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Thanksgiving: A Religiously-Inspired Holiday in a Christian Nation?

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Thanksgiving did not become a federally recognized holiday until 1863, almost 250 years after the “first Thanksgiving celebration [which was] held by the Pilgrims,” when President Abraham Lincoln declared a national day of Thanksgiving.

However, according to the United States Supreme Court, it was George Washington, who in 1789, was the first American president to proclaim a national day of Thanksgiving.

“On the day after the House of Representatives voted to adopt the form of the First Amendment Religion Clauses which was ultimately proposed and ratified, Representative Elias Boudinot proposed a resolution asking President George Washington to issue a Thanksgiving Day Proclamation. Boudinot said he ‘could not think of letting the session pass over without offering an opportunity to all the citizens of the United States of joining with one voice, in returning to Almighty God their sincere thanks for the many blessings he had poured down upon them.’” *Wallace v. Jaffree*, 472 U.S. 38, 100-101 (1985), *citing* 1 Annals

of Cong. 914 (1789),¹ Justice Rehnquist dissenting.

“Boudinot’s resolution was carried in the affirmative on September 25, 1789.” *Wallace v. Jaffree*, 472 U.S. at 101.

“Within two weeks of this action by the House, George Washington responded to the Joint Resolution which by now had been changed to include the language that the President ‘recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness.’ 1 J. Richardson, Messages and Papers of the Presidents, 1789-1897, p. 64 (1897). The Presidential Proclamation was couched in these words:

“Now, therefore, I do recommend and assign Thursday, the 26th day of November next, to be devoted by the people of these States to the service of that great and glorious Being who is the beneficent author of all the

¹ *Wallace v. Jaffree* was a case in which the United States Supreme Court held that an Alabama statute which authorized a daily period of silence in public schools for meditation or voluntary prayer was an endorsement of religion lacking any clearly secular purpose, and thus was a law respecting the establishment of religion in violation of First Amendment.

good that was, that is, or that will be; that we may then all unite in rendering unto Him our sincere and humble thanks for His kind care and protection of the people of this country previous to their becoming a nation; for the signal and manifold mercies and the favorable interpositions of His providence in the course and conclusion of the late war; for the great degree of tranquillity, union, and plenty which we have since enjoyed; for the peaceable and rational manner in which we have been enabled to establish constitutions of government for our safety and happiness, and particularly the national one now lately instituted; for the civil and religious liberty with which we are blessed, and the means we have of acquiring and diffusing useful knowledge; and, in general, for all the great and various favors which He has been pleased to confer upon us.

And also that we may then unite in most humbly offering our prayers and supplications to the great Lord and Ruler of Nations, and beseech Him to pardon our national and other transgressions; to enable us all, whether in public or private stations, to perform our several and relative duties properly and punctually; to render our National Government a blessing to all the people by constantly being a Government of wise, just, and constitutional laws, discreetly and faithfully executed and obeyed; to protect and guide all sovereigns and nations (especially such as have shown kindness to us), and to bless them with good governments, peace, and concord; to promote the knowledge and practice of true religion and virtue, and the increase of science among them and us; and, generally, to grant unto all mankind such a degree of temporal prosperity as He alone knows to be best.” *Ibid.*

Joseph Story, a Member of [the United States Supreme] Court from 1811 to 1845, and during much of that time a professor at the Harvard Law School, published by far the most comprehensive treatise on the United States Constitution that had then appeared. Volume 2 of Story’s Commentaries on the Constitution of the United States 630-632 (5th ed. 1891) discussed the meaning of the Establishment Clause of the First Amendment this way:

Probably at the time of the adoption of the Constitution, and of the amendment to it now under consideration [First Amendment], the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the State so far as was not incompatible with the private rights of conscience and the freedom of religious worship. An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation.

* * *

The real object of the [First] [A]mendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government. It thus cut off the means of religious persecution (the vice and pest of former ages), and of the subversion of the rights of conscience in matters of religion, which had been trampled upon almost from the days of the Apostles to the present age. . . . (Footnotes omitted; underline added.)

Thomas Cooley’s eminence as a legal authority rivaled that of Story. Cooley stated in his treatise entitled Constitutional Limitations that aid to

a particular religious sect was prohibited by the United States Constitution, but he went on to say:

But while thus careful to establish, protect, and defend religious freedom and equality, the American constitutions contain no provisions which prohibit the authorities from such solemn recognition of a superintending Providence in public transactions and exercises as the general religious sentiment of mankind inspires, and as seems meet and proper in finite and dependent beings. Whatever may be the shades of religious belief, all must acknowledge the fitness of recognizing in important human affairs the superintending care and control of the Great Governor of the Universe, and of acknowledging with thanksgiving his boundless favors, or bowing in contrition when visited with the penalties of his broken laws. No principle of constitutional law is violated when thanksgiving or fast days are appointed; when chaplains are designated for the army and navy; when legislative sessions are opened with prayer or the reading of the Scriptures, or when religious teaching is encouraged by a general exemption of the houses of religious worship from taxation for the support of State government. Undoubtedly the spirit of the Constitution will require, in all these cases, that care be taken to avoid discrimination in favor of or against any one religious denomination or sect; but the power to do any of these things does not become unconstitutional simply because of its susceptibility to abuse. . . .

Cooley added that:

[t]his public recognition of religious worship, however, is not based entirely, perhaps not even mainly, upon a sense of what is due to the Supreme Being himself as the author

of all good and of all law; but the same reasons of state policy which induce the government to aid institutions of charity and seminaries of instruction will incline it also to foster religious worship and religious institutions, as conservators of the public morals and valuable, if not indispensable, assistants to the preservation of the public order. *Wallace v. Jaffree*, 472 U.S. at 104-106 (internal citations and italics omitted).

In 1947, “in *Everson v. Board of Education*, . . . [the United States Supreme Court] summarized its exegesis of Establishment Clause doctrine thus:

In the words of Jefferson, the clause against establishment of religion by law was intended to erect ‘a wall of separation between church and State.’ *Reynolds v. United States*, [98 U.S. 145, 164, 25 L.Ed. 244 (1879)].

This language from *Reynolds*, a case involving the Free Exercise Clause of the First Amendment rather than the Establishment Clause, quoted from Thomas Jefferson’s letter to the Danbury Baptist Association the phrase ‘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. 8 Writings of Thomas Jefferson 113 (H. Washington ed. 1861). [FN1]

FN1. *Reynolds* is the only authority cited as direct precedent for the ‘wall of separation theory.’ 330 U.S., at 16, 67 S.Ct., at 512. *Reynolds* is truly inapt; it dealt with a Mormon’s Free Exercise Clause challenge to a federal polygamy law.

It is impossible to build sound constitutional doctrine upon a mistaken understanding of constitutional history, but unfortunately the Establishment Clause has been expressly freighted with Jefferson’s misleading metaphor. . . . Thomas Jefferson was of course in France at the time the constitutional Amendments known as the Bill of Rights were passed by Congress and ratified by the

States. His letter to the Danbury Baptist Association was a short note of courtesy, written 14 years after the Amendments were passed by Congress. He would seem to any detached observer as a less than ideal source of contemporary history as to the meaning of the Religion Clauses of the First Amendment.

Jefferson's fellow Virginian, James Madison, with whom he was joined in the battle for the enactment of the Virginia Statute of Religious Liberty of 1786, did play as large a part as anyone in the drafting of the Bill of Rights. He had two advantages over Jefferson in this regard: he was present in the United States, and he was a leading Member of the First Congress. But when we turn to the record of the proceedings in the First Congress leading up to the adoption of the Establishment Clause of the Constitution, including Madison's significant contributions thereto, we see a far different picture of its purpose than the highly simplified 'wall of separation between church and State.'" *Wallace v. Jaffree*, 472 U.S. at 91-93 (internal citations and italics omitted).

"It would seem from this evidence that the Establishment Clause of the First Amendment had acquired a well-accepted meaning: it forbade establishment of a national religion, and forbade preference among religious sects or denominations. Indeed, the first American dictionary defined the word 'establishment' as 'the act of establishing, founding, ratifying or ordaining,' such as in '[t]he episcopal form of religion, so called, in England.' 1 N. Webster, American Dictionary of the English Language (1st ed. 1828). The Establishment Clause did not require government neutrality between religion and irreligion nor did it prohibit the Federal Government from providing nondiscriminatory aid to religion. There is simply no historical foundation for the proposition that the Framers intended to build the 'wall of separation' that was constitutionalized in *Everson*." *Wallace v. Jaffree*, 472 U.S. at 104-106 (internal citations omitted).

Happy Thanksgiving!

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, constitutional and civil rights law, family law, real estate law, tax law, and trusts and estates.

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