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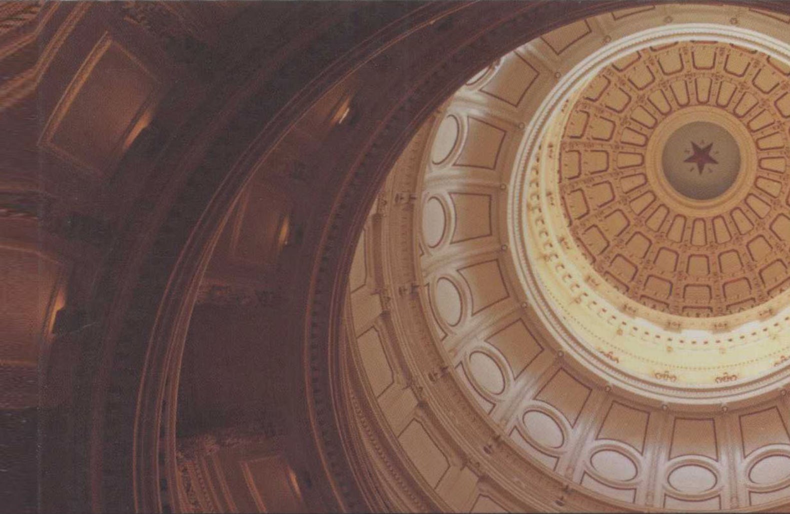
STATUTORY INTERPRETATION STORIES



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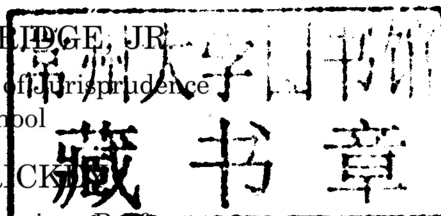

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DEDICATION

Our friend, colleague, and co-editor Philip P. Frickey passed away as we were about to go to press. It is with immense sadness for our personal loss, and the loss to the legal and academic communities, that we dedicate this publication to his memory.

ACKNOWLEDGMENTS

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STATUTORY INTERPRETATION STORIES

Church of the Holy Trinity, New York, view of the front facade on Madison Avenue, circa 1890

Photo credit: The New York Public Library

Holy Trinity Church v. United States, decided in 1892, is the often-cited source for one of the main tenets of statutory interpretation: that the spirit of a statute may take precedence over its literal words. It is also considered an early authority for the use—and misuse—of legislative history to explain legislative purposes in the search for statutory meaning. The lawsuit resulted from prosecution of the church for violating the Alien Contract Labor Act by hiring an English minister, which led Justice David Brewer to base his opinion for the Court in part on his conclusion that the United States is a "Christian nation" so the statute must not have been intended to extend so far. Justice Brewer's extended encomium to Christianity in American history, and his own religious background, have encouraged some to see *Holy Trinity* as a prime example of the dangers of turning away from textual analysis to include a problematic invocaan extended look at the legislative history and a review of accepted statutory interpretation methodology in 1892, Professor Carol Chomsky shows that, despite the notoriety of the case and the bias suggested by the religious bent of its author, there is ample authority both for Justice Brewer's interpretation of the text and his crediting spirit over apparently clear language. In the process, Professor Chomsky reinforces the value of legislative history and the validity of seeking insight into the spirit of a statute, not just exploring its literal text.tion of spirit and purpose gleaned from uncertain legislative history. Drawing on

1

Carol Chomsky*

The Story of *Holy Trinity Church v. United States*: Spirit and History in Statutory Interpretation

In 1887, Church of the Holy Trinity, an Episcopal church in New York City, hired Reverend Doctor Edward Walpole Warren, a forty-eight-year-old native and then-resident of England, to lead the church as its rector. Almost immediately, Dr. Warren found himself a figure of public controversy when the United States district attorney in New York charged the church with violating the Alien Contract Labor Act, which made it unlawful for any person, company, partnership, or corporation to "assist or encourage the importation or migration of any alien or aliens ... into the United States ... under contract or agreement ... made previous to the importation or migration of such alien or aliens ... to perform labor or service of any kind in the United States...."[1] The Circuit Court for the Southern District of New York imposed the required $1,000 fine on the church.

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* Professor, University of Minnesota Law School. A version of this chapter appeared as *Unlocking the Mysteries of* Holy Trinity: *Spirit, Letter, And History in Statutory Interpretation*, 100 Colum. L. Rev. 901 (2000). For additional research assistance, the author thanks Elizabeth R. Smith and Nick Rose.

1. Alien Contract Labor Act of 1885, ch. 164, § 1, 23 Stat. 332 (amended 1887, 1888).

Rev. Edward Walpole Warren

In February 1892, in *Holy Trinity Church v. United States,* the United States Supreme Court reversed the judgment of the circuit court, concluding that the Alien Contract Labor Act did not apply to the contract between the church and its minister.[2] In an often-cited statement, Justice David Brewer, speaking for a unanimous court, noted "the familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers."[3] Referring to the circumstances surrounding the enactment, the "evil which was intended to be remedied," and the House and Senate committee reports, Justice Brewer concluded that Congress intended to exclude cheap, unskilled laborers, not professional men such as Warren, despite the breadth of the language used.[4]

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2. 143 U.S. 457 (1892).

3. *Id.* at 459.

Justice Brewer might have stopped there, but he went on, in ringing language and at great length, to declare another reason that the Alien Contract Labor Act should not be construed as including the contract with Warren. It could not be, he declared, that Congress would have intended to prevent this particular kind of contract, no matter how broad the statutory language. "[N]o purpose of action against religion can be imputed to any legislation, state or national, because," declared Justice Brewer, "this is a religious people." With examples including the charge to Christopher Columbus when he sailed westward, colonial charter documents, the Declaration of Independence, the constitutions of various states, the familiar oath of office ("so help me God"), and the "business" and "customs" of American life, Justice Brewer found "a volume of unofficial declarations [and a] mass of organic utterances that this is a Christian nation." With all this evidence, "shall it be believed that a Congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation? . . . The construction invoked cannot be accepted as correct."[5]

Holy Trinity became, and remains, an often-cited, and often-criticized, source for one of the main tenets of statutory interpretation: that the express words of a statute should be read with the legislature's purpose in mind, and circumstances literally within the statute may be excluded from its purview if such exclusion better fulfills that purpose. Justice Anthony Kennedy has referred to the "unhappy genesis" of that doctrine and its "unwelcome potential," and described the methodology of *Holy Trinity* as "rummag[ing] through unauthoritative materials to consult the spirit of the legislation in order to discover an alternative interpretation of the statute with which the Court is more comfortable." The "problem with spirits," he said, "is that they tend to reflect less the views of the world whence they come than the views of those who seek their advice."[6] Justice Antonin Scalia considers *Holy Trinity* to be "the prototypical case involving the triumph of supposed 'legislative intent' (a handy cover for judicial intent) over the text of the law." *Holy Trinity* is cited to the Supreme Court, he says, "whenever counsel wants us to ignore the narrow, deadening text of the statute, and pay attention to the life-giving legislative intent. It is nothing but an invitation to judicial lawmaking."[7] To Chief Justice William Rehnquist, the case "has always

4. *Id.* at 462–65.

5. *Id.* at 465, 471–72.

6. Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 473 (1989) (Kennedy, J., concurring in the judgment).

7. Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 18, 21 (1997).

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meant we're going to legislate a little. It means that you can't really get the meaning you want out of the statute."[8] Acknowledging just these attitudes, Professor Philip Frickey tells his students that "*Holy Trinity Church* is the case you always cite when the statutory text is hopelessly against you."[9]

Because Justice Brewer's opinion referred to the House and Senate committee reports accompanying the Alien Contract Labor Act, *Holy Trinity* is also frequently credited, or blamed, for changing the rules on the use of legislative history in statutory interpretation. Professor Adrian Vermeule, for example, calls it "the leading case in the legislative history debate," crediting it with "elevat[ing] legislative history to new prominence by overturning the traditional rule that barred judicial recourse to internal legislative history" and promoting judicial use of legislative history to "endorse[ ] countertextual interpretive techniques."[10]

Part of *Holy Trinity*'s notoriety lies in the suspicion that Justice Brewer was wrong about the intent of Congress, and that he used legislative intent as a subterfuge for imposing his own meaning, and his personal view of the United States as a religiously inspired nation, on the statute. The Alien Contract Labor Act has long since faded into memory, so the particular statutory interpretation question—whether the church violated the statute—no longer matters. Indeed, it mattered only briefly because Congress amended the statute to explicitly permit contracts to hire ministers from abroad, acting even before the *Holy Trinity* opinion was issued. But the larger questions—whether purpose and spirit should ever trump express statutory language and whether judges can effectively use legislative history to reach better judgments about legislative intent—remain central to the debates about statutory interpretation and can best be explored with a more thorough understanding of the history of the Alien Contract Labor Act and the jurisprudential grounding for Justice Brewer's opinion. To provide that context, this chapter reviews the history of the *Holy Trinity* litigation, including the genesis of the lawsuit, the arguments of the advocates, and the conclusions of the courts. Then the chapter explores the legislative history behind enactment of the Alien Contract Labor Act, so critical to justifying or challenging the outcome. Finally the chapter reviews the authority for Justice Brewer's use of legislative history to overcome literal text. What emerges is the picture of a judgment that is grounded

8. Transcript of Oral Argument at 28, United States v. Gonzales, 520 U.S. 1 (1997) (No. 95–1605), *available at* 1996 WL 723377.

9. Philip P. Frickey, *From the Big Sleep to the Big Heat: The Revival of Theory in Statutory Interpretation*, 77 Minn. L. Rev. 241, 247 (1992).

10. Adrian Vermeule, *Judging Under Uncertainty: An Institutional Theory of Legal Interpretation* 88 (2006).

in accepted methodology and correctly reads the likely intent behind a badly drafted provision. That picture cannot settle the question whether a court *should* trump statutory text with even clear legislative intent, but it provides a better frame for answering it, and rehabilitates *Holy Trinity* itself as a model of appropriate statutory analysis.

HISTORY OF THE CASE

Holy Trinity Church was established in New York City in 1864.[11] In 1887, it occupied a large stone-and-brick structure on the corner of Madison Avenue and 42nd Street, built to accommodate the growing needs of the parish. That year, to fill the recently vacated position of rector, the trustees of Holy Trinity Church selected Warren, who had visited the church as part of a group of visiting English missionaries who had preached in local Episcopal churches during Advent season in 1885.[12] Warren had "made a profound impression upon his congregations" during that visit and was reported to be "of fine presence and pleasing manners, an earnest and eloquent orator and of remarkable executive ability."[13]

Just two days after Warren arrived in New York, *The New York Times* reported an impending challenge to his hiring, instigated by John Stewart Kennedy, a prominent banker, financier, and railroad director who was president of the St. Andrew's Society, a mutual benefit and charitable organization established in 1756 to support natives of Scotland emigrating to the United States.[14] Kennedy set the legal wheels in motion in a letter he wrote on September 22, 1887, to Daniel Magone, collector of United States Customs in New York. He encouraged the prosecution because of his own frustration over the application of the Alien Contract Labor Act to his fellow Scotsmen:

> In calling your attention to this matter I desire distinctly to say that I have nothing whatever against Mr. Warren, and feel that the

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11. *See* James Elliott Lindsley, *A History of Saint James' Church in the City of New York, 1810–1960* (1960). The history of Holy Trinity Church retold here is drawn from Lindsley's book, unless otherwise indicated.

12. Warren was descended from the Earl de Varenne, who fought at the Battle of Hastings alongside William the Conqueror. His grandfather settled in America after a career in the British Navy but later was a Methodist minister and then an Anglican rector. Warren's father was a novelist and member of Parliament, the author of many legal works (including an edition of *Blackstone's Commentaries*), and "Master of Lunacy," responsible for ensuring implementation of the laws related to mental incompetency. John De Witt Warner & Milo T. Bogard, *The Redemption of New York* 564 (1902).

13. *The Call Accepted*, N.Y. Times, June 9, 1887, at 8.

14. *See Holy Trinity To Be Sued*, N.Y. Daily Trib., Oct. 14, 1887, at 8; *see also* George Austin Morrison, Jr., *History of St. Andrew's Society of the State of New York, 1756–1906*, 123–30 (1906) (biographical sketch of Kennedy); *Mr. John S. Kennedy, Interesting Sketch of the Life of an Honored Citizen of New York*, N.Y. Times, Feb. 20, 1893, at 3.

enforcement of the law against him will be a great hardship not only to him, but to the people who called him. Nevertheless, as the law stands, I do not see how any exception can be made in his favor, and as President of the St. Andrew's Society in this city I feel greatly aggrieved at the manner in which this law has been enforced against countrymen of mine who, if they had been allowed to land would have made most valuable citizens, and my only object in serving this notification upon you is in order to make this a test case, and by enforcing a most obnoxious and unreasonable law I hope thereby it will lead to its total abrogation.[15]

The New York Times agreed with Kennedy's stated assessment that the law was unreasonable in all its aspects, not only as enforced against Holy Trinity Church. With tongue planted firmly in cheek, and reflecting the prejudices enacted into the earlier Chinese Exclusion Act,[16] an editorial published the same day as Kennedy's letter called Warren a " 'coolie' clergyman" and said he would "in a week or two begin his unholy work of undermining our institutions by performing the 'contract labor' for the performance of which he was imported." If only Kennedy had written before Warren had landed, the *Times* said, the collector of the port might simply have notified the ship master that "he had been conveying a pernicious and unlawful immigrant, a kind of human dynamite, and to warn that astonished skipper to take back the dangerous exile whence he came."[17] The law was, indeed, being violated, the *Times* concluded: "[W]e must applaud the purpose of Mr. Kennedy to enforce the law in a case where its enforcement will be a riotous travesty upon sense and justice. The law is no respecter of parsons, and what is sauce for the agricultural and manufacturing goose must be sauce also for the theological gander."

But perhaps, the *Times* archly suggested, an "astute lawyer" might claim that the new rector was a workman in a new industry for which skilled labor was not otherwise available, one of the recognized exceptions to the ban on importation. "[I]f it can be shown that there is anything peculiar in Mr. Warren's theology . . . he might come in as the practitioner of a new industry. Congress has no objection to heresiarchs any more than to Anarchists or dynamiters, so long as they do not compete with talent native or already established." Adopting a slightly more sober tone, the editorialist pointed out the absurdity of using the

15. *Importing a Rector*, N.Y. Times, Sept. 25, 1887, at 2. His attitude may also have been shaped by the fact that he first emigrated to the United States under contract with a London trade firm to be its resident representative in America. *See* Morrison, *supra* note 14, at 123.

16. Ch. 126, 22 Stat. 58 (1882).

17. In fact, it appears that Kennedy *did* write before Warren's arrival and requested he be barred from landing. *See The Imported Minister*, N.Y. Times, Oct. 14, 1887, at 1.

law "against a man who is in all senses a welcome and valuable citizen" while permitting the emigration of "hundreds of Neapolitan paupers and criminals . . . when they bring only idleness and crime. If such a contract cannot induce Congress to revise the outrageous statute invoked by Mr. Kennedy the case for its revision is hopeless."[18]

Church services were well attended at Holy Trinity Church the day the case was reported in the newspaper, and the *Times* noted it was a "new experience" and a "novelty" for the parishioners to be charged with trying to break the nation's laws. Warren's first sermon on October 2, 1887, made "a very favorable impression upon his hearers. He spoke, without manuscript, fluently and earnestly, his voice easily filling the great room."[19] Appropriately, Warren took for his text Acts 10:29: "Therefore came I unto you without gainsaying, as soon as I was sent for; I ask, therefore, for what intent ye have sent for me?"[20]

Meanwhile, Kennedy continued to press his challenge to Warren and the Alien Contract Labor Act. Collector Magone indicated he did not think he had authority to act in the case, so Kennedy took his complaint to Secretary of the Treasury Charles Fairchild. "I see no reason . . . why a law should be enforced in the case of a poor gardener or mechanic and should not be enforced in the case of the chosen head of a rich city congregation," Kennedy wrote to Fairchild.[21] In response, Assistant Secretary of the Treasury Maynard told Kennedy that only the United States attorney could enforce the law once the alien had landed. Undeterred, Kennedy turned his attention to U.S. Attorney Stephen A. Walker. Despite his continuing crusade, Kennedy apparently bore no ill will toward either Dr. Warren or the church, telling *The New York Times* that he would pay $1,000 to the church to compensate for any fine imposed, while urging the church to litigate the case fully.

Only a week after Kennedy's letter to him, Walker replied that he would, indeed, prosecute the suit. In a letter remarkable because its thorough review of the principal arguments was compiled so quickly, and sent to a private citizen, Walker wrote to Kennedy that "[n]otwithstanding first impressions to the contrary, I have reached the conclusion that the case presented is within the statute and that it is my duty to bring suit." He noted the breadth of the statutory language ("labor or service of 'any kind' ") and the existence of exceptions (for "among others, 'professional actors, artists, lecturers, or singers,' " none of them "regarded as belonging to the manual labor class"), which would be unnecessary if the general provisions were meant to "relate to mechanical or

18. *A "Coolie" Clergyman*, N.Y. Times, Sept. 25, 1887, at 4.

19. *Pleased With Their Rector,* N.Y. Times, Oct. 3, 1887, at 2.

20. *Id.*

21. *Holy Trinity To Be Sued*, *supra* note 14, at 8.

industrial labor alone." But despite concluding that "[t]he case you present is therefore clearly within the bald and remorseless letter of the statute," (making one wonder what "first impressions" led him initially to a "contrary" conclusion), Walker questioned "whether the broader basis of interpretation, popularly known as 'the spirit of the act' or 'presumed legislative intent,' excludes its application to the case which you present,"[22] raising the possibility that purpose could trump text before any court so suggested.

Walker, it appears, also shared Kennedy's appraisal that the effort to exclude alien contract laborers was bad public policy, indicting it as unwise trade protectionism. "The statute, he states, like every other statute in the tariff system, bears the ear marks of carelessness, selfish personal interest, and all manner of invidious discrimination."[23]

Walker followed through quickly, filing the enforcement action on October 21, 1887, in the United States Circuit Court for the Southern District of New York.[24] The church filed a demurrer, claiming the suit should be dismissed because the statute did not include the hiring of Dr. Warren within its scope. The demurrer was argued on April 23, 1888, with Walker appearing for the prosecution. "[N]either counsel concealed his contempt for the act of Congress and for the motives of the men who passed it," noted *The New York Times* in an editorial the next day. The *Times* shared this sentiment: "It is very undesirable that the State of New York should be made ridiculous by the acts of its Legislature. It is still more undesirable that the United States should be made ridiculous by act of Congress. Yet this was done very effectually yesterday by the argument in the case of the Rev. Walpole Warren. . . ."[25]

The church said that the statute would be unconstitutional if applied to clergymen, but its primary defense was that the words of the act should be construed in light of its purposes, arguing that "labor or service of any kind" was to be given its "ordinary legislative significance" and did not include "that kind of mental and spiritual service which a clergyman tenders his congregation." The words should be

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22. *Id.*

23. *The Imported Minister*, *supra* note 17, at 1.

24. *See* Complaint at 3, Church of the Holy Trinity v. United States, 143 U.S. 457 (1892) (No. 13,166). The Circuit Court for the Southern District was the principal trial court at the time; the district court heard primarily maritime, admiralty, and bankruptcy cases. In 1891, the appellate jurisdiction of the circuit courts was transferred to the newly established United States Circuit Courts of Appeal. Twenty years later, the original circuit courts were abolished and their remaining trial jurisdiction transferred to the district courts. Federal Bar Association of New York, New Jersey, and Connecticut, *History of the United States District Court for the Southern District of New York* (May 1, 1962), *available at* http://www1.nysd.uscourts.gov/operations/history.pdf (last visited May 27, 2010).

25. *Class Legislation*, N.Y. Times, Apr. 24, 1888, at 4.

understood in historical context, the church argued, reflecting that the statute was aimed at preventing "a wholesale invasion of pauper manual laborers" threatening mining and railroad workers.[26]

The United States attorney offered a somewhat different description of the political context of the act's passage, suggesting it was the result of pressure from "certain so-called labor organizations" and was passed out of "fear of the voting power of labor organizations as operating on, not to say terrorizing, our legislative assemblies. ... Any measure having the indorsement of a labor organization must be carried through Congress as gingerly as eggs in a basket."[27]

Given his attitude about protectionist legislation, one suspects Walker was speaking facetiously when he argued that clergymen could benefit from the same kind of protection from foreign competition that other workers wanted:

> In no department of service has competition been more active than in clerical work. Our choicest and most desirable metropolitan pulpits are invaded by the foreign product. Eight of the best-paying and best-attended churches in New York are at the present time served by imported ... clergymen. Meanwhile our theological seminaries, which are infant industries just as much as carding machines or iron mills, are turning out annually enough of this form of labor product to supply the home demand, and meet the exigencies of missionary service also. There are more Congregational ministers in the United States not engaged in the work of their profession in proportion to their numbers than there are carpenters or masons out of employment. Of the 4,090 Congregational ministers in the United States in 1887, only 2,832 were engaged in pastoral work.[28]

As before, *The New York Times* echoed Walker's attacks on the statute, concurring that Congress voted for it "to avoid a political boycott from the Knights of Labor" and arguing that a clergyman should not be prevented from coming to the United States to take charge of a parish, but neither should "a gardener or a coachman or a domestic servant" if an employer was willing to make a contract to hire him. Adding its own derision, the *Times* suggested that members of Congress "may see in the contempt of the counsel in the Warren case the light in which their action is regarded by sensible citizens, for whose opinion they apparently care nothing."[29]

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26. *See Parsons Need Protection*, N.Y. Times, Apr. 24, 1888, at 9.

27. *Id.*

28. *Id.*

29. *Class Legislation*, *supra* note 25, at 4.

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