

## Naturalization: Moral Standard

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# JURISPRUDENCE

## NATURALIZATION — MORAL STANDARD

Petitioner Schmidt, was a male alien German of 39 when he applied for citizenship. He was a teacher of German at the College of the City of New York. To be admitted under the naturalization act he had to "establish that he was a person of good moral character." He admitted voluntarily by affidavit that he had on occasions committed fornication with unmarried women. Thereupon, the immigration authorities denied his petition for citizenship on the ground that he had failed to establish he was a person of good moral character as prescribed by law. Schmidt appealed to the Second Circuit and the Court reversed the order holding, that, since the common conscience permitted casual, concupiscent, and promiscuous lapses, Schmidt's conduct did not prevent him from qualifying as a person of good moral character under the law.<sup>1</sup>

In admitting aliens to the privileges of citizenship, they must possess the qualifications prescribed by statutes.<sup>2</sup>

Since the early history of our country, because of the value of good moral integrity and character of citizens in society we have demanded that each alien seeking citizenship possess such moral qualifications.<sup>3</sup> The courts have interpreted the statutory requirement of good moral character to refer to acts involving moral turpitude.<sup>4</sup> Consequently, aliens admitted committing assault and battery,<sup>5</sup> adultery,<sup>6</sup> larceny,<sup>7</sup> and even perjury, later pardoned,<sup>8</sup> were held to be guilty of such acts involving moral turpitude and hence the aliens were within the statutory exclusion whether the offense was misdemeanor or a felony.

The courts have considered reformation<sup>9</sup> and mitigating circumstances<sup>10</sup> as defenses to such acts. This gives the rehabilitated offender an opportunity to receive the privileges of citizenship. Thus our courts in some instances have recognized that past digressions will not in all cases exclude the offender. However, the rationale of the present case and what is here subject to comment is that the Circuit Judge uses as moral test "what the common conscience feels to be acceptable" and arrives at the conclusion that Schmidt did not commit an immoral act.<sup>11</sup>

<sup>1</sup> U.S. v. Schmidt, C.C.A.-2 (Oct. 1949).

<sup>2</sup> In re Bodek, 63 Fed. 813 (C.C.E.D. Penn. 1878).

<sup>3</sup> Valenti v. Harmuth, 1 F. Supp. 370 (N.D.N.Y. 1932).

<sup>4</sup> U.S. v. Williams, 200 Fed. 528 (C.C.A. 5th 1912).

<sup>5</sup> Pellegrino v. Kornuth, 23 F. Supp. 688 (W.D.N.Y. 1938).

<sup>6</sup> U.S. v. Schwimmer, 279 U.S. 644 (1929).

<sup>7</sup> Amoto v. Com'r. of Immigration, 18 F. Supp. 480 (S.D.N.Y. 1938).

<sup>8</sup> In re Spenser, 22 Fed. Case 921 No. 13,234 (Oregon 1878).

<sup>9</sup> Ex parte Bigney, 285 Fed. 669 (D.C. Oregon 1923).

<sup>10</sup> Maronci v. Johnson, 12 F.(2d) 465 (1926).

<sup>11</sup> *Supra*, note 1.

This position accepts the proposition that right and wrong are determined by what some consider socially acceptable. There is of course the practical difficulty of ascertaining just what the common conscience is. Here the Court resolves the difficulty by determining it itself. The result is that the court indirectly ascertains a subjective moral standard under this statute.

The historical test applied to determine what was morally reprehensible was the natural law standard embodied in the common law which provided an immutable objective moral standard. The statutory moral requirement was framed in that light and should be interpreted against the natural law standard rather than what the court itself subjectively feels to be correct.

The historical fact that the natural law concept of morality is embodied in our law is shown first by the fact that our law was taken from the English common law which itself was based on this concept of objective morality. The eminent Lord Coke commented on this:

"Law of nature was before any judicial or municipal law and is immutable. The law of nature is that which God at the time of creation of the nature of man infused into his heart for his preservation and direction, and this is the eternal law."<sup>12</sup>

When our country was formed, the framers of our Constitution adopted this spirit of the common law.<sup>13</sup> This is best illustrated by some of their writings. John Adams wrote:

"It has been my amusement for many years past . . . to examine systems of all the legislators, ancient and modern . . . and the result . . . is a settled opinion that liberty, the inalienable, indefeasible right of man, the honor and dignity of human nature, the grandeur and glory of the public and the universal happiness of individual, were never so skillfully and successfully consulted as in that most excellent monument of human art, the common law of England."<sup>14</sup>

George Mason arguing the case of *Robin v. Hardaway* in 1772 also postulated this view:

"Now all acts of legislation apparently contrary to natural rights and justice are in our laws and must be in the nature of things, considered as void."<sup>15</sup>

Alexander Hamilton assuming the same position said.

"Sacred rights of mankind are written as with a sunbeam in the whole volume of human nature, by the hand of the Divine itself and can never be erased or obscured by mortal power."<sup>16</sup>

<sup>12</sup> Calvins Case, 7 Coke Rep. 392, 77 Eng. Rep. 392.

<sup>13</sup> Natural Law Institute, *The Natural Law Philosophy of Founding Fathers*, Notre Dame Press: South Bend, Ind. (1949).

<sup>14</sup> Adams Life and Works (1851) p. 440.

<sup>15</sup> 1 Jefferson Va. Rep. 109.

<sup>16</sup> *Supra*, note 13.

No fuller adoption of the natural law concept based upon God's immutable standard is found than in the Declaration of Independence.

James Wilson who signed both the Declaration of Independence and the Constitution and who was appointed as one of the first justices of the Supreme Court by Washington said in one of his lectures:

“. . . that our Creator has a supreme right to prescribe a law for our conduct, and that we are under the most perfect obligation to obey that law, are truths established on the clearest and most solid principles.”<sup>17</sup>

L. Hand, in here refusing to recognize immutable objective morality departs from a traditional American position. Much danger lies in that society which has no immutable standard whereby it and the individual rights are preserved—a society in which the courts interpret moral right and wrong. Certainly, in admitting aliens, we should not demand less than that declared in our jurisprudence because some deem it socially acceptable.

Fornication is just one of many transgressions long recognized as undesirable and prohibited in every criminal code. When the courts refuse to condemn such conduct as being evil, they are in effect not only laying down a moral standard of their own, but also are condoning a hertofore considered moral wrong.

This decision is even more surprising when you realize that the court completely overlooked the simple statutory prohibitions to fornication found in every state.

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<sup>17</sup> Wilson, Works, Vol. V, p. 95.