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CHRISTIANITY AND THE COMMON LAW.

In many of the cases that have occupied the courts, involving religious questions, the proposition has been advanced and reasoned from, that Christianity is a part of the common law. It will perhaps be useful briefly to examine the doctrine in its development to discover, if possible, in what sense it may be considered true in those jurisdictions that have not altogether repudiated it.

I. ENGLAND.

The first formal statement of the doctrine was by Sir MATTHEW HALE in *Rex* v. *Taylor* (27 and 28 Car. 11), 3 Keble 607. The case was an information for blasphemy for saying "Christ is a whoremaster and religion is a cheat * * * Christ is a bastard, and damn all Gods of the Quakers, etc." The Chief Justice, in sustaining the conviction of the blasphemer, is reported to have said:

"These words though of ecclesiastical cognizance, yet that religion is a cheat, tends to dissolution of all government and therefore punishable here, and contumelious reproaches of God or the religion established. * * An indictment lay for saying the Protestant religion was a fiction, for taking away religion, all obligations to God by oaths, etc., ceaseth, *and the Christian religion is a part of the law itself*, therefore injuries to God are as punishable as to the king or any common person."

The authority for this statement of the Chief Justice seems to have been certain language in Year Book 34 Henry VI., 40, where the judge, PRISOT, says—

"*A tielr leis que ils de Seint Eglise ont en ancien scripture, covient a nous a doner credence; car ceo (est) common ley sur quel touts mans leis sont fondes. Et auxy, Sir, Nous sumus obliges de conustre lour ley de St. Eglise et semblablement ils sont obliges de conustre nostre ley.*"

(*Translation.*—To such laws as they of the Holy Church have in ancient writings, it is fit that we should recognize as authority, for this is common law or custom, upon which all kinds of laws are founded. * * * We are obliged to recognize their Holy Church law and equally they are under obligation to recognize our law, i. e., the civil law.)

The case was a *quare impedit*, by *Humfhrey* v. *Bohun* against *John Broughton*, Bishop of Lincoln. Commenting on this, Thomas Jefferson writes—

A question was, How far the ecclesiastical law was to be respected in this matter, by the Common Law Court? * * * * Finch mis-states this in the following manner: "To such laws of the Church as have warrant in *holy scripture*, our law giveth credence," and cites the above case, and the words of PRISOT in the margin. Finch's Law, bk. 1, chap. 3, published in 1613. Here we find "ancien scripture" converted into "holy scripture;" whereas it can only mean the antient written laws of the Church. * * * * In truth, the alliance between Church and State in England, has ever made their judges accomplices in the frauds of the clergy; * * * * And thus they incorporate into the English Code, laws made for the Jews alone, and the precepts of the Gospel, intended by their benevolent Author as obligatory only *in foro conscientiae;* and they arm the whole with the coercions of the municipal law. (Jeff. Rep. App.)

The utterance of Chief Justice Hale in Taylor's case was considered sufficient basis for the doctrine thereafter, and accordingly all the cases in which it was subsequently adopted rely on that judgment as authority. In *Rex* v. *Hall* (7 Geo. I.) a charge of libel against the doctrine of the Trinity was maintained, and in *Rex* v. *Woolston* (2 Geo. II.), 2 Str. 834, Sir ROBERT RAYMOND, sitting as Chief Justice of the King's Bench, in an indictment for blasphemous discourses on the miracles of Christ, the Court, citing Taylor's case, declared they would not suffer it to be debated whether to write against Christianity in general was not an offence punishable in the temporal court at law.

King v. *Williams* (1797), 26 Howell's State Trials 653, was the celebrated case of the indictment of the publisher of Paine's "Age of Reason" for blasphemy in publishing the work. It was tried before Lord KENYON. He charged the jury that Christianity was part of the law of the land. In the opinion of the Court, Mr. Justice ASHHURST, (p. 714,) said:

"All offences of the kind are not only offences to God, but crimes against the law of the land, and are punishable as such, inasmuch as they tend to destroy those obligations whereby civil society is bound together; and it is upon this ground that the Christian religion constitutes part of the law of England."

Sir JAMES MANSFIELD, Chief Justice of the Common Pleas, observed in *Drury* v. *Defontaine* (1808), 1 Taunt. 130, 135, that it was said by Lord COKE that the Christian religion is part of the common law. The citation from Coke in connection with this statement is 2 Inst. 220, where, in referring to a Saxon law of King Ethelstan, (the latter part of which is, *Die autem dominico nemo mercaturum facito; id quod si quis egerit, et ipsa merce, et triginta praeterea solidis mulctatur;*) Lord COKE observes:

"Here note by the way that no merchandising should be on the Lord's day."

In 1819, in *King* v. *Carlile*, 3 B. & Al. 161, on an information the same as the indictment in *King* v. *Williams*, it was declared that, independent of statute, blasphemous libel was an offence at common law. It was said by BEST, Chief Justice, in *King* v. *Waddington* (1822), 1 B. & C. 26, that denying the truth of the Scriptures maliciously was by the common law a libel, and the legislature could not alter the law whilst the Christian religion was considered to be the basis of that law. This was said in considering an information for blasphemous libel, in stating in a publication that Jesus Christ was an impostor and a murderer in principle. Justice BAYLEY, in *Fennell* v. *Ridler* (1826), 5 B. & C. 406, a case involving the interpretation of the Sunday Law of England, declared the law was an affirmance of the religion which is the basis of the law of this country. This utterance was approved by BEST, C. J., in *Smith* v. *Sparrow* (1827), 4 Bing. 84, which case decided that an action would not lie on a contract entered into on Sunday.

Lord ELDON, as appears by *Attorney General* v. *Pearson* (1817), 3 Merivale 353, and Lord TENTERDEN, before whom *King* v. *Waddington* was tried, assented to the doctrine. Lord CAMPBELL in his *Lives of the Chief Justices*, Vol. 3, p. 417, takes occasion to comment upon it, and refers to an opinion of Lord MANSFIELD in the House of Lords, in 1780, on the occa-

sion of an appeal from a judgment of the Lord Mayor's court against a dissenter for a statutory penalty, for not being able to take the oath of office after his election as sheriff of London. Lord MANSFIELD, according to his biographer, declared—

"The eternal principles of natural religion are part of the common law; the essential principles of revealed religion are part of the common law; so that any person reviling, subverting or ridiculing them, may be prosecuted at common law."

Lord CAMPBELL adds in a note:

"This, I think, is the true sense of the oft-repeated maxim, that 'Christianity is part and parcel of the common law of England.'"

The fact that all the cases where the maxim was uttered and relied upon, were cases of indictments or informations for blasphemies, would seem to bear out Lord CAMPBELL'S limitation, that Christianity is part of the common law of England only in the sense that blasphemy against it is illegal, and punishable independent of statute. On this theory, the case *Cowen* v. *Milburn* (1867), L. R. 2 Exch. 230, seems to have been decided. The defendant contracted to let rooms to the plaintiff; afterwards, discovering that they were intended to be used for the delivery of lectures maintaining that the character of Christ is defective and his teaching misleading, and that the Bible is no more inspired than any other book, he refused to allow the use of them. The Court held that the publication of such doctrines was blasphemy, and the contract could not be enforced at law.

It remained for the present Lord Chief Justice of England in *Reg.* v. *Ramsey and Foote* (1883), 48 L. T. (N. S.) 733, to show that all the earlier utterances of the courts in England, to the effect that Christianity was part of the common law, were *dicta*, and if ever actually true, were statements of a law that had been outgrown. He even qualifies the limitation that had been put upon the maxim by Lord MANSFIELD, and in charging the jury (the case was an indictment of the editor and publisher of the "Free Thinker," for certain blasphemous libels therein) told them that it was not a blasphemous libel honestly to deny the truths of the Christian religion, and happily defined such a libel in the generous phrase:

"A wilful intention to pervert, insult, and mislead others by means of licentious and contumelious abuse applied to sacred subjects."

He said, as to Christianity:

"Gentlemen, you have heard with truth that those things are, according to the old law, if the *dicta* of old judges, *dicta* often necessary for the decisions, are to be taken as of absolute and unqualified authorities, that these things, I say, are undoubtedly blasphemous libel, simply and without more, because they question the truth of Christianity. But I repeat what I said on the former trial that, for reasons which I will presently explain, these *dicta* cannot be taken to be a true statement of the law, as the law is now. It is no longer true, in the sense in which it was true when these *dicta* were uttered, that Christianity is part of the law of the land."

II. UNITED STATES.

In this country, where there is no established church, but where guarantees against an establishment and against religious preferences are found in the Federal Constitution and in every State Constitution, we would not expect to find a general acquiescence in the earlier English view. The cases are numerous where the maxim is broadly asserted upon the authority of the English precedents. In most, if not all, of these cases, however, the utterances are pure *dicta*. Many of them show merely the rhetorical piety of the judiciary. There being, strictly speaking, no common law of the Union, there is no necessity for inquiring as to the interpretation of the maxim as applied to the United States Government. It is significant, however, that almost contemporaneous with the adoption of the Federal Constitution, it was declared by the Senate of the United States that the National Government was not founded on the Christian religion. In the Treaty with Tripoli ratified by the Senate in 1797 (8 U. S. Statutes at Large 155), occurs this article:

"ART. XI. As the Government of the United States of America is not in any sense founded on the Christian religion—as it has in itself no character of enmity against the laws, religion or tranquility of Musselmen—and as the said States have never entered into any war or act of hostility against any Mahometan nation, it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries."

Coming to the State Governments, it will be found that the maxim has been altogether repudiated, as applied to their common law, by the Supreme Courts of Ohio and Louisiana.

In *Bloom* v. *Richards* (1853), 2 Ohio St. 387, 390, 391, the Supreme Court of Ohio speaking by Chief Justice THURMAN, said:

"Neither Christianity, or any other system of religion, is a part of the law of the State * * * Thus the Statute, upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of the State, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty."

This view was followed in the later Ohio cases, *McGatrick* v. *Wason* (1855), 4 Ohio St. 566, and *Board of Education of Cincinnati* v. *Minor, et. al.* (1872), 23 Ohio St. 211. In the latter case, the Court held that Christianity was part of the law of the land in the sense that the Constitution and laws were made by a Christian people.

The Louisiana Supreme Court decided similarly to the Ohio Courts, in *State* v. *Bott* (1879), 31 La. An. 663.

Most of the States, however, have recognized that, for some purposes and in some sense at least, Christianity is a part of their common law, the more general view being that it is part of the common law no further than Lord CAMPELL declared it to be part of the common law of England. Many loose utterances, as stated, will be found throughout the decisions, declaring the doctrine broadly, but the well considered judgments practically establish the above qualification.

Taking up the more important decisions of the State Courts, *People* v. *Ruggles* (1811), 18 Johns. (N. Y.) 210, was an indictment for blasphemy. It was decided that blasphemy against God, and contumelious reproaches and profane ridicule of Christ or the holy scriptures, were offences punishable at common law, whether uttered by words or writings. And it was held that wantonly, wickedly and maliciously uttering the following words: "Jesus Christ was a bastard and his mother must be a whore," was a public offence and punishable by the common law of New York. It was said by Chief Justice KENT—

"The people of this State, in common with the people of this country, prefer 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 a religious point of view, extremely impious, but even in respect to the obligations due to society, is a gross

violation of decency and good order. * * * * Christianity, in its enlarged sense, as a religion revealed and taught in the Bible, is not unknown to our law. The statute for preventing immorality consecrates the first day of the week as holy time, and considers the violation of it as immoral." (Pp. 293–7.)

In *Andrew* v. *New York Bible and Prayer Book Society* (1850), 4 Sandf. 156, the New York Superior Court decided that a legacy to the Bible Society was not a pious use, authorized by law. In the course of his opinion, Judge DUER, said:

"The maxim that Christianity is part and parcel of the common law, has been frequently repeated by judges and text writers, but few have chosen to examine its truth, or to attempt to explain its meaning. We have, however, the high authority of Lord MANSFIELD and of his successor, the present Chief Justice of the Queen's Bench [Lord CAMPBELL] for stating as its true and only sense, that the law will not permit the essential truths of revealed religion to be ridiculed and reviled. In other words, blasphemy is an indictable offence at common law. (p. 182.)

People v. *Hayman* (1860), 20 How. Pr. (N. Y.) 76, was decided by the same Court, holding that the Sunday law which prohibited certain exhibitions and plays within the city and county of New York, was constitutional, Judge HOFFMAN relying chiefly on the ground that Sunday was a day of rest divinely ordained.

Lindenmuller v. *The People* (1861), 33 Barb. (N. Y.) 548, was a case where the Supreme Court of New York sustained an indictment for giving theatrical exhibitions on Sunday, contrary to the Sunday law. The decision supported the Sunday law on the dual ground, (1) that the common law of the State recognized the institutions of Christianity to the extent that acts interfering with Christian worship and tending to disrespect of the Christian religion might be restrained; (2) that the Sunday law was a valid police measure. The case of *People* v. *Ruggles* (*supra*) was relied on as authority for the first of these positions and as justifying its application to the case in hand. The history of the maxim that Christianity was part of the common law of New York was examined. Said ALLEN, J.:

"It was conceded in the convention of 1821, that the Court in *People v. Ruggles*, did decide that the Christian religion was the law of the land, in the sense that it was preferred over all other religions, and entitled to the recognition and protection of the temporal courts by the common law of the State. * * * * Mr. Post proposed an amendment to obviate that decision, to the effect that the judiciary should not declare any particular religion to be the law of the land. The decision was vindicated as a just exponent of the Constitution and the relation of

the Christian religion to the State; and the amendment was rejected. * * * One class, including Chief Justice SPENCER and Mr. King, regarded Christianity as a part of the common law adopted by the Constitution; another class, in which were Chancellor KENT and Mr. Van Buren, were of the opinion that the decision was right, not because Christianity was established by law, but because Christianity was in fact the religion of the country, the rule of our faith and practice, and the basis of public morals. According to their views, as the recognized religion of the country, 'the duties and injunctions of the Christian religion' were interwoven with the law of the land, and were part and parcel of the common law, and 'maliciously to revile it is a public grievance, and as much so as any other public outrage upon common decency and decorum.'" (Per CH. KENT in debate.)

The Court of Appeals, in *Smith* v. *Wilcox* (1862), 24 N. Y. 353, declared the Sunday statute to be in harmony with the religion of the country, and the religious sentiment of the public, and for the support and maintenance of public morals and good order. "Its design is * * * to secure to the day the outward respect and observance which is due to it as the acknowledged Sabbath of the great mass of the people, to protect the religion of the community from contempt and unseemly hindrances, and to its professors the liberty of quiet and undisturbed worship on the day set apart for that purpose."

In *Neuendorff* v. *Duryea* (1877), 69 N. Y. 557, the doctrine of *Lindenmuller* v. *The People* (*supra*) was followed, and a bill for injunction against the police commissioners, to prevent them from interfering with complainant's operatic and dramatic entertainment on Sunday, was refused.

The most celebrated case, involving a consideration of the relation of the law of Pennsylvania to Christianity, is *Vidal* v. *Girard's Executors* (1844), 2 How. (43 U. S.) 127. The Supreme Court of the United States there decided that the will of Stephen Girard, in its prohibition of the employment or admission within Girard College of clergymen, was not contrary to the law of Pennsylvania. Mr. Webster sought to have the Court declare that Christianity was generally, and for all purposes, part of the law of Pennsylvania, so that any indirect reflection upon it, even of an argumentative kind, such as might be suggested by the will in question, was illegal and against the policy of the Pennsylvania law. The Court declined to take this view. Said Mr. Justice STORY, (p. 198):

"It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania. But this proposition is to be received with its appropriate qualifications, and in connection with the bill of rights of that State, as found in its constitution of government. The Constitution of 1790 (and the like provision will in substance, be found in the Constitution of 1776, and in the existing Constitution of 1838,) [and in the Constitution of 1874, Art. I § 3], expressly declares, 'That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.' Language more comprehensive, for the complete protection of every variety of religious opinion, could scarcely be used, and it must have been intended to extend equally to all sects, whether they believed in Christianity or not, and whether they were Jews or infidels. So that we are compelled to admit that although Christianity be a part of the common law of the State, yet it is so in this qualified sense, that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public. Such was the doctrine of the Supreme Court of Pennsylvania in *Updegraph* v. *The Commonwealth* (1824), 11 S. & R. (Pa.) 394."

Cooley in his *Constitutional Limitations* (*472) remarks upon this:

"It may be doubted, however, if the punishment of blasphemy is based necessarily upon an admission of the divine origin or truth of the Christian religion, or incapable of being otherwise justified."

The case of *Updegraph* v. *The Commonwealth* (1824), 11 S. & R. (Pa.) 400, arose on an indictment for saying "That the Holy Scriptures were a fable: That they were a contradiction, and that although they contained a number of good things, yet they contained a great many lies.'" The utterance was in the course of a debate. The defendant was convicted and fined five shillings and costs. The Supreme Court sustained the conviction. The indictment was under an Act of Assembly whose provisions have been in force in the State since 1700 and now form part of its criminal law. (Act of 31 March 1860, §30, P. L. 392). The penalty is directed against whosoever "shall wilfully, premeditatedly, and despitefully blaspheme, or speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth." The Court said,

"Christianity, general Christianity, is and always has been a part of the common law of Pennsylvania; * * * with liberty of conscience to all men * * * It is only the malicious reviler of Christianity who is punished * * * It is open,

public vilification of the religion of the country that is punished, * * * to preserve the peace of the country by an outward respect to the religion of the country * * * If from a regard to decency and the good order of society, profane swearing, breach of the Sabbath, and blasphemy are punishable by civil magistrates, these are not punished as sins or offenses against God, but crimes injurious to, and having a malignant influence on, society."

By the side of this early utterance of the Supreme Court of Pennsylvania, should be placed the remarks of the Court, speaking by GIBSON, C. J., in *Harvey* v. *Boies* (1829), 1 P. & W. (Pa.) 12, 13:

"Christianity has been indefinitely said to be a part of the law of the land. The law undoubtedly avails itself of the obligations of Christianity as instruments to accomplish the purposes of justice. * * * Christianity is indeed recognized as the predominant religion of the country, and for that reason are not only its institutions, but the feelings of its professors guarded against insult from reviling or scoffing at its doctrines; so far it is the subject of special favor. But further the law does not protect it."

All the later utterances of the Court upon the subject have not been as guarded as those in these cases, so that there has been some doubt as to how far Christianity in fact is part of the law of Pennsylvania. But the more careful judgments of the Court have maintained the limitations of these early cases. In *Mohney* v. *Cook* (1855), 26 Pa. 342, 347, the Court in similar language to that used by Chief Justice GIBSON, declared that Christianity is part of the law, in that its customs, institutions and ethical principles are recognized and followed by the mass of the people and are therefore to be respected by the minority. Said LOWRIE, J.:

"The declaration that Christianity is part of the law of the land, is a summary description of an existing and very obvious condition of our institutions. We are a Christian people, in so far as we have entered into the spirit of Christian institutions, and become imbued with the sentiments and principles of Christianity; and we cannot be imbued with them, and yet prevent them from entering into and influencing, more or less all our social institutions, customs and relations, as well as all our individual modes of thinking and acting. It is involved in our social nature, that even those among us who reject Christianity, can not possibly get clear of its influence or reject those sentiments, customs and principles which it has spread among the people, so that, like the air we breathe, they have become the common stock of the whole country, and essential elements of its life. It is perfectly natural, therefore, that a Christian people should have laws to protect their day of rest from desecration. Regarding it as a day, necessarily and divinely set apart for rest from worldly enjoyments, and for the enjoyment of spiritual privi-

leges, it is simply absurd to suppose that they would leave it without any legislative protection from the disorderly and the immoral."

Said SHARSWOOD, J., in *Zeisweiss* v. *James* (1870), 63 Pa. 465, 471:

"It is in entire consistency with this sacred guarantee of the rights of conscience and religious liberty, to hold that, even if Christianity is no part of the law of the land, it is the popular religion of the country, an insult to which would be indictable as directly tending to disturb the public peace. The laws and institutions of this State are built on the foundation of reverence for Christianity. To this extent, at least, it must certainly be considered as well settled that the religion revealed in the Bible is not to be openly reviled, ridiculed or blasphemed, to the annoyance of sincere believers who compose the great mass of the good people of the Commonwealth."

Some of the justices seem to have accepted the doctrine in a fuller sense than the above decisions warrant. For example, COULTER, J., in *Brown* v. *Hummel* (1847), 6 Pa. 86, and *Specht* v. *Commonwealth* (1848), 8 id. 312; STRONG, READ and AGNEW, JJ., in *Sparhawk* v. *Union Passenger Railway Company* (1867), 54 id. 401. See also the opinion of ALLISON, P. J., in *Granger* v. *Grubb* (1870), 7 Phila. 350, 355.

The opinion of the Court, by SHAW, C. J., in *Commonwealth* v. *Kneeland* (1838), 20 Pick. (Mass.) 206, shows that for some purposes Christianity is part of the law in Massachusetts.

State v. *Chandler* (1837), 2 Harr. (Del.) 553, was an indictment for blasphemy. Chief Justice CLAYTON examines the doctrine at length in the following language:

"It is true, that the maxim of the English law 'that Christianity is a part of the common law' may be liable to misconstruction, and has been misunderstood. It is a current phrase among the special pleaders, that the almanac is a part of the law of the land. (Chitt. Pl 121, etc.) By this it is meant, that the courts will judicially notice the days of the week, month and other things, properly belonging to an almanac, without pleading or proving them. * * * * So too, we apprehend every court in a civilized country is bound to notice in the same way, what is the prevailing religion of the people. If, in Delaware, the people should adopt the Jewish or Mahomedan religion, as they have an unquestionable right to do if they prefer it, the court is bound to notice it as their religion, and to respect it accordingly. * * * The declarations of Lord HALE, Lord RAYMOND and others, who pronounced Christianity to be parcel of the common law, are all to be taken in reference to the cases of blasphemy before them; and for the purpose of punishing such blasphemies as they condemned, they noticed that Christianity was the religion of England, and in this sense a part of the common law of the land. * * * It will be seen that, in our judgment of the Constitution and laws of

Delaware, the Christian religion is a part of those laws so far that blasphemy against it is punishable while the people prefer it as their religion and no longer."

Following some of the above authorities, Christianity has also been said to be part of the law of Arkansas—*Shover* v. *State* (1880), 5 Eng. 250; North Carolina—*Melvin* v. *Easley* (1860), 7 Jones (Law) 356, 367; South Carolina—*Charleston* v. *Benjamin* (1846), 2 Strob. 508; Missouri—*State* v. *Ambs* (1854), 20 Mo. 214, 216, in which case it was said that Christianity was part of the law in the sense that the Constitution was made by Christian men.

The text writers agree, either in denying altogether that Christianity is a part of the common law of the land in any legal sense, or in recognizing that it is part of the law only to the extent and in the manner above indicated. Perhaps the most lucid statement of the doctrine is that of Dr. Wharton in his work on Criminal Law. He says (Sec. 20):

"Christianity undoubtedly has affected the common law in the United States in the following important particulars: (1.) In most jurisdictions, we have adopted the principles of the canon law in relation to matrimony and succession. The rules which the English ecclesiastical courts imposed in this connection, we have, in a large measure, accepted as binding us; and in several States we have recognized as indictable, certain offenses, such as adultery and fornication, which in England can only be prosecuted in the ecclesiastical courts. (2.) We have also, adopting the ethical rules of Christianity, as distinguished from those of heathendom, made indictable breaches of domestic duty which were not criminally punishable by the old Roman law. (3.) Witnesses, unless they have conscientious scruples, or believe another form of oath more binding, are sworn as a rule on the Christian Bible. But beyond this we have not gone. We make blasphemy of Christianity indictable; but this is because such blasphemy is productive of a breach of the public peace, and not because it is an offense against God. We treat a disturbance of Christian worship as indictable, when such disturbance amounts to a private assault or to public disorder; but we give that same protection to non-Christian assemblies. And in no State does the government interfere to prosecute offenses consisting of a denial of Christian dogma, or a rejection of Christian sanctions. Nor in any State is Christianity in such sense part of the common law that the State can determine what are the dogmas of Christianity. That which is part of the common law can be changed by statute; but as the dogmas of Christianity are beyond the reach of statute, *we must hold that they are not part of the common law of the land.*"

See also Sedgwick "*Construction of Statutory and Constitutional Law*," p. 14.

Cooley's Constitutional Limitations, p. 472.

The fact that many judges have asserted, without qualifying their statements, that Christianity is part of the common law has led to whatever uncertainty exists on the subject. Careful thinking and careful writing would have eliminated much in the opinions of courts that has only tended to confusion. It is difficult to see how the American, not to say the Anglo-Saxon, idea can permit of the assertion that Christianity is part of the law in any other sense than that indicated by Dr. Wharton. There are doubtless a large number of well-meaning people who without a proper apprehension of the absolute sovereignty of the individual in matters of faith, are willing that the State shall be made to declare the truth of their particular form and philosophy of religion. But it would seem to be no more the function of an American State, to declare the truth of the religion of the majority than that of the minority.

Christianity, as a religion, is an affair of the individual alone. It does not cease to be so because many or most individuals adopt it. Christianity, as an ethical system, pervades, and, as we believe, sustains, modern society. Its pervading force furnishes the law, and to custom, lofty standards of right and wrong, whose adoption both makes and promises a better race because of it. But as its teachings are coming to be better understood, they seem to vindicate the political philosophy which would withdraw the individual from constraint in matters of religious opinion, by having the State neither enforce nor assert any particular doctrine in the realm of conscience. The absolute divorce of religion and the State is the postulate of this philosophy. Though its prevalence does indeed mark the triumph of the broad philanthropy of Christian men, it nevertheless implies as within its proper import the separation of dogmatic Christianity and the law.

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