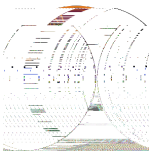

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Symposium on Religion and Politics

RELIGIOUS DIVERSITY AND THE COMMON GOOD

"On the Free Exercise of Religion" (continued)

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SUPREME COURT OF THE UNITED STATES
98 U.S. 145
OCTOBER, 1878, Term

ERROR to the Supreme Court of the Territory of Utah.

This is an indictment found in the District Court for the third judicial district of the Territory of Utah, charging George Reynolds with bigamy, in violation of sect. 5352 of the Revised Statutes, which, omitting its exceptions, is as follows: --

"Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years...."

After the trial commenced, the district attorney, after proving that the defendant had been married on a certain day to Mary Ann Tuddenham, offered to prove his subsequent marriage to

sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions.

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

every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are

Wisconsin v. Yoder

SUPREME COURT OF THE UNITED STATES
406 U.S. 205
May 15, 1972
CERTIORARI TO THE SUPREME COURT OF WISCONSIN

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

to return to the early, simple, Christian life deemphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated in great detail by the Ordnung, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations, not unlike the Bar Mitzvah of the Jews, to abide by the rules of the church community. Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a "worldly" influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal "learning through doing;" a life of "goodness," rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs not only because it places Amish children in an environment hostile to Amish beliefs, with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these traits, skills, and attitudes admittedly fall within the category of those best learned through example and "doing," rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendd

The Amish do not object to elementary education through the first eight grades as a general proposition, because they agree that their children must have basic skills in the "three R's" in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to worldly values or interfere with their development in the Amish community during the crucial adolescent period. While Amish accept compulsory elementary education generally, wherever possible. they have established their own elementary schools, in many respects like the small local schools of the past. In the Amish belief, higher learning tends to develop values they reject as influences that alienate man from God.

On the basis of such considerations, Dr. Hostetler testified that compulsory high school attendance could not only result in great psychological harm to Amish children, because of the conflicts it would produce, but would also, in his opinion, ultimately result in the destruction of the Old Order Amish church community as it exists in the United States today. The testimony of Dr. Donald A. Erickson, an expert witness on education, also showed that the Amish succeed in preparing their high school age children to be productive members of the Amish community. He described their system of learning through doing the skills directly relevant to their adult roles in the Amish community as "ideal," and perhaps superior to ordinary high school education. The evidence also showed that the Amish have an excellent record as law-abiding and generally self-sufficient members of society.

Although the trial court, in its careful findings, determined that the Wisconsin compulsory school attendance law, "does interfere with the freedom of the Defendants to act in accordance with their sincere religious belief," it also concluded that the requirement of high school attendance until age 16 was a "reasonable and constitutional" exercise of governmental power, and therefore denied the motion to dismiss the charges. The Wisconsin Circuit Court affirmed the convictions. The Wisconsin Supreme Court, however, sustained respondents' claim under the Free Exercise Clause of the First Amendment, and reversed the convictions. A majority of the court was of the opinion that the State had failed to make an adequate showing that its interest in "establishing and maintaining an educational system overrides the defendants' right to the free exercise of their religion."

I

There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was, in Pierce, made to yield to the right of parents to provide an equivalent education in a privately operated system. There, the Court held that Oregon's statute compelling attendance in a public school from age eight to age 16 unreasonably interfered with the interest of parents in directing the rearing of their offspring, including their education in church-operated schools. As that case suggests,

the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society. Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, "prepare [them] for additional obligations."

It follows that, in order for Wisconsin to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate

Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal, rather than religious, and such belief does not rise to the demands of the Religion Clauses.

Giving no weight to such secular considerations, however, we see that the record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, "be not conformed to this world. . . ." This command is fundamental world1Wp t.u35( )-.(

stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

The impact of the compulsory attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels

Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful social unit within our society, even if apart from the conventional "mainstream." Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. The Congress itself recognized their self-sufficiency by authorizing exemption of such groups as the Amish from the obligation to pay social security taxes.

It is neither fair nor correct to suggest that the Amish are opposed to education beyond the eighth grade level. What this record shows is that they are opposed to conventional formal education of the type provided by a certified high school because it comes at the

assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist.

Insofar as the State's claim rests on the view that a brief additional period of formal education is imperative to enable the Amish to participate effectively and intelligently in our democratic process, it must fall. The Amish alternative to formal secondary school education has enabled them to function effectively in their day-

instruction from public teachers only. 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."

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The duty to prepare the child for "additional obligations," referred to by the Court, must

Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education. In light of this convincing showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong

Employment Division, Dept. of Human Resources of Oregon v. Smith

> “Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.”

We first had occasion to assert that principle in Reynolds v. United States (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said,

> “are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man

The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press . . . Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion. . .

The present case does not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity or parental right. Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. There being no contention that Oregon's drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs, the rule to which we have adhered ever since Reynolds plainly controls. "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government."

Respondents argue that, even though exemption from generally applicable criminal laws need not automatically be extended to religiously motivated actors, at least the claim for a religious exemption must be evaluated under the balancing test set forth in Sherbert v. Verner. Under the Sherbert test, governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. . . .

Even if we were inclined to breathe into Sherbert some life beyond the unemployment compensation field, we would not apply it to require exemptions from a generally applicable criminal law. The Sherbert test, it must be recalled, was developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct. As a plurality of the Court noted in Roy, a distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment: "The statutory conditions [in Sherbert and Thomas] provided that a person was not eligible for unemployment compensation benefits if, "without good cause," he had quit work or refused available work. The "good cause" standard created a mechanism for individualized exemptions." . . . As the plurality pointed out in Roy, our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason.

Whether or not the decisions are that limited, they at least have nothing to do with an across-the-board criminal prohibition on a particular form of conduct. Although, as noted earlier, we have sometimes used the Sherbert test to analyze free exercise challenges to such laws, we have never applied the test to invalidate one. We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." To make an individual's obligation to obey such a law contingent upon the law's coincidence with his

expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use. But to say that a nondiscriminatory religious practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

Because respondents' ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug. The decision of the Oregon Supreme Court is accordingly reversed.

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Tennessee Pastor Disputes Wildlife Possession Charge by State

By ALAN BLINDER

JACKSBORO, Tenn. — In a mix of old-time religion, modern media and Tennessee law, a 22-year-old preacher who has become a reality television star because of his experience in handling poisonous snakes pleaded not guilty on Friday to illegally keeping dozens of them that he and his congregants routinely touch during worship services.

Andrew Hamblin, pastor of the Tabernacle Church of God in nearby LaFollette and a star of “Snake Salvation,” a recent series on the National Geographic Channel, said he hoped to turn the case against him in Campbell County General Sessions Court into a new front in the battle for religious liberty.

“This ain’t no longer just a fight for snake handling,” Mr. Hamblin, the father of five, told a group of supporters wearing red — to symbolize the blood of Christ — before his arraignment on a misdemeanor wildlife possession charge. “This is a fight for freedom of religion.”

As Mr. Hamblin, holding a Bible, spoke from the third step of the Campbell County Courthouse, several women cried and shook.

Members of Mr. Hamblin’s two-story brick church, which sits along a gravel road, have made no

anyone else in the general public who has a king cobra in his room."

And although church members say Mr. Hamblin takes care to keep the snakes secure, the chief prosecutor for Campbell County, a rural area just north of Knoxville, has described them as a "significant public safety hazard."

But to Mr. Hamblin and his supporters, the case is little more than state-instigated discrimination against a religious practice that has been present in East Tennessee for more than a century.

"When those officers entered the house of God, that cooked it with me," said James Slusher, who attends Mr. Hamblin's church but said he does not handle snakes.

Mr. Hamblin's legal troubles have attracted widespread attention in Campbell County, and they have revived a longstanding debate here about whether the Constitution offers protections for

in this room," Mr. Hamblin said during an interview on Thursday night in his sanctuary, which includes a large photograph of him holding up a snake. "Snake handling isn't going to get me into heaven. The blood of Jesus Christ is what is going to get me into heaven."

Whether the transparency, bravado or legal tactics of Mr. Hamblin will lead to a new precedent or a groundswell of public opinion remains an open question.

But legal scholars from outside Tennessee said Mr. Hamblin could mount a credible defense, especially because the state allows some entities, like zoos, to possess snakes.

"It all really comes down to whether or not there are exceptions for other reasons, and that's really the key factor," said James A. Sonne, the director of the Religious Liberty Clinic at Stanford Law School. "The devil is going to be in the details."

Mr. Hamblin, who sat at his church for hours on Thursday as supporters brought in petitions endorsing his battle, said he was prepared to take his case to the federal appellate courts.

Although the matter could take years to resolve, Mr. Hamblin and his backers said they would remain unbowed.

"If they take him to jail, I'll go to jail with him," said Bucky Rouse, a former embalmer who is now an interior designer. "This is something we believe in."

Some Amish Opt Out Of Government-Sponsored Insurance

November 03, 2013 8:00 AM

Listen to the Story

Weekend Edition Sunday 4 min 19 sec

The new health care law states that all individuals must have some kind of health insurance. But what happens when groups oppose insurance on religious grounds? Host Rachel Martin speaks with Dennis Lehman, an Amish man who is the president of an Amish health clinic in Indiana, and Chris Roberson, an attorney in Indianapolis, about how the Amish are dealing with the Affordable Care Act.

RACHEL MARTIN, HOST:

Now, to Indiana, where members of the Amish community are trying to figure out what the Affordable Care Act means for them, specifically the law's requirement that every person have health insurance. The Amish are religiously opposed to commercial insurance and they pride themselves on taking care of their own. Here's Dennis Lehman. He is the president of an Amish community health clinic in Topeka, Indiana.

DENNIS LEHMAN: We've always shared each other's burdens, so

they kept his true identity a secret for so long.

STEVE LICKTEIG: She looked at me, my mother, and said I have no idea what you're talking about. And I said, you know, well, I know everything. I know what the truth is. And she kept denying and denying. And finally my dad slammed his hand down on his Lay-Z-Boy and said dammit, will you just tell him?

MARTIN: Stay with us for a conversation with Steve Lickteig about his film "Open Secret."