Charles Hodge on Law and Religion

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See also: Christianity and Nineteenth Century American Law, to which the following article was originally an appendix.

In his *Systematic Theology* (1871), Charles Hodge did not simply argue that, according to custom, the law should reflect the common faith of people who were "Christians and Protestants". Instead, he urged that the administration of civil government in general must conform to the laws of religion. "Those laws are ordained, administered, and enforced by God, and there is no escape from their obligation, or from the penalties attached to their violation."[1]

Hodge here reflects the view of the Westminster divines that the ruler is a "nursing father". This does not mean that every precept of Christianity should be taught or enforced by government, since the state is not constituted for that purpose. "But as [government] cannot violate the moral law in its own action, or require the people to violate it, so neither can it ignore Christianity in its official action. It cannot require the people or any of its officers to do what Christianity forbids, nor forbid their doing anything which Christianity enjoins."[2]

At the same time, Hodge declared that full religious liberty prevails in the land: "All are welcomed: all are admitted to equal rights and privileges. All are allowed to acquire property and to vote in every election, made eligible to all offices, and invested with equal influence in all public affairs. All are allowed to worship as they please, or not to worship at all if they see fit. No man is molested for his religion or for his want of religion. No man is required to profess any form of faith, or to join any religious association. More than this cannot reasonably be demanded."[3]

But Hodge also recognized that there are limits to liberty. "If a religion should enjoin infanticide, or the murder of the aged or infirm, neither the people nor the government

1 Charles Hodge, *Systematic Theology*, vol. 3 (New York: Charles Scribenr's Sons, 1887 [1871]), p.342
2 Hodge, p. 343.
3 Hodge, p. 345-346.

should conform their conduct to its laws".[4] On this point it is evident that Hodge's evaluation of the relation of Christianity to the "law of the land" anticipated the Supreme Court's interpretation of the First Amendment in two major polygamy cases, Reynolds v. United States, 98 U.S. 145 (1878) and Davis v. Beason 133 U.S. 333 (1890). In the latter case, Justice Stephen Field distinguished between "religion" and "the *cultus* or form of worship of a particular sect:"

> The term "'religion" has reference to one views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will (133 U.S. 333, 342).

The Court was here acknowledging a practical dimension to religion that may not be invaded, even though particular cultic practices, like polygamy or suttee, might be prohibited. The norm or standard of religion accepted by the Court is reasonably clear:

> Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government, for acts recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance (133 U.S. 333, 343).

Christianity supplied the moral and religious norm upon which the western legal tradition is based.

It was with these polygamy cases in mind that Justice William O. Douglas could observe as late as 1954 that "a religious rite, which violates standards of Christian ethics and morality is not in the true sense, in the constitutional sense, included within "religion", the 'free exercise' of which is guaranteed by the Bill of Rights."[5] Recent rulings by the Supreme Court have not expressly rejected this standard, but its implications—as Justice Douglas understood them—have been ignored. A growing body of lower court decisions based on Oregon Employment Division v. Smith (1990) shows how little the judiciary today is guided by history.

4 Hodge, p. 345.
5 William O. Douglas, *An Almanac of Liberty* (Garden City, NT: Doubleday and Company, 1954) p. 304.