

IN THE SUPREME COURT OF TEXAS

No. 20-0127

IN RE DIOCESE OF LUBBOCK, RELATOR

ON PETITION FOR WRIT OF MANDAMUS

JUSTICE BLACKLOCK, concurring.

“[I]n this world of sin and woe,” our judicial system, like democracy in general, “is the worst form of government except all those other forms that have been tried from time to time” Winston Churchill, Speech at the House of Commons (Nov. 11, 1947). We seek justice in every case, but the justice dispensed by courts is never perfect, often unsatisfying, and sometimes, many would say, downright unjust. This will always be so because the judgment courts provide is human judgment. As with everything human, it is limited and imperfect. Courts, like all of government, are necessary in the first place because men are not angels. *See* THE FEDERALIST NO. 51, at 337 (James Madison) (Sherman F. Mittell ed., 1937). Judges are no exception.¹ The faithful among us look forward to a day when God’s unlimited, perfect judgment “will wipe away every tear from

¹ “It is fit and proper that there should be an end to litigation . . . and to accomplish this end courts of last resort have been established. It does not follow that the judgments of the highest courts or judicatories are always right, for everything done by man is at best imperfect, and liable to be erroneous, but it is the best system which has yet been devised for the well-being of society The utter impolicy of the civil courts attempting to interfere in determining matters which have been passed upon in church tribunals, arising out of ecclesiastical concerns, is apparent.” *State ex rel. Watson v. Farris*, 45 Mo. 183, 197–98 (1869).

their eyes.” *Revelation 21:4* (English Standard Version). That day is yet to come, and we are left, for now, with the ugliness of litigation as the least bad way to settle many of our differences.

The intractable imperfection of human judgment is one of many reasons our Constitutions deny government authorities—including courts—any power over churches. Both the Texas Constitution and the United States Constitution compel judges to acknowledge that there are places where our imperfect judicial system does not belong, places where earthly judges have no power.² The human impulse to right every wrong is understandable, but it can become totalitarian, unless it is accompanied by an acknowledgment of our human incapacity to truly right all wrongs, our incapacity as imperfect people to dispense perfect justice. There are certain places in our world—places like the church and the family—whose character as independent sources of authority apart from the state is best preserved by keeping courts and judges out of the picture.³ This may mean that some wrongs are not righted in this life, though it would be a mistake to assume that human judges, if given the chance, would always right them wisely. We preserve the independence of our most precious private institutions from the all-consuming power of the state by drawing clear lines and abiding by them, even if doing so seems—from our limited, imperfect perspective—to leave a wrong unrighted. Our Constitutions draw many such lines, none clearer than their protections for religion.

² See TEX. CONST. art. I, § 6 (“No human authority ought, *in any case whatever*, to control or interfere with the rights of conscience in matters of religion”) (emphasis added); U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”).

³ “The judicial eye of the civil authority of this land of religious liberty, cannot penetrate the veil of the Church, nor can the arm of this Court either rend or touch that veil for the forbidden purpose of vindicating the alleged wrongs of the excinded members.” *Shannon v. Frost*, 42 Ky. 253, 259 (1842).

Like all of us, the Diocese of Lubbock will have to answer to God for the words it chooses.⁴ Because of our Constitutions, however, it does not have to answer to earthly judges. A robust rule of ecclesiastical abstention prevents the judgments of courts from influencing the words or actions of churches, whose mission is to seek conformity with God’s perfect judgment, not with man’s imperfect variety. A church is not truly free to manage its affairs, practice its faith, and publicly proclaim its doctrine if lawyers and judges lie in wait to pass human judgment on whether the church should have chosen its words more carefully. When a church makes public statements on ecclesiastical or spiritual matters, it is not for courts to apply the earthly standards of defamation law to the church’s words. Our Constitutions prohibit courts from imposing imperfect human justice on words spoken in pursuit of God’s perfect justice.

I respectfully concur.

James D. Blacklock
Justice

OPINION DELIVERED: June 11, 2021

⁴ See *Matthew* 12:36 (English Standard Version) (“I tell you, on the day of judgment people will give account for every careless word they speak.”).