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A CRITICAL ANALYSIS AND APPRAISAL OF BURSTYN V. WILSON

HOWARD NEWCOMB MORSE*

A DEEP and devout faith in Christianity as the cardinal characteristic of American life manifested itself in the prologue, so to speak, of the drama that is American history for, as was pointed out by the Supreme Court of the United States in the case of Church of the Holy Trinity v. United States: "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." (Emphasis mine). In 1892, four hundred years from the time Columbus discovered America, the Supreme Court of the United States handed down its decision in the Church of the Holy Trinity case. The importance of the concept of religious freedom to the American people can be seen from the fact that the guarantee of freedom of religion is contained in the first of the Bill of Rights and from the fact that of the several guarantees of freedom contained in the First Amendment that pertaining to freedom of religion is first.

From the time of the adoption of the first ten amendments in 1791 up until the Holy Trinity case, the implied standard of morality by which American law was judged was the Christian religion. The implied standard of morality became expressed by the terms of the decision in the Holy Trinity case just as the implied guarantee of religious freedom contained in the original Constitution of the United States became expressed by the terms of the First Amendment. The opinion of the Supreme Court of the United States, written by Mr. Justice David Josiah Brewer, in the Holy Trinity case held that: ". . . this is a Christian nation."[1]

Sixty years later, on May 26, 1952, the Supreme Court of the United States handed down its decision, written by Mr. Justice Tom Clark, in the case of Burstyn v. Wilson, the so-called "Miracle case." The subject matter of the case was a pictorial representation mocking the dogma of the Immaculate Conception. The decision, in the opinion of this writer, is the most sig-

* Member of the Bar of the Supreme Court of the United States and Author of Leading Articles in The Alabama Lawyer, Chicago Bar Record, Florida Law Journal. Georgia Bar Journal, Dickinson Law Review, Kentucky Law Journal, Marquette Law Review, New Jersey Law Journal, The Federal Bar Journal, The Lawyer and Law Notes. New York State Bar Bulletin, Portland University Law Review, The South Carolina Law Quarterly and The Journal of the Bar Association of the District of Columbia.

1. 143 U.S. 457, 471, 36 L. Ed. 226, 232, 12 S. Ct. 511, 516 (1892).

nificant and the worst in the history of the Court. The question presented in the case was whether the word "sacrilegious" as contained in a New York statute [2] is so ambiguous as not to be susceptible of legal meaning. Mr. Justice Clark held in the affirmative, declaring that: "In seeking to apply the broad and all-inclusive definition of "sacrilegious" given by the New York courts, the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies. . . . Under such standard the most careful and tolerant censor would find it virtually impossible to avoid favoring one religion over another . . . ." [3] Mr. Justice Clark's injunction against "favoring one religion over another" constitutes a negation of both the First Commandment and the First Amendment. The Court has interpreted the doctrine of freedom of religion to mean freedom from religion.

In attempting to apply a legal definition to the word "sacrilegious" why should anyone be "set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies" when "This is a Christian nation" according to the expressed wordage of the Supreme Court of the United States in the Holy Trinity case and since the Christian Bible has always been the universally-accepted chart for human guidance in this country? The American system of law has always been respected and looked up to because it has always stood atop the pedestal of Christian morality. What the Supreme Court has done is to kick the pedestal of Christian morality out from under our hitherto lofty system of law so that our system of justice crashes to the ground and becomes, to make an understatement, not so lofty. Christian morals have always constituted the recognized rule in the United States by which our civil laws in the last analysis, have been measured, lauded, criticized, accepted, or rejected. The Christian religion has always been the one single criterion for American justice, the ultimate standard by which our temporal laws are judged to be good or bad, right or wrong, true or false, correct or incorrect, moral or immoral, sufficient or insufficient, just or unjust. The simplicity and utility of Christian morality as the inflexible model for our secular laws is obvious when we consider that such a pattern is perma-

2. McKinney's N. Y. Laws, 1947, Education Law, sec. 122.
3. 20 U. S. L. W. 4329, 4331 (1952).

nent and unchanging. The strength and greatness of such a formula is equally obvious when we consider that the pattern is high and noble and that since the standard is constant and eternal that standard can never be less high or less noble. Man is not capable, in the opinion of this writer, of formulating good and just laws without Divine Guidance, without the inherent goodness of the Christian standard of values to emulate in his law-giving efforts, without that standard by which to compare and measure the results of such efforts. How can we expect man to arrive at legal truth unless he has the shining example of Christian moral truth constantly before him? Truly, the props have been knocked out from under our system of law for no longer do our courts recognize the Christian moral system as the exclusive arbiter, in the ultimate sense, of the proportionate value of American laws.

With few exceptions, if one man kills another on a street in Chicago, the perpetrator runs afoul of man-made law in the form of one of the homicide statutes of the State of Illinois. But the reason why the Illinois General Assembly passed statutes making homicide unlawful and providing punishment for its various forms of perpetration was because in each of the individual members of such General Assembly was a traditional abhorrence of the killing of one human being by another stemming from collective acceptance of the Sixth Commandment. Likewise, the various forms of theft such as larceny, embezzlement, forgery, uttering, etc., were made criminal offenses by the several State legislatures due to group acceptance of the correctness, as a moral principle, of the Eighth Commandment.

If Columbus had had several compasses none of which was recognized as having more validity than the others and the needle of each pointed westward in a different direction he would have become lost and the discovery of America in all probability would have been delayed many years. Similarly, in the realm of mundane law, without one universally-recognized gage in the form of the Christian system of morals by which to measure the relative faults and virtues of our worldly laws we are lost.

The Christian code of morals has heretofore been the official compass by which American law has been guided "in the paths of righteousness." American law has been good but not perfect, and the only reason it has been good is because it has been made somewhat in the image of the Christian standard of mor-

ality. We in America live in a highly gregarious society, and it is the Christian moral code, even more than the Constitution of the United States, which binds our people together in a relative state of tranquility. It is indeed ironical and perhaps prophetic that the word whose definition gave rise to this case and the heretic opinion which ensued is "sacrilegious."

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