The War(s) on Christmas in the Law Books

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For several years now, some commentators have decreed a “war on Christmas.” Often this war is evidenced by corporations or political leaders using “Happy Holidays” instead of “Merry Christmas,” although its impact can be as serious as the design of Starbucks’ holiday cups. Where these political pundits see this as a dangerous turn toward secularism, others see companies merely acknowledging that other religious holidays are celebrated during the many weeks between Halloween and December 25—which weeks devoted to the seasonal retail sales that make up a sizable portion of annual consumer spending by Americans.

Of course, some of the ire from these critics derives from two aging U.S. Supreme Court cases, Lynch v. Donnelly, 465 U.S. 668 (1984) and County of Allegheny v. American Civil Liberties Union, 492 U.S. 573 (1989), which ruled that Christmas symbols (a creche or a Christmas tree) couldn’t be erected on public property, unless the government’s implied endorsement of a religion was mitigated by the display being grouped with symbols of other religions like a Hanukkah menorah.

The unstated assumption of these humbug-bears is that until the forces of modernity, secularism and political correctness began their assault in the late 1960s, Christmas had been celebrated uniformly with Christmas trees, Santa Claus, and elaborate church services since the founding of America. None of this, they say, was true. All the things—including the worship services—would have been foreign to early Americans.

A Kentucky Christmas, 1823

This was brought home to me a few years ago while I was researching a book on antebellum Kentucky legal history. While looking up legislative divorce cases from the 1820s—when the only way to get divorced in Kentucky was by an act of the state legislature—I saw a reference to divorce to “Emily Nixon and others.” (1823 Ky. Senate Journal, p. 237). Bah humbug, indeed.

The truth is that the 1823 Kentucky Senate Journal reveals where—in stark violation of the spirit of holiday-themed festivities, as were superstitionally kept in other Countries, to the great dishonour of God,” ordered that “whosoever shall be found observing any such day, as Christmas or the like, either by forbearance labour, feasting, or any other way upon any such account at aforesaid, every such person so offending, shall pay for every such Offence Five Shillings, as a fine to the County.”

In the 1660 Colonial Laws of Massachusetts, a law for “preventing disorders arising in several places within this jurisdiction; by reason of some still observing such days as Christmas, or other holidays” was a continuing threat to the slavocracy. So, on behalf of myself and the 1867-68 Kentucky legislature, I hereby order that the “commanding officer of the Militia may order Par- dons, if officers are present, otherwise the soldiers shall be held guilty of mutiny, and the place and persons concerned shall suffer the punishment of offenders, shall pay for every such Offence Five Shillings, as a fine to the County.”

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