the government of the proposed colony provided that

'they be not against the true Christian faith now professed in the Church of England.' The 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 the Almighty God, hereafter and 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 time, 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.

"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 of Windsor, Hartford and Wethersfield, are now cohabitating and dwelling in and upon the River of Connectecotte and the lands thereunto adjoining; and well knowing where a people are gathered together the word of God requires that to mayntayne the peace and union of such people there should be an orderly and decent government established according to God, etc.'

"In the charter of privileges granted by William Penn to the Providence 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 understanding 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 were created equal; that they were 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 the 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 the Divine Providence we mutually pledge to each other our lives, our Fortune, and our sacred Honor.'"

If we examine the constitution of the various states, we find in them a constant recognition of religious obligations. *Every constitution of every one of the forty-eight states 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 the 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 in clauses like that of the constitution of Indiana 1816, Art. 11, par. 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: "That, 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 of 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 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 existenc 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 be required as a qualification of 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.' Or like that in Articles 2 and 3 of part 1 of the constitution of Massachusetts (1780): 'It is the right as well as 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 can not be generally diffused through a community but by the institution of 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 provisions shall not be made voluntarily.' Or as in Sections 5 and

14 of Article VII of the constitution of Mississippi (1832): 'No person who denies the being of 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 means of education shall be forever encouraged in this State.' Or by Article XXII 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 forevermore; and I do acknowledge the Holy Scriptures of the Old and New Testaments 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 I, par. 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. Com.*, 11 Serg. & 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 *People v. Ruggles*, 8 Johns 290, 294, 295, *Chancellor Kent*, the great commentator on American law, speaking as Chief Justice of the Court of New York, said:

'The 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 religious point of view, extremely impious, but, even in respect to the obligations due to society, is gross violation of decency and good order.

The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject is granted and secured 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 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 that morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines of worship of these imposters.' And in the famous case of *Vidal v. Girard's Ex'rs.*, 2 How. 127, 198, this Court, while sustaining the will of Mr. Girard, with the provisions 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 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 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 Christian organizations existing everywhere 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 that might be noticed add a *value 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?

In the Annotated Constitution, prepared under the supervision of Senators Curtis and Brandegee for the Judiciary Committee of the United States Senate, it is stated as to this amendment at page 567 as follows:

"Religion.—Not a Limitation on the States.—The Constitution makes no provision for protecting the citizens of the respective states in their religious liberties; that is left to the State constitutions and laws. Nor is there any inhibitions imposed by the United States Constitution in this respect on the States. *Permoli v. First Municipality*, 3 How. 609; See also: *Ohio v. Dollison*, 194 U. S. 447; *Bolin v. Nebraska*, 176 U. S. 87; *Brown v. New Jersey*, 175 U. S. 174; *Brown v. Walker*, 161 U. S. 606; *Monongahela Nav. Co. v. U. S.*, 148 U.

S. 324; *McElvains v. Brus.*, 142 *U. S.* 158; *Eilenbecker v. Plymouth County*, 134 *U. S.* 34; *Spies v. Illinois*, 123 *U. S.* 131; *Edwards v. Elliott*, 21 *Wall.* 552; *Fox v. Ohio*, 5 *How.* 410; *Barron v. Baltimore*, 7 *Pet.* 247; *Livingston v. Moore*, 7 *Pet.* 551."

"Incorporation and Appropriation for Hospital or Religious Society.—Act of Congress chartering a corporation for the purpose of opening and keeping a hospital in the City of Washington for the care of such sick and invalid persons as may place themselves under the treatment and care of the corporation."

Bradfield v. Roberts, 175 *U. S.* 295.

"Treaty Money of Indiana for Support of Catholic Schools.—Money appropriated by Congress under the obligations of treaties with the Indians can lay claim to as a matter of right and a contract between the Commissioner of Indian affairs and the bureau of Catholic Missions for the payment of such money for the support of Indian Catholic schools, made at the request of the Indians, does not violate the Constitution."

Quick Bear v. Leupp, 210 *U. S.* 50.

But see the discussion hereinafter of the 14th Amendment, ratified in 1868, some seventy-five years later.

The Act of May 12, 1917, exempting ministers of religion and theological students from the draft, and exempting members of sects whose tenets exclude the moral right to engage in war, from strict military service was held not violative of this amendment.

Selective Draft Law Cases, 245, *U. S.* 366.

In the Articles of Confederation of 1778 in No. 13, God was recognized as follows:

"And, whereas, it has pleased the Great Governor of the world to incline the hearts of the legislatures, we respectfully represent in Congress, etc."

And Jesus Christ was recognized in the dating as follows:

"In the year of Our Lord one thousand seven hundred and seventy-eight and the third year of the independence of America."

The Act of Congress requires an oath of qualifications for Federal officers, closing with these words, "So help me God."

Rev. Stat. 1756, 1757, *U. S. Comp. St.* 1913, 83218.

Notwithstanding the constitutional provision as to religious freedom, it was held that it was an offense to pretend to believe in supernatural powers for the purpose of procuring money and to use the mails in pursuance of such purpose.

New v. United States, 245 *Fed.* 710.

The second session of the Fifty-eighth Congress, document 755, ordered published 9,000 copies of Thomas Jefferson's "The Life and

Morals of Jesus of Nazareth," extracted textually from the Gospels of Matthew, Mark, Luke and John, and which has been printed in Greek, Latin and French, as well as in English, 3,000 copies for the Senate and 6,000 copies for the House at government expense.

There is attached hereto a resolution of Congress of September 12, 1782, in which it approved and encouraged Mr. Aitken's Bible which was the first Bible, and also the first book, printed in America. As far as I can learn, the United States Senate and House have each from the very earliest days maintained a chaplain at government expense, and most state legislatures have chaplains or ministers to open sessions daily with prayer.

The President is sworn in on the Bible and Grover Cleveland (2nd inaugural) said, "Above all, I know there is a Supreme Being whose goodness and mercy has always followed the American people, and I know He will not turn from us now if we humbly and reverently seek His powerful aid."

Our Federal Government has almost continually since the Revolution maintained and paid for the services of chaplains, both in the army and navy, and in 1847, the War Department issued regulations, requiring compulsory church attendance by the soldiers and also urging the wives and the families of the soldiers to attend divine service. This is most interestingly described in a "Brief History of Chaplains in United States Army," by Chaplain John T. Axton, Jr. Recently a suit to enjoin the payment of the salaries of the chaplains was entered in the Supreme Court of the District of Columbia contending for the so-called separation of church and state, but the court denied the injunction and dismissed the suit in July, 1926. It was not appealed.

Elliott v. White, Treasurer U. S. (Equity No. 45481).

In the treaty between the United States and England, 1794, Article 26, both countries recognized God by stating, "In the event of future war, which God forbid."

The "Great Northwest Territory" was ceded to the United States by Virginia in 1794, New York, in 1780, Massachusetts in 1785, and Connecticut in 1786 and the Northwest Ordinance, which accepted the same and formed a temporary government, provided in Article III:

"Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

I can not find any repeal of this ordinance or changing of it in the Enabling Acts or admission acts of the different States in that territory and it was quoted with approval by the United States Supreme Court.

Meyer v. Nebraska, 262 U. S. 390, 43 Sup. Ct. 625.

During all the days of the legalized liquor traffic the United States prohibited the sale of intoxicating liquors on the Sabbath not only in the District of Columbia but in all territory over which the Federal Government had jurisdiction, and all the states had similar laws.

The United States Supreme Court held in *Mormon Church v. United States*, 136 U. S. 48, that polygamy can be prohibited, notwithstanding the religious conviction of one sect that it may be advocated and practiced.

Congress has provided in the Code of the District of Columbia, Section 446, for the excluding of Sunday in counting time on certain summons, and by Section 1304 and 1389, provided for certain acts to be done on the next secular day that should have been done on Sunday, and the Revised Statutes of the District of Columbia, Section 147, exempts religious property from taxation, and Code 1288 authorizes ministers of the Gospel to perform marriage, and Code 1056 requires all oaths to be in accordance with the forms of oath at common law, and all such oaths at common law recognize, and contain a prayer to the God in which we all believe, for help to tell the truth or to faithfully perform the office.

The earliest records of an oath are Genesis 31:24, where Abraham swore to Abimileck and Genesis 22:16, where God made an oath by Himself because there was none greater to make it by, and verse 16 states, "For men swear by the greater; and in every dispute of theirs the oath is final for confirmation."

Practically all our courts are opened with a statement by the officer, which usually ends with a two or three sentence prayer for God to protect and save the court or the country or both.

Christmas Day and Thanksgiving Day were both many years ago declared by Acts of Congress to be legal holidays, notwithstanding that each is *purely a religious holiday*, in which the people are urged to devote themselves to worship and thanksgiving, and Christmas Day is a celebration of the birth of Christ, in which many of the Jews do not believe, yet I have never known of any one questioning the authority of Congress to legislate, making Christmas a legal holiday, thus preventing the Jews or anyone else from instituting suits and having papers served on Christmas Day and preventing notes that they hold from becoming due that day.

Most of the States during their entire existence have had statutes, customs and regulations similar to the foregoing, which have been ob-

served and not questioned, in fact, by the large body of our people they have been gloried in.

The courts have held that where there has been continual acquiescence in statutes and regulations by the government, as well as by the people, and the construction placed on same has not been questioned in the courts for a hundred years or thereabouts, that then the courts will not overthrow such laws and constructions.

Meyers v. United States, 272 U. S. 52, 47 Sup. Ct. 21, October 12, 1926).

(To be Continued).

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ITA LEX SCRIPTA EST

*"For when the great scorer, History,
Comes to write against your name,
She writes not how you won or lost.
But how you played the game."*

The Lawyer and Banker has attained its majority. With the current number it has rounded out twenty years of life. It has grown from small beginnings and a small subscription list to its present position as the unquestioned voice and authority of a large part of the legal profession and of the abstracting and title professions.

There is no occasion for us to look backward. The record speaks for itself. There has been a steady growth with increasing power and influence. In looking forward, we only "highly resolve" that the work which was begun in 1908 will be carried on with increasing vigor and effectiveness. It is our earnest wish that the ideals of an equal and exact justice shall be brought nearer and nearer to the world of men.

The United States is at the present time in the throes of a Caesarean operation for which the Volstead Act of some ten years since seems to be wielding the knife. Whether or not the patient will entirely recover is a question for the Executive, the Legislative and the Judicial branches of this government to balance. The supreme aim of American citizenship lies in the essential necessity of a perfect law and union.

If the United States has a giant's strength, it owes it in no small measure to the skillful guidance of the lawyers who bring to the service knowledge of great industrial, financial and commercial undertakings, as well as to municipal county and state administrations, trained legal minds, caution, wisdom, equity and humanity, these are the stoutest bulwarks of civilization.

It goes without saying that the rule of law involves two important things. One is the absence of arbitrary power on the part of the government. The other is equality before the law. Every man and every woman, whoever he or she may be, whether an official or not, is subject to the ordinary law of the land, administered by ordinary tribunals.

The word "democracy", of which so much is heard, would seem to be a patent medicine or a fancy relation of some idealism belonging to wonderland. It is not intended, of course, to mean anything of the kind. It is rather a particular form of Government, under which the Sovereign political power in a State or country is distributing among all the citizens of that State or country. We accept the discussions of Aristotle, Plato, Herodotus, Thucydides and Athenagoras; this last saying, a few centuries before Christ, that democracy is the fairest name of all because every citizen has a share in the Government, and that consequently each and every citizen is free. The freedom shall consist in responsibility and the responsibility which involves freedom is unquestionable the very pith and marrow of the democratic condition.

With these thoughts in mind, we enter upon a new, and, we trust, a long term of life, giving careful consideration to improvements in the law which we find best, and the enforcement of all laws which stand for the general betterment of the individual and of the State.

May the coming year be fraught with better business, higher ideals and greater successes than those hereto enjoyed.

EDITORIAL COMMENT

It has been frequently said that in some of the States of the United States the criminal law is as technical today as was the law in England in the eighteenth century, but we believe that it would be difficult to find an English case which could equal *People v. Fathers*, 153 N. E. 704, Ill. 1926 (noted in the *Law Quarterly Review*, Vol XLIII, p. 357, July 7, 1927). The Illinois statute under which the prisoner F. was indicted provided that every male of the age of 17 years and upwards who should have carnal knowledge of any female not his wife under the age of 16 should be guilty of rape. F. was convicted, but on appeal the judgment was reversed on the ground that the indictment did not allege that the prosecutrix E. S. was not the wife of the accused.

ENGLISH JUDICIAL DISCRETION.

The difference between law in action and law in the books is well illustrated by *Grayson v. Grayson*, 43 T. L. R. 225. Both the husband and the wife had committed adultery, but Mr. Justice Hill was asked to exercise his discretion in favour of the wife. His Lordship granted a decree *nisi* on the ground

Rights of Religion and the Bible in Public and Private Schools

By Raymond M. Hudson of the Washington, D. C., Bar.

(Continued from last number.)

SUCH READING OR STUDY OF THE BIBLE OR RELIGIOUS INSTRUCTION IN THE PUBLIC AND PRIVATE SCHOOLS IS NOT PROHIBITED BY THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES, RATIFIED JULY 28, 1868.

Our position as a people and nation on the separation of religion and politics, or church and state, was a matter of history, and well defined, long before 1866; the Bible had been taught and read, and religious instructions had, in the public and private institutions of learning in many states; many of the statutes mentioned above providing for religious activities had then been enacted by Congress; State legislatures had passed many similar laws and authorized similar activities, so that it can hardly be contended seriously that our people in adopting the 14th Amendment intended, or even thought of, changing or limiting the rights and powers of the people in matters of religion and good morals. Everyone knows that the three amendments, the 13th, 14th and 15th, commonly called the "Civil War Amendments," were principally adopted for protection of the rights of the Negroes.

(See *United States v. Wong Kim Ark*, 169 U. S. 676.)

The 14th Amendment is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly free from restraint. There are *manifold restraints* to which *every person* is necessarily subject for the *common good*. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person

to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others.

Jacobson v. Massachusetts, 197 U. S. 26;
Allgeyer v. Louisiana, 165 U. S. 589;
Smith v. Texas, 233 U. S. 630;
Patterson v. Colorado, 205 U. S. 454;
Williams v. Fears, 179 U. S. 270;
Otis v. Parker, 187 U. S. 606;
Patterson v. The Hudson, 190 U. S. 169;
Aikens v. Wisconsin, 195 U. S. 194;
Smiley v. Kansas, 196 U. S. 447;
McLean v. Arkansas, 211 U. S. 539;
Grenada Lbr. Co. v. Mississippi, 217 U. S. 433;
House v. Naves, 219 U. S. 270.

In Curtis & Brandegees's Annotated Constitution, it is stated, at pages 673 and 674:

"For the public good individuals must suffer the destruction of property or even life, rights, of necessity, being part of the law, and the possession and enjoyment of all rights are subject to such reasonable conditions as may be decreed by the governing authority essential to the safety, health, *peace, good order and morals of the community.*"

Compagnie Francaise v. Louisiana, 186 U. S. 393.
Bowditch v. Boston, 101 U. S., * 98 N. Y. 98, 50 Am. Rep. 636.

The inhibition upon the deprivation of property without the process of law is not violated by the legitimate exercise of legislative power in securing the public safety, health and morals.

New York, etc., R. Co. v. Bristol, 151 U. S. 567;
Atlantic Coast Line v. Goldsboro, 232 U. S. 548;
House v. Naves, 219 U. S. 270;
Warson v. Maryland, 218 U. S. 173;
Western Turf Ass'n. v. Greensberg, 204 U. S. 359;
California Reduction Co. v. Sanitary, etc., Works, 100 U. S. 306;
In Re. Converse, 137 U. S. 631
Missouri Pac. R. Co. v. Rumes, 115 U. S. 520;
Chicago, etc., R. Co. v. Illinois, 200 U. S. 561.

Under this amendment the Supreme Court can not supervise state legislation in the exercise of the police power beyond protesting against laws of an arbitrary character having no reasonable relation to the execution of lawful purposes.

Jones v. Portland, 245 U. S. 217; 38 Sup. Ct. 112.

**Crawley v. Christensen*, 137 U. S. 89; *In Re. Jacobs*.

Under this last statement the United States Supreme Court can not hold a state law or regulation invalid which is for the uplift of the children and the advancement of knowledge and *morality*; it can only supervise where the *States seek* to arbitrarily restrict education not injurious to *good morals* or health.

Bartel v. Iowa, and *Bohning v. Ohio*, 262 U. S. 404, 43 Sup. Ct. 628, followed *Meyer v. Neb.*, 262 U. S. 390, 43 Sup. Ct. 625, which held a state statute prohibiting the teaching of foreign languages in public and private schools was not constitutional, it was aimed at the German language, and the Court said, at page 628:

“No emergency has arisen which renders knowledge by a child of some language other than the English so clearly harmful as to justify the inhibition with the consequent infringement of rights long freely enjoyed.”

And further said, at page 628:

“Experience shows that this (proficiency in a foreign language) is not injurious to the health, morals or understanding of the ordinary child.”

The Court stated (page 627) that the legislature had attempted by the statute to interfere “with the opportunities of the pupils to acquire knowledge” and accordingly held the law unconstitutional as *the forbidden knowledge* or instruction is *not injurious to their morals*.

Is the “acquired knowledge” from the Bible by pupils injurious to their morals? Where will you find such poetry? Milton, a great judge of poetry, said, “There are no songs comparable to the songs of Zion.” Where will you find such oratory? Daniel Webster declared, “If there be anything in my style of thought to be commended, the credit is due to my kind parents in instilling into my mind an early love of the Scriptures.” Where will you find such logic? Lord Bacon, a master of logic, said, “There is no philosophy like that of the Bible.” Where will you find such beauty and power in any book? Fronde, the greatest writer of history, said, “The Bible is in, and of itself, a liberal education.”

So literary critics, historians, statesmen, philosophers, agree that the Bible is the best single book for any student. It contains the most perfect ideal of human character and the best views of human life and human destiny are to be found in its pages. Its lessons will never grow antiquated.

Daniel Webster said: “If we abide by the principles taught in the Bible, our country will go prospering; but if we and our posterity neglect its instructions, and its authority, no man can tell how suddenly a calamity may overwhelm us, and bury all our glory in profound obscurity.”

Woodrow Wilson, addressing a large audience, pleaded as follows:

"I ask every man and woman in this great audience, that from this night on, they will realize that part of the destiny of America lies in their daily perusal of this great Book of Divine Revelation—the Bible. If they would see America free and pure, they will make their spirits free and pure by this baptism of the Holy Book."

The Bible teaches recognition of, and obedience and respect to the law and established government.

1 *Peter* 2:13.

"Then saith He unto them, 'Render therefore unto Cæsar the things that are Cæsar's and unto God the things that are God's'."

Matt. 22:21.

"Put them in mind to be in subjection to rulers, to authorities to be obedient, to be ready unto every good word."

Titus 3:1.

But a state statute making attendance upon a public school only compulsory, is invalid, but if it makes attendance upon either a public or private school compulsory it would be constitutional, as held last year by the United States Supreme Court in *Pierce, Governor of Oregon v. Hill Military Academy* 268 U. S. 510, 45 Sup. Ct. 571 (known as the Oregon case), where the Court said:

"No question is raised concerning the power of the state reasonably to regulate all schools, to *inspect, supervise, and examine* them, their *teachers and pupils*; to *require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.*"

* * * * *

"Appellees are engaged in a kind of undertaking not inherently harmful, but long regarded as *useful and meritorious*. Certainly there is nothing in the present records to indicate that they have failed to discharge their *obligations to patrons, students or the states.*"

Clearly under the last two decisions a statute, forbidding, or in any wise prohibiting, the reading or teaching of the Bible or religious instructions based on the Bible in public and private schools would be unconstitutional. Nor can a state do indirectly what it is prohibited from doing directly as forbidding the spending of state funds for Bible reading and religious instructions in the public schools.

Only teachings against good morals, good government, or the general welfare or injurious to health, can be prohibited by the States without violating the 14th Amendment.

Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625 at 630, where the Court said:

"That a State in the exercise of its police power may punish those who abuse this freedom (under the first and 14th amendments), by utterances in-

imical to the *public welfare*, tending to *corrupt public morals*, incite to crime, or disturb the public peace, is not open to question."

State statutes prohibiting publications against the draft law, encouraging disrespect for the law, or teaching anarchy are valid and constitutional.

Fox v. Washington, 236 U. S. 273, 35 Sup. Ct. 383;

Gilbert v. Minn., 254 U. S. 325, 41 Sup. Ct. 125;

Gitlow v. New York, 268 U. S. 652, 45 Sup. Ct. 625.

As was recently said in one of the briefs in the *Oregon School Law* case, children are, in the end, what most men and women live for. Through them parents realize, as it were, a measure of immortality. To the parent the child represents the sum of all his hopes. One's defeated aspirations, his children may achieve; his unfulfilled ambitions, they may realize. All that we missed, lost, failed of, our children may have, do, accomplish, in fullest measure. Thus, they hold in their new young lives the dearest and most intimate yearnings of the parent's soul. For them parents struggle and amass property and put forth their greatest efforts and strive for an honored name. In return for the enormous sacrifice they make and burden they bear, parents have the right to guide and rear their children to be worthy of them. What right could be more truly and completely of the essence of liberty?

Tillman v. Tillman, 26 L. R. A. (N. S.) 781, 785, *et seq.* (S. Car.). Manifestly so vital and intimate a right may not be invaded by the state without the clearest justification and imperative necessity therefore.

"If a state takes hold of the child, the father is no longer free, and tomorrow not a trace of liberty will be left."

(*Jules Simon, L'Ecole*, p. 345.)

The Supreme Court of Georgia in *Wilkinson v. City of Rome* (1922),

(20 *A. L. R.* 1535), 152 *Ga.* 763, 110 *S. E. R.* 895,

held, that where city ordinance required some portion of King James version of the Bible to be read daily and prayers offered in public schools, mandamus lies to force the Board of Education to put such ordinance into effect. (Strong Historical Opinion).

In *Perry v. Board of Education*, the Ohio State Court at East Liverpool, denied an injunction which was sought to prevent and restrain the teaching of the Bible in the Ohio public schools and no appeal was sought.

Board of Education v. Minor, 23 *Ohio St.* 211, 13 *Am. Rep.* 233,

held, it was optional with each local board of education.

Since then, the State Court in *Vollmar v. Board of Education*, at Platteville, Colorado, likewise denied an injunction to prevent the reading

of the Bible in the public schools and the Court, referring to Article II, Section 4 of the Constitution of the State, "guaranteeing liberty of conscience," stated that "it was inserted in the Bill of Rights to protest the possible tyranny of an 'Established' or 'state' church and also said:

'Moreover, the Bible itself is not sectarian. The Bible antedates sects; it did not make them. It is broad enough to and does include all sects. They all find their foundation on it.'

* * * * *

"The Bible contains the purest English and the most forceful style; it announces the highest code of morals and the safest rules of conduct; it is a history of mankind (true, criticised by some as inaccurate, but all historians are charged with inaccuracy), and may profitably be read for any one of these purposes. It cannot be said that the mere reading portions of it for the avowed purpose, undenied in the writ, of teaching non-sectarian, right, living, as a part of an opening exercise converts that exercise into either sectarian or religious service."

(This case has been appealed and the Colorado Supreme Court denied the writ N. W. 255.

In *Kaplan v. Independent School District of Virginia*, a writ was sought to prevent reading of the Bible in the public schools of St. Louis County, Minnesota, but the Court denied the writ and case was appealed. It is No. 25459 in the Supreme Court of Minnesota, and has been argued and was decided April 22, 1927, again denying the writ, 214 N. W. 18.

In *People of the State of New York, Ex Rel. Joseph Lewis v. Frank Pierrepont Graves, Commissioner of Education of the State of New York*, Mr. Justice Ellis J. Staley in the Supreme Court, Albany County, New York, refused a writ of mandamus against the Board of Education, the object of which was to prevent the public schools from allowing the school children forty-five minutes each week to go to their various churches for religious training and worship, and the Court said:

"The facts in this case establish no violation of this constitutional prohibition. The mere excusing of pupils at the volition of their parents for a half hour period each week to attend religious instruction outside the school and at places unrelated to school activities, in free exercise and enjoyment of their religious profession, does not constitute the use of public property, credit or money in aid of any institution of learning under the control of any religious denomination."

* * * * *

"The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

(*Pierce v. Society*, 268 U. S. 510).

"That the right of the parent to direct the training and nurture of the child is a fundamental right;

"That the obligations of citizenship require the promotion of a spirit of patriotic and civic service and the fostering in children of moral as well as intellectual qualities;

"That religious conscience, conviction and accountability are the least dispensable foundations for good citizenship and real patriotism;

"That moral growth and intellectual growth go hand in hand to make the essential elements of character and good citizenship;

"That the right of the state to enforce school attendance does not mean that the mental and moral development of all children must be limited to a common mould and that all children must be standardized;

"That the regulation does not create a union between church and state, or teach any sectarianism in the schools or invade the religious freedom or conscience of any individual."

This case has been appealed and was affirmed in an unanimous opinion January —, 1927, by the New York Appellate Division, 219 N. Y. Sup. 189 and by the Court of Appeals May 10, 1927, 245 N. Y. 195 N. E.

The states whose laws require the daily reading of the Bible in the public school rooms are: Massachusetts, Tennessee, Pennsylvania, New Jersey, Alabama, Georgia, Maine, Idaho, Kentucky, Delaware and Florida. Three cities have the local school board rule permitting Bible reading, viz: New York City, Washington and Indianapolis. State laws forbid Bible exclusion and make reading optional with the teachers in the public schools of Indiana, Iowa, Kansas, North Dakota, South Dakota and Oklahoma. In several States, including New Hampshire, Vermont, Maryland, Virginia, West Virginia, North Carolina, South Carolina and Arkansas, the Bible is not discussed in the State laws, and its use is unobstructed. In Minnesota, Wyoming, Utah, Washington, California, Arizona and New York State (outside the metropolis), it is shut out of the schools.

It is interesting to note what is being done in other countries. The National Board of Education in Mexico has placed a Bible in every school and in every library in Mexico. Japan has placed Bibles in all of its schools. It is said by those who have investigated the subject, that in schools where the Bible is read the moral tone of the children is higher than in schools where it is not read, and where it had not been read before.

But note decision just above by Mr. Justice Staley, affirmed by the Appellate Division, permitting religious training of public school children in New York State.

The Bible is not sectarian and can be put in public school libraries

(*Evans v. Selina Union School Dist.*, 193 Calif. 54; 222 Pac. 801 (1924),

although the statute prohibits use of "sectarian" books in public schools or libraries.

In *Herold v. School Directors*, 136 La. 1034, 68 S. 116 (1915), it was held, that a requirement of reading extracts from the New Testa-

ment was a discrimination against the Jews but not against the Catholics as the Jews do not believe in Christ or that the New Testament is the word of God, while the Catholics do; the Louisiana Constitution forbids "discrimination."

The case mainly relied on as authority that it is not constitutional to read the whole Bible in the public schools is

People v. Board of Education, 245 Ill. 334, 92 N. E. 910, decided in 1910 before the decisions by the United States Supreme Court in Oregon case above, and the Nebraska case above, which lay down principles overruling this Illinois decision. This Illinois case stated that the religious clause of the ordinance of 1787 was no longer in effect but the cases it cited in support do not so hold, and this clause was quoted with approval by United States Supreme Court in *Meyer v. Nebraska*, above.

It seems absolutely clear now if the question came up again in either Illinois, Louisiana, Washington, Wisconsin or Nebraska that its Supreme Court would be compelled to, and would, overrule its former decision, but if it refused to do so, the case would be reversed by the United States Supreme Court on appeal following *Meyer v. Nebraska* and the Oregon cases read in connection with *Holy Trinity v. United States*, above, known as "The Christian National Case," and

Reynolds v. United States, 98 U. S. 145 at 162.

With the exception of Illinois above, and the State of Washington (*State v. Frazier*, 102 Wash. 369, 173 Pac. 35 (1918)),

which held the Bible is sectarian and shut out study credits on the Bible at State expenses, but not the Bible as a whole), none of the courts of last resort have held that the Bible, as an entirety, could be excluded from the public schools on constitutional grounds, as none of them have held that all parts of it are sectarian. The Supreme Courts of two states, Wisconsin and Nebraska

(*State v. District School Board*, 77 Wis. 177, 44 N. W. 297; *State v. Scheve*, 65 Neb. 853, 91 N. W. 846, 93 N. W. 169, 59 L. R. A. 927),

have held that certain portions of the Bible are sectarian in their character while others are not sectarian in character, and that the sectarian portions should be excluded from the public schools while the non-sectarian portions might be read. Neither of these courts, however, lays down any test or tests or points out any course of reasoning whereby the school boards, patrons or pupils of the public schools can certainly determine

what portions of the Bible are sectarian and what portions are non-sectarian. The Supreme Courts of Georgia, Maine, Massachusetts, Michigan, Iowa, Kentucky, Kansas, Ohio and Texas.

(Wilkinson v. Rome (1922), 152 Ga. 763, 110 So. 895, 20 A. L. R. 1335;

Board of Education v. Minor, 23 Ohio St. 200, 13 Am. Rep. 233;

Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 256;

Hilling v. Waterman, 12 Allen (Mass.), 127;

Clifton v. Board of Education of Detroit, 118 Mich, 560, 77 N. W. 250, 42 L. R. A.;

Hackett v. Brooksville School District, 120 Ky. 608, 87 S. W. 792, 69 L. R. 592, 117 Am. Ct. Rep. 592;

Billard v. Board of Education, 69 Kan. 53, 76 Pac. 422, 66 L. R. A. 166, 105 Am. St. Rep. 148;

Church v. Bullock, 104 Tex. 1, 109 S. W. 115, 16 L. R. A. (N. S.) 860),

have each held the Bible to be non-sectarian in character in its entirety and that no part of it could be excluded from the public schools on constitutional grounds.

The judgments of those courts would seem at least to be capable of enforcement and to announce a definite rule and one that would be readily understood by the school boards, teachers, parents and pupils, and the reasons given in support of those judgments appear to be satisfactory, convincing and logical. The Supreme Court of every State of the Union which has spoken on the subject, with the exception of Wisconsin, Louisiana, Illinois, Washington and Nebraska, has held that the reading of the Bible in the public schools is not prohibited by constitutional enactment and the Supreme Courts of Wisconsin, Louisiana and Nebraska each hold that only portions of the Bible may be excluded, but they and Washington and Illinois are contrary to the United States Supreme Court in the Oregon case and Nebraska case, which later overruled the five state courts, especially when taken in connection with *Holy Trinity v. United States*, 143 U. S. 457, 12 Sup. Ct. 511 at 514-5-6 and *Reynolds v. United States*, 98 U. S. 145 at 162.

In *Hysong v. Gallitgin School Dist.*, 164 Pa. 629, 44 Am. St. Rep. 632, 30 Att. 482, Catholic nuns were employed after passing examination by Board of Education who gave their salaries (seems they were required to) to the sisterhood, used the school room after school hours to impart Catholic religious instructions (the catechism) to children whose parents requested it, this was enjoined by the lower court which was af-

firmed as it was using public school property for sectarian purposes. But the court refused to enjoin the employment of the nuns or to forbid their wearing in school the garb of the nun when it appeared there was no religious instructions given during school hours as it was not sectarian teaching.

But *O'Connor v. Hendrick*, 184 N. Y. 421, 77 N. E. 612, held that such distinctive religious garb was a sectarian influence and the wearing of such garb by a teacher in violation of an order of the superintendent of public instruction prevented recovery of such teacher's salary.

THE BIBLE AND RELIGIOUS TEACHING THEREUNDER IS BENEFICIAL AND UPLIFTING TO ALL AND DOES NOT COME WITHIN ANY OF THE TEACHINGS WHICH THE UNITED STATES SUPREME COURT SAYS THE STATE CAN PROHIBIT, THEREFORE, THE STATE CAN NOT PROHIBIT THE READING AND STUDY OF THE BIBLE IN EITHER THE PUBLIC OR PRIVATE SCHOOLS.

This necessarily follows from the decision in *Meyer v. Nebraska*, above; *Pierce, Governor of Oregon v. Hill Military Academy*, 268 U. S. 510, 45 Sup. Ct. 571, and *Gitlow v. New York*, above, if the Bible is not harmful or does not corrupt good morals. The 14th Amendment not only is not a restriction on the people as to teaching religion and the Bible in the public schools, but it is rather a reservation unto all the people of all the States of the right of such teaching and also a prohibition on the States to prevent them from attempting to deprive the people of such rights.

Kansas v. Colorado, 206 U. S. 46 at 100; 27 Sup. Ct. 622 at 663,

specifically recognizes such rights as are "Reserved to all the people," as against both the State and the United States. See 10th Amendment. The rights reserved are to all the people of the United States, not just the people of one state.

Attendance of a public school is not such a right of each child as overrides the rights of all others.

What is to be taught or read in a public school is what is deemed best for the whole community, to advance the health, morals, and general welfare, and no one family, faction, or sect, can have barred anything which is not harmful, simply because they do not want their children to learn it. Their remedy as provided by the Constitution as construed by the Supreme Court is to send their child to private schools.

The states can not make public school attendance only compulsory; it is bound to leave with the people the option in compulsory education to attend either public or private schools as decided in the Oregon case, above.

Public school education is not a right, it is only a privilege, which the state does not have to grant, but when the state grants the privilege, then, says the United States Supreme Court, the Federal Constitution steps in and forbids the states to prohibit the teaching of anything unless it is harmful to the health, morals, or good citizenship of the pupils.

Fitting here is the language of Justice Woodward in delivering the opinion of the Supreme Court of Pennsylvania, in the case of *Johnston v. Comm.*, 22 Pa. 102, 114, 116, construing the Act of 1794 for Sabbath observance:

"Whilst, however, this Act of Assembly remains unaltered by the legislature, it is not to be frittered away by judicial construction. Our fathers, who planted in our fundamental law the assertion of those immortal truths, that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to attend, erect, or support any place of control or interfere with the rights of conscience; enacted, also the statutes of 1705, 1786, 1794, for the suppression of worldly employments on Sunday. So far from *conflicting* with these invaluable rights of conscience, they regard such statutes as indispensable to *secure them*. Thus the law, without *oppressing* anybody, becomes auxiliary to the rights of conscience. And there are other rights, intimately associated with the rights of conscience, which are worth preserving.

"The right to rear a family with a becoming regard to the institutions of Christianity, and without compelling them to witness hourly infractions of one of its fundamental laws—the *right to enjoy the peace and good order of society* and the increased securities of life and property, etc.,

What is the Bible? What is its relation to our Government and people? How has it been used by our great leaders and with what results or advantages to them? What is education and what does the Bible mean to pupils?

Concerning the authenticity of the Sacred Scriptures and their admissibility in evidence, Prof. Simon Greenleaf, the greatest of all writers on the law of evidence, has thus written:

"That the books of the Old Testament, as we now have them are genuine; that they existed in the time of our Saviour, and were commonly received and referred to among the Jews as the sacred books of their religion; and that the text of the Four Evangelists has been handed down to us in the state in which it was originally written, that is, without having been materially corrupted or falsified, either by heretics or Christians, are facts which we are entitled to assume as true, until the contrary is shown."

The first book printed was the Bible in Mentz, Germany, 1450-55. The whole Bible is printed in one hundred and fifty-eight languages; the New Testament in one hundred and forty-two more, portions of the Bible in four hundred and twenty-two more, and chapters or verses of

the Bible in forty-eight more, making a total of seven hundred and seventy different languages; about 28,000,000 volumes are now printed per year.

Such a record speaks volumes as to its value and usefulness to all nations of the earth.

Our representative form of government was taken from and patterned after the early Hebrew government, as given in the Law of Moses in the first books of the Bible.

The Bible gives the Ten Commandments that outline our duties to God and our fellows. While, simple, they embrace every possible human relationship. Jesus showed by His teachings their proper meaning just as He deduced them all to one, "Thou shalt love."

Kalisch has pointed out that Alfred the Great "based his Saxon Constitution of Sheriffs in Counties, etc., on the example of the Mosaic divisions." We, then, as a people, owe our free institutions to the suggestions given Moses by Jethro, the priest of the desert, for the creation of judicial divisions and the selection of men of strength, lovers of God and of invincible integrity to preside over the divisional courts. (Exodus, 18:1-24.)

The Mecklenberg (N. C.), Declaration of Independence, promulgated by the Presbyterian Church, was closely followed by Jefferson in preparing our great Declaration of Independence.

As proving the inspiration of the Bible, we cite the following:

In Ecclesiastes XII, 6, we have the circulation of the blood described, but Dr. Harvey did not discover it until 1616.

In I Kings XVIII, 44, you have our modern theory of atmospheric evaporation, and in Isaiah XL, 22, the declaration by the inspiration of God that the earth is round, although for hundreds of years, all the schools of human philosophy believed it to be flat.

In Job, XXVIII, 25, God describes the weight of the air whose gravity was unknown before the time of Galileo, born 1563 in Pisa. When asked how it happened he thought of the air having its weight, he answered:

"I read it in the 25th verse of the 28th chapter of the Book of Job, and believing in the inspiration of the Bible, I know it must be true."

In Job XXVI, 7, we read that the earth is suspended upon nothing and that it is a crust of fossils and a core of fire, whizzing and whirling at the rate of 600,000,000 miles annually.

The five Books of Moses describing "the beginning," were written 900 years before Thales, the most ancient of the philosophers of Greece, and 400 years before Homer, who, from a few letters of an ancient alphabet, composed a poem whose rhythm still beats upon the shores of time.

During the World War the Bible was used as a guide by the Allied Armies under General Allenby and when they approached the pass leading to Mickmah they turned to 1 Samuel, 13-14 and read how Jonathan captured the Philistines with one man at this pass, and they changed their strategy and took the pass from the Turks with one company instead of using a brigade as originally planned.

The first Woman's Club, first Woman's Rights activity, and the promulgation of the first law in the world by which woman could inherit real estate is given in Numbers 27 :1-8, where a Hebrew girl named Noah (not the Noah of Ark fame), and her four sisters persuaded Moses to establish such a law.

In Ruth 4 :2-9-11, we have a trial and verdict in the nature of a jury trial and verdict by a jury of ten, as prescribed in Deuteronomy 25 :9-10.

The first record of where the separation of witnesses in a trial was established, and which vindicated another woman, is set out in one of the Books of the Apocrapha, which is printed with some editions of the Bible. History of Susanna, Chapter 1:51. The witnesses were two judges and elders of Israel, and Daniel was advocate for the women.

Just in recent years have we discovered the Hammurabi Code of the Babylonians, which was promulgated soon after Moses wrote the Mosaic law, and it is evident from its contents that Hammurabi copied extensively from Moses.

As a literary production, as well as a wellspring of law and history, the Bible has not any equal and its poetical books are unsurpassed. Benjamin Franklin said: "The Bible is our only certainty for this life." Washington said: "He is worse than an infidel who has not read his Bible and acknowledged his obligation to God."

Washington was a devout student of the Bible and much of his wisdom, judgment and poise is the result of his Bible learning and knowledge and he urged others to read it diligently.

The introduction to "Jefferson's Bible," states:

"Thomas Jefferson was from early life a close student of the Bible. It was of the Bible that he wrote: 'There never was a more pure or sublime system of morality than is to be found in the four Evangelists.' His further interest in it is clearly shown by the original copy of the so-called '*Jefferson Bible*' now preserved with so much care in the National Museum at Washington, it having been *purchased by the United States Government* as a memento of the author of the Declaration of Independence and is now a *priceless relic of that great man.*"

Webster said: "I read the Bible through every year for my help."

Lincoln—sad, patient, kindly Lincoln—who, after bearing on his weary shoulders for four year a greater burden than that borne by any

other man of the nineteenth century, laid down his life for the people whom living he had served so well—built up his entire reading upon his early study of the Bible. He had mastered it absolutely; mastered it as later he mastered only one or two other books, notably Shakespeare; mastered it so that he became almost “a man of one book,” who knew that book and who instinctly put into practice what he had been taught therein; and he left his life as part of the crowning work of the century that has just closed. Of the Bible, Lincoln said to a committee of colored men from Baltimore, who came to present a copy to him:

“It is the best gift which God has given to man. All the good from the Saviour of the world is communicated to us through this Book. But for that Book, we could not know right from wrong: All those things desirable to man are contained in it.”

I have read a statement that when Lincoln made that grand statement, “A Government of the People, for the People, and by the People,” that the wise ones began to wonder and search where he got the thought and later they found he got it out of the preface of an early edition of the Bible, from the thought that the Bible was then and is now a Book of the people, for the people, and by the people; and not just a Book for the clergy. It shows that in common parlance, Lincoln did not just read the text but he also read and grasped the “advertisements.”

Theodore Roosevelt said:

“You may look through the Bible from cover to cover and nowhere will you find a line that can be construed into an apology for the man of brains who sins against the light. On the contrary, in the Bible, taking that as a guide, you will find that because much has been given to you much will be expected from you; and a heavier condemnation is to be visited upon the able man who goes wrong than upon his weaker brother who can not do the hard task that the other does, because it is not in him to do it.”

And in *Davis v. Beason*, 133 U. S. 333, the Supreme Court of the United States said (p 342):

“The term ‘religion’ has reference to one’s views of his relations to his Creator, and to the obligations they impose of reference for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter.”

And now, in conclusion, it seems clear that from every standpoint—educational, literary, historical, professional, legal, business, financial, social, mental, moral and spiritual—the Bible and the principles enunciated therein are helpful and beneficial as well to the young pupil as the adult and the teaching of same in the public and private schools is not only not prohibited by the Federal Constitution, but on the other hand, that document as construed by the Supreme Court, denounces as invalid any State Constitution, statute, or regulation, attempting to prevent or restrict such teaching in the public and private schools of the Word of God.