April 1933

God in the Constitution

Robert T. Donley
West Virginia University College of Law

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Constitutional Law Commons, Religion Law Commons, and the United States History Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol39/iss3/12

This Book Review is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.
twice or more often been indicted for any offense, and in the case of any prisoner who is convicted and sentenced to imprisonment for more than thirty days.

The tendency in the more advanced states is to ordain that as a matter of routine the mental status of certain types of prisoners must be investigated by a psychiatric expert. This expert is selected by the state on the basis of scientific ability and moral integrity. He is provided with assistants and all the necessary machinery for thorough investigation. His report is then available for the court and for the attorneys both for the state and for the defense. The best practice is distinctly tending toward the removal from both the court and the jury of all procedures for the determination of the mental status of a prisoner. Questions of sanity must be determined by medical science in advance and given to the court as facts upon which the legal decision of the court is to be based.

This Bulletin points out the ease with which a bureau of experts, not only in psychiatry but in other branches of medical science, could be instituted in every American state. The courts of each state would then have readily available a means of determining scientific matters which the courts themselves know best are not within the province of their own expertness.

—ANDREW H. WOODS, M. D.,
Director of Psychopathic Hospital, University of Iowa.

Iowa City, Iowa.


Eddying out of the flood of case-books, treatises, and periodicals comes this little volume whose thesis is to answer "the charge of political atheism and infidelity (that) has been lodged against the Constitution of the United States." It seems that "the basis of this charge is the absence from the document of the name of God and of a formula recognizing his existence and the obligations of our people to him for the blessings which all citizens and denizens of our country enjoy." The object of the book is to show, by an historical summary, that the charge is unfounded and that God (meaning orthodox Christianity) is in the Constitution;
that this idea is supported by court decisions, and that an amend-
ment to the Constitution is not only unnecessary but undesirable.

One is tempted to ask why these self-evident propositions call
for elucidation. Again, admitting with the author that there is
room for argument, whether the questions merit discussion from
the standpoint of the law. For he has “attempted to write, not
church history, but some part of the history of the law.” For
example, chapter one argues that the doctrine of separation of
church and state does not mean separation. Colonial history
demonstrates that the real struggle was to obtain religious equal-
ity for the various Christian sects, as opposed to the established
Anglican Church. It is said that the revolutionary spirit en-
gendered in this struggle carried over into the political dismem-
berment from England and was an important factor therein.

From this the conclusion is drawn that having been forced
to “enter the lists in the political arena, the law could not, then,
exclude the church from that arena in the future,” and “the
facts of history (so) forcefully vindicate her right to go into
politics to promote a moral principle,” and “to advance the cause
of morality and religion.”

This reviewer is unable to follow the reasoning. However
trite it may be, apparently it must again be observed that there
is no necessary, logical connection between morality and religion.
The assumed “right” of the church to engage in the not very
hallowed business of lobbying for legislative measures thought by
it to “promote a moral principle” it not a right at all which can
be distinguished from the privilege of any citizen or group of
citizens. But the greatest evil flows from the assumed infallibility
of the church in determining (1) that the principle involved is
a “moral” one, and (2) that it can be promoted by legislation.
If the Church would shed its robes and attempt to influence legis-
lation by letting it pass or fail on its own merits, well and good.
Otherwise, it attempts by inference to brand as an opponent of
religion all those who differ with it upon social and political
grounds.

What has been said is, of course, true even if one agrees with
the thesis of chapter three: that “The standard of judgment in
matters of morals adopted by our law is the standard of the ac-
cepted practices and teachings of Christianity.” Is the breach
of a law an immoral act? Yes, when wilful, says the author. Af-
ter making repeated attempts this reviewer sadly announces that
he is unable to discover the reasoning in support of this conclusion, unless it be in the admonition to "Render unto Caesar," etc.

In chapter four, it is demonstrated that religious liberty is qualified by those restraints which prevent its degenerating into mere license. Wherefore, it is said to exhibit limits of the freedom of conscientious objectors in time of war. As a legal proposition we shall not quibble. As a moral or as a religious matter, one would hardly wish to say with the author that:

"But he who will not bear arms, cannot lay unto his soul the unctuous thought that he has had no part in the slaughter. .... The citizen who conscientiously objects to war must be more than a Pharisee. He must expatriate himself or become an open enemy of the laws of his country; or, if the civil law exempt him from bearing arms and he remain in the country, his religious belief becomes no more than a cloak for cowardice."

"If not a citizen, he cannot justly complain when membership in the body politic is denied him because he will not defend that which he seeks to enjoy. The conscientious objector has the right to his opinions, provided he chooses his domicile where they are orthodox. .... Accountability to God for one's belief demands moral logic in choosing the scene of one's activity."

The reconciliation of true conscientiousness with smugness, cowardice and hypocrisy, we leave to the author. Perhaps there could also be explained the time-honored device during wars whereby the opposing nations each call (presumably) 'upon the same God for assistance. And such is the nature thereof that fourteen years after the World War historians disagree as to (a) which nation was responsible for starting it, (b) which emerged victorious, and (c) whether in the light of subsequent events, defeat were preferable to victory.

These and other controversial topics .... The books is worth reading because there is so much in it that conflicts with one's notions of matters thought to be fairly well settled. The views of the author and of the reviewer are so divergent that language bridges the gap with difficulty. That in no wise detracts from the value of the book, nor the right (which the reviewer would, with Voltaire, defend to the death) to express those views. The sole question is whether they are worth expressing. That can be determined only by reading them.

—ROBERT T. DONLEY.

Morgantown, West Virginia.