



# AMERICAN STATE PAPERS

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The Statue of Liberty Enlightening the World, Symbol of America's Welcome to the Overseas of Youth.

AMERICAN  
STATE PAPERS  
and Related Documents  
ON FREEDOM IN RELIGION

FOURTH REVISED EDITION

First Edition Compiled by  
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Of the Chicago Bar, for Some Years  
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Member of the American Academy  
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Emmett F. Fields  
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To the  
Supporters of the Constitution  
of the United States  
and to the  
Lovers of Justice, Right, and Liberty  
Everywhere  
**AMERICAN STATE PAPERS**  
Is Dedicated by  
the Editors

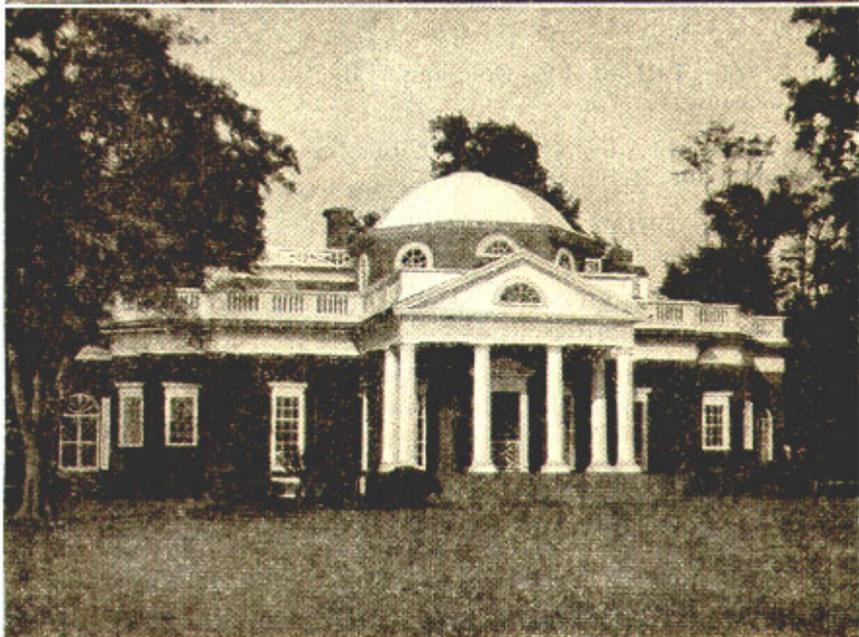


ERINO GALLOWAY

The National Capitol and the National Emblem

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HOVEGIAN AND B. M. PARDAN

Mount Vernon, George Washington's Home (above) and  
Monticello, the Home of Thomas Jefferson (below)

## FOREWORD

*Written for "American State Papers" by the late distinguished jurist, Thomas M. Cooley, author of "Constitutional Limitations"*

THIS is a country of religious liberty, not of religious toleration merely. Every person is entitled to worship God according to the dictates of his own conscience, under the obligations which rest upon all alike, that public order shall be respected, and the requirements of morality and decency observed. Whenever the law, either in terms or by the method employed in its enforcement, goes beyond this, and undertakes to compel observances that are required only by particular creeds, no matter how numerous may be those who consider them of divine obligation, it becomes tyrannical and destructive of a fundamental principle of American liberty. It is also tyrannical when it punishes as a public offense the management of a citizen's private affairs in such a manner as his own conscience approves, taking care in doing so neither to wrong nor to disturb those of his fellow citizens who differ with him in their views. If in their opinion the course he pursues must be displeasing to the Ruler of the world, the question involved belongs not to human tribunals, and it is the purpose of our constitutional system that human laws administered by imperfect human instruments shall not assume to deal with it. This is a commonplace in the United States of America, but it cannot be too often repeated or too distinctly borne in mind.

*Thomas M. Cooley.*

*Ann Arbor, Michigan, June 16, 1893.*



U. S. O.

The Declaration of Independence and the Constitution of the United States on Display in the Library of Congress

## INTRODUCTION

**A**MERICA is the symbol of liberty to all men. It was the first nation to recognize the equality of all before the law and the inalienable rights of the individual. The science of civil government, as conceived by the founders of the American Republic, is based on the fundamental principles of equal justice, equal freedom, and equal opportunity. They aimed to establish "a new order of things" in civil government—a state without a king and a church without a pope. It was to be a "government of the people, by the people, for the people," granting civil and religious freedom to all, and equality of all religions before the bar of justice. The people recognized the supremacy of the individual conscience in religious matters.

The love of liberty which animated the early Americans led them to establish a government in which the people recognized no masters or rulers but such as they themselves chose. They repudiated the religio-political scheme of joint sovereignty which had drenched the soil of the Old World with the blood of millions of martyrs, and in its stead they founded a government based upon the complete separation of church and state, where every citizen should be granted the liberty to worship or not to worship God in harmony with the dictates of his own conscience. They fortified the guaranties of human rights and freedom of conscience in the fundamental law of the land, and made the Federal Constitution the bulwark of liberty.

Civil and religious liberty will live only as long as the Constitution survives. The Constitution was established by the American people as the highest authority in our Government to protect and preserve its citizens in the enjoyment of their natural and God-given rights, and to guard against the invasion of despots and tyrants in our national Government.

The great statesmen who framed the charter of our liberties realized that civil and religious liberty must stand together. The conscience of the minority in religious matters was held as sacred in the fundamental law as the conscience of the majority. The state was denied the right to legislate upon religion or to interfere with the free exercise of the conscience of the individual so long as his religious practice did not violate the laws of civility or encroach upon the rights of others.

It was predicted that "the democratic attempts to obtain universal suffrage, a general elective franchise, annual parliaments, entire religious freedom, and the Miltonian right of schism, would be of short duration." But this nation has demonstrated that religion prospers more where it is left free to pursue its own independent course than when hampered by state aid or interference, and that the state has a more enduring stability where it is absolutely independent of the church than where religion is established by law.

In recent years there have been widespread and almost universal backsliding and downright disloyalty to fundamental principles of constitutional government, and sappers have been at work undermining free governments and individual prerogatives of natural rights. This backward drift is striking at the very roots of human advance and progressive civilization.

The reaction which, in recent years and in certain quarters, has so decidedly manifested itself against our present constitutional form of government, calls for the revision and republication of the *American State Papers*. It is hoped that the American people may be aroused to the present dangers which threaten their precious heritage of liberty.

When the Union was formed and a constitutional government was ordained on the basis of a total separation of church and state, there were certain religious jealousies and prejudices which prevailed in various sections of the country and which could not be overcome without jeopardizing the ratification of the Constitution and the setup of the Federal Government. As a consequence, the various States were permitted to retain upon their statute books religious laws which were diametrically opposed to the fundamental principles of religious liberty and human rights as set forth in the Federal Constitution. These un-American laws and religious tests have remained upon some State statute books to plague American citizens and courts until the present time.

This book sets forth the true American idea of the absolute separation of church and state. The reader will find here most interesting and important State documents: some of the early colonial religious laws still extant in the State statute books, important Federal Supreme Court and State Supreme Court decisions upholding the constitutional guaranties of civil and religious liberty, the origin and history of compulsory Sunday-observance legislation under the penal codes, and the story of consequent religious persecutions.

The struggle for a complete separation of church and state, in its

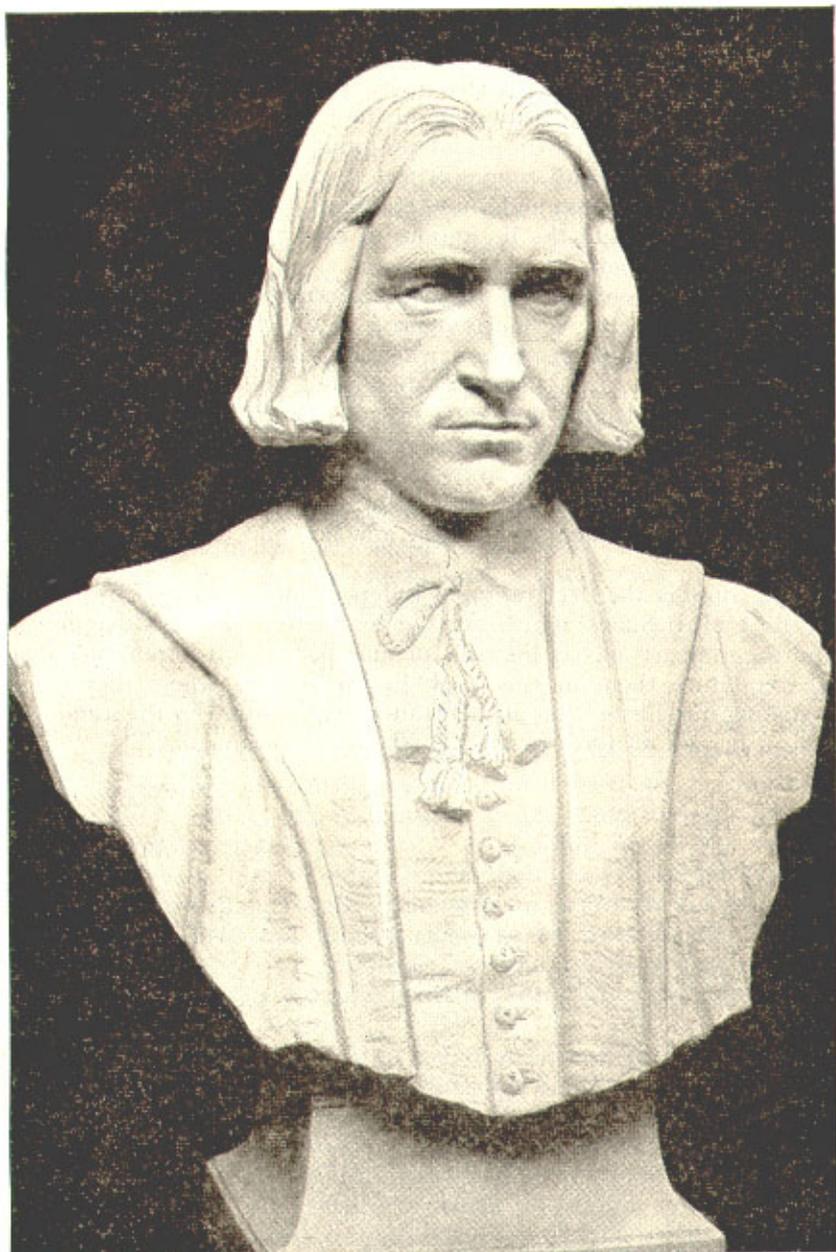
truest sense, in the early and critical period when our Government was in the making, constitutes one of the most interesting portions of this book. The most logical and profound utterances to which the greatest statesmen of all time ever gave expression—veritable masterpieces of English diction and sound reasoning—bearing on the supremacy of conscience and the limitations of civil authority, are found in its documentary portions.

It is a compendium of valuable information which cannot be found anywhere else without extensive research. It is brought into a small compass for ready use when important issues arise which involve the rights of the people as guaranteed under our Constitution.

The Bill of Rights guaranteeing religious liberty in each State constitution and the religious laws retained upon State statute books, constitute a very interesting study on the subject of the conflict of laws.

The operation of Sunday laws before the bar of reason is equally interesting to the student of history and law and to the lay member of society.

We consider the Declaration of Independence and the Constitution of the United States, which are the foundation of our Government and the ramparts of our liberties, of such paramount importance that we reproduce them in this book in the periods where they came marching into history; for all that follows is measured by the standards and principles set forth in these fundamental documents.



HERBERT

Roger Williams, the Apostle of Soul Liberty, Was Perhaps the First Man of Modern Times to Maintain Successfully in Practice That Civil Government Has No Right to Interfere in Religious Matters

*PART I*

Colonial Period

Early Colonial Religious Laws



The Puritan, Though a Courageous Lover of Right and Truth,  
Has Come to Stand for All That Is Intolerant

## Ideas of Compulsion in Religion Brought Over From the Old World

THE practical application of the freedom of the individual to believe and practice religion, as conceived by the Author of Christianity, had its beginnings in America. It was not brought from Europe to these shores on the *Mayflower* or any other ship. Rather, the Old World order which was brought over by the colonists, had in it the principle of religion established in the state and for the most part recognized only religious toleration. The colonists had the same rights and privileges as when they lived in England. They also had the same civil and religious responsibilities as were imposed upon the people of England. Therefore, there was the acceptance in the colonies of the Established Church of England, with the king as its supreme head. Toleration, and varying degrees of liberty of conscience, were matters of special provision in certain charters. Separation of church and state was for the most part not achieved until the colonial charters were superseded by state constitutions during the struggle for independence. It was longest delayed in certain States in New England, in which the Congregational Church was not disestablished until the third and fourth decades of the nineteenth century. We shall better understand the miracle of the birth and growth of freedom in America by first scrutinizing the background from which it emerged. Hence the object of Part I of this book is to place before the reader the provisions concerning religion contained in the earlier colonial charters, and the religious legislation enacted under these charter provisions.

Some of these laws were so drastic that they have come to be known as "blue laws."<sup>1</sup>\* It is significant that the very first religious laws imposed upon an American colony required church going on a specific day of the week under penalty of death for persistent violation.

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\* The reference figures in this book direct the attention of the reader to the editorial discussion which appears at the end of each part. The discussion of Part I begins on page 77.

## VIRGINIA\*

## FUNDAMENTAL LAWS

## Conversion of the Indians

We, greatly commending, and graciously accepting of, their desires for the furtherance of so noble a work, which may, by the providence of Almighty God, hereafter tend to the glory of His Divine Majesty, in propagating of Christian religion to such people, as yet live in darkness and miserable ignorance of the true knowledge and worship of God, and may in time bring the infidels and savages, living in those parts, to human civility, and to a settled and quiet government: do, by these our letters patents, graciously accept of, and agree to, their humble and well-intended desires.—The First Charter of Virginia, 1606, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 7, p. 3784.

## Religious Test for Admittance

And lastly, because the principal effect which we can desire or expect of this action, is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion, in which respect we should be loath that any person should be permitted to pass that we suspected to affect the superstitions of the church of Rome, *we do hereby declare*, that it is our will and pleasure that none be permitted to pass in any voyage from time to time to be made into the said country, but such as first shall have taken the Oath of Supremacy.†—The Second Charter of Virginia, 1609, *ibid*, p. 3802.

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\* In these ancient colonial laws the spelling, abbreviations, and capitalization are so different from modern usage as at times to interfere with a ready understanding of the meaning. The editors have therefore modernized spelling and capitalization, and spelled out abbreviated words. The wording has not been changed.

† A similar provision occurs in the Third Charter of Virginia, 1611-12. The Oath of Supremacy was in recognition that the King of England was the head of the Church of England. A faithful Catholic could not conscientiously take this oath.

## RELIGIOUS ENACTMENTS

## Death Penalty for Blasphemy, 1610

Section 2. That no man speak impiously or maliciously, against the holy and blessed Trinity, or any of the three persons, that is to say, against God the Father, God the Son and God the Holy Ghost, or against the known articles of the Christian faith, upon *pain of death*.

Section 3. That no man blaspheme God's holy name upon pain of death, or use unlawful oaths, taking the name of God in vain, curse, or ban, upon pain of severe punishment for the first offense so committed, and for the second, to have a bodkin thrust through his tongue, and if he continue the blasphemy of God's holy name, for the third time so offending, he shall be brought to a martial court, and there receive censure of death for his offense.<sup>2</sup>—*For the Colony in Virginea Britannia. Lavves, Morall and Martiall, &c.* [first established by Sir Thomas Gates, 1610; exemplified and enlarged by Sir Thomas Dale, 1611], edited by William Strachey, London, 1612. In PETER FORCE, *Tracts Relating to the Colonies in North America* (Washington, 1844), vol. 3, no. 2, p. 10.

## Sunday Law of 1610

Section 6. Every man and woman duly twice a day upon the first tolling of the bell shall upon the working days repair unto the church, to hear divine service upon pain of losing his or her day's allowance for the first omission, for the second to be whipped, and for the third to be condemned to the galleys for six months. Likewise no man or woman shall dare to violate or break the Sabbath by any gaming, public, or private, abroad, or at home, but duly sanctify and observe the same, both himself and his family, by preparing themselves at home with private prayer, that they may be the better fitted for the public, according to the commandments of God, and the orders of our church, as also every man and woman shall repair in the morning to the divine service, and sermons preached upon the Sabbath day, and in the afternoon to

divine service, and catechising, upon pain for the first fault to lose their provision, and allowance for the whole week following,\* for the second to lose the said allowance, and also to be whipped, and for the third *to suffer death.*—*Ibid.*, p. 11.

#### Law Requiring Church Attendance, 1623/4†

Whosoever shall absent himself from divine service any Sunday without an allowable excuse shall forfeit a pound of tobacco, and he that absenteth himself a month shall forfeit 50 lbs. of tobacco.—WILLIAM WALLER HENING, *Statutes at Large; Being a Collection of All the Laws of Virginia* (New York, 1823), vol. 1, p. 123.

#### Sunday Travel and Church Attendance, 1661/2

That the Lord's day be kept holy, and that no journeys be made on that day except in case of emergent necessity, and that no other thing, be used or done, that may tend to the profanation of that day, but that all and every person and persons inhabiting in this country having no lawful excuse to be absent shall upon every Sunday and the four holy days hereafter mentioned, diligently resort to their parish church or chapel accustomed then and there to abide orderly and soberly during the time of common prayers preaching or other service of God, upon penalty of being fined fifty pounds of tobacco by the county court upon presentment made by the churchwardens who are to collect the same with the parish levies, *Provided always*, That this act include not Quakers or other recusants who out of nonconformity to the church totally absent themselves but that they shall be liable to such fines and punishments as by the statute of 23d [year] of Elizabeth are imposed on them, being for every month's absence twenty pounds

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\* This was at the time that the Virginia plantation held all things in common; and if Sunday was not observed according to the requirements of the government, all supplies were cut off.

† 1623 "old style," but 1624 by the Gregorian calendar. Since England began the year on March 25 under the old calendar, and did not accept the revised calendar until 1752, we find many colonial dates between January and March still bearing the number of the preceding year or double dated in this manner.

sterling and if they forbear a twelvemonth then to give good security for their good behavior besides their payment for their monthly absences, according to the tenor of the said statute, and that all Quakers for assembling in unlawful assemblies and conventicles be fined and pay each of them there taken, two hundred pounds of tobacco for each time they shall be for such unlawful meeting taken or presented by the churchwardens to the county court and in case of the insolvency of any person among them, the more able then taken to pay for them, one half to the informer and the other half to the public.—*Ibid.*, vol. 2, p. 48.

#### Law of 1662, Requiring Baptism of Children

*Whereas many schismatical persons, out of their averseness to the orthodox established religion, or out of the new-fangled conceits of their own heretical inventions, refuse to have their children baptized, Be it therefore enacted by the authority aforesaid, That all persons that, in contempt of the divine sacrament of baptism, shall refuse when they may carry their child [children] to a lawful minister in that county to have them baptized shall be amerced two thousand pounds of tobacco, half to the informer, half to the public.—Ibid.*, pp. 165, 166 (see also CHARLES F. JAMES, *Documentary History of the Struggle for Religious Liberty in Virginia*, p. 19).

#### Law of 1663 Against Quakers<sup>a</sup>

If any person or persons commonly called Quakers, or any other Separatists whatsoever in this colony shall at any time after the publishing of this act in the several respective counties depart from the place of their several habitations and assemble themselves to the number of five or more of the age of sixteen years or upwards at any one time in any place under pretense of joining in a religious worship not authorized by the laws of England nor this country that then in all and every such cases the party so offending being thereof lawfully convict by the verdict of twelve men, or by his own confession, or by notorious evidence of the fact, shall for

the first offense forfeit and pay two hundred pounds of tobacco, and if any such person or persons being once convicted shall again offend therein, and shall in form aforesaid be thereof lawfully convicted shall for the second offense forfeit and pay five hundred pounds of tobacco to be levied by distress and sale of the goods of the party so convicted, by warrant from any one of the justices before whom they shall be so convicted rendering the overplus to the owners (if any be,) and for want of such distress or for want of ability of any person among them to pay the said fine or fines then it shall be lawful to levy and recover the same from the rest of the Quakers or other Separatists or any one of them then present, that are of greater ability to pay the said fine or fines; and if any person after he or she in form aforesaid hath been twice convicted of any of the said offenses shall offend the third time and be thereof lawfully convicted, that then every person so offending and convict as aforesaid shall for his or her third offense be banished this colony of Virginia to the places the governor and council shall appoint.

*And be it further enacted by the power and authority aforesaid,* that each master of ship or vessel that shall import and bring in any Quaker into this colony to reside after the first day of July next, unless by virtue of an act of parliament made in England the nineteenth day of May in the fourteenth year of the reign of our sovereign Lord the King, shall be fined five thousand pounds of tobacco to be levied by distress and sale of the master's goods by warrant from any justice of peace in the county where such person or persons shall arrive, the same being proved by sufficient evidence, and further shall be enjoined to carry him or them out of the country again when his ship returns and to take especial care to secure him, her or them so brought in as aforesaid from spreading any seditious tenets whilst he she or they remain in the country.

*And be it further enacted* that any person or persons inhabitants of this country that shall entertain any Quakers in or near their houses, that is, to teach or preach shall likewise be fined five thousand pounds of tobacco for each time they do entertain them,

to be levied by distress and sale of the person's goods by order of the justices of peace in the next county court held for that county where the fact was committed before whom the same shall be by evidence proved. . . .

*Provided always, and be it further enacted,* That if any of the said persons Quakers or other Separatists shall after such conviction as aforesaid give security that he, she or they shall for the time to come forbear to meet in any such unlawful assemblies as aforesaid, that then and from thenceforth such person or persons shall be discharged from all the penalties aforesaid any thing in this act to the contrary notwithstanding.—*Ibid.*, pp. 180-183.

#### Lashes for Sunday Labor, Travel, and Nonattendance at Church, 1705

If any person of full age shall absent from divine service at his or her parish church or chapel, the space of one month (except such Protestant dissenters as are exempted by the act of Parliament made in the first year of King William and Queen Mary) and shall not, when there, in a decent and orderly manner continue till the service be ended. And if any person shall on the Lord's day, be present at any disorderly meeting, gaming, or tippling, or travel upon the road, except to and from church (cases of necessity and charity excepted) or be found working in their corn, tobacco, or other labor of their ordinary calling, other than is necessary for the sustenance of man or beast. Every such person being lawfully convicted of any such default or offense, by confession or otherwise, before one or more justice or justices of the county, within two months after such default or offense made or committed, shall forfeit and pay five shillings, or fifty pounds of tobacco for every such default or offense; and on refusal to make present payment, or give sufficient caution for payment thereof at the laying the next parish levy, shall, by order of such justice or justices, receive, on the bare back, ten lashes, well laid on.—JOHN MERCER, *An Exact Abridgement of All the Public Acts of Assembly of Virginia* (1758), p. 320; see also HENING, *Statutes at Large*, vol. 3, pp. 360, 361.

PLYMOUTH  
FUNDAMENTAL LAWS

Conversion of the Indians

We have thought it fit according to our kingly duty, so much as in us lieth, to second and follow God's sacred will, rendering reverend thanks to His Divine Majesty for His gracious favor in laying open and revealing the same unto us, before any other Christian prince or state, by which means without offense, and as we trust to His glory, we may with boldness go on to the settling of so hopeful a work, which tendeth to the reducing and conversion of such savages as remain wandering in desolation and distress, to civil society and Christian religion, to the enlargement of our own dominions, and the advancement of the fortunes of such of our good subjects as shall willingly interest themselves in the said employment, to whom we cannot but give singular commendations for their so worthy intention and enterprise.—The Charter of New England, 1620, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 3, p. 1829.

Religious Test for Admittance

And lastly, because the principal effect which we can desire or expect of this action, is the conversion and reduction of the people in those parts unto the true worship of God and Christian religion, in which respect, we would be loath that any person should be permitted to pass that we suspected to affect the superstition of the Church of Rome, we do hereby declare that it is our will and pleasure that none be permitted to pass, in any voyage from time to time to be made into the said country, but such as shall first have taken the oath of supremacy; for which purpose, we do by these presents give full power and authority to the president of the said council, to tender and exhibit the said oath to all such persons as shall at any time be sent and employed in the said voyage.—*Ibid.*, p. 1839.

### Civil Concern With Religion

In the name of God, Amen. We, whose names are underwritten, . . . having undertaken for the glory of God, and advancement of the Christian faith, and the honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia; do by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic.—Agreement between the settlers at New Plymouth, 1620, *ibid.*, p. 1841.

### RELIGIOUS ENACTMENTS

[The religious laws of the originally separate colonies of Plymouth and Massachusetts Bay have been segregated because of the differences between them.]<sup>7</sup>

#### Profanation of the Lord's Day, 1650<sup>4</sup>

*Further be it enacted*, That whosoever shall profane the Lord's day by doing any servile work or any such like abuses, shall forfeit for every such default ten shillings or be whipped.—*The Compact With the Charter and Laws of the Colony of New Plymouth* (Boston, 1836), p. 92.

#### Church Attendance, 1651

Whatsoever person or persons shall neglect the frequenting the public worship of God that is according to God in the places where they live or do assemble themselves upon any pretense whatsoever in any way contrary to God and the allowance of the government tending to the subversion of religion and churches or palpable profanation of God's holy ordinances being duly convicted; videlicet every one that is a master or dame of a family or any other person at their own disposing to pay ten shillings for every such default.—*Ibid.*, p. 93.

#### Profanation of the Lord's Day, 1669

*It is enacted by the Court*, That the constable or his deputy in each respective town of this government shall diligently look after such as sleep or play about the meetinghouse in times of the public worship of God on the Lord's day and take notice of their names

and return such of them to the Court who do not after warning given to them reform.

As also that unnecessary violent riding on the Lord's day; the persons that so offend; their names to be returned to the next Court after the said offense.

*It is enacted by the Court,* That any person or persons that shall be found smoking of tobacco on the Lord's day; going to or coming from the meetings within two miles of the meeting house shall pay twelve pence for every such default to the Colony's use.—*Ibid.*, pp. 157, 158.

#### **Death Penalties for Idolatry, Infidelity, Witchcraft, 1671**

1. *It is enacted by this court and the authority thereof,* That if any person having had the knowledge of the true God, openly and manifestly, have or worship any other god but the Lord God, he shall be put to death.—Exod. 22:20. Deut. 13:6, 10.

2. If any person within this jurisdiction, professing the true God, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son, or Holy God [Ghost], with direct, express, presumptuous or high-handed blasphemy, either by willful or obstinate denying of the true God, or His creation or government of the world; or shall curse God, Father, Son, or Holy Ghost, such person shall be put to death.—Levit. 24:15, 16. . . .

8. If any Christian (so called) be a witch; that is, hath or consulteth with a familiar spirit, he or they shall be put to death.—*Ibid.*, pp. 243, 244.

#### **Death Penalty for Presumptuous Sunday Desecration, 1671<sup>b</sup>**

*This court taking notice of great abuse, and many misdemeanors, committed by divers persons in these many ways, profaning the Sabbath or Lord's day, to the great dishonor of God, reproach of religion, and grief of the spirits of God's people,*

*Do therefore order,* That whosoever shall profane the Lord's day, by doing unnecessary servile work, by unnecessary traveling, or by sports and recreations, he or they that so transgress, shall forfeit for every such default forty shillings, or be publicly

whipped: but if it clearly appear that the sin was proudly, presumptuously and with a high hand committed, against the known command and authority of the blessed God, such a person therein despising and reproaching the Lord, shall be put to death or grievously punished at the judgment of the Court.—*Ibid.*, p. 247.

#### Orthodoxy Required of Freeman, 1672

None shall be admitted a freeman of this corporation, but such as are one and twenty years of age at the least, and have the testimony of their neighbors, that they are of sober and peaceable conversation, orthodox in the fundamentals of religion and such as have also twenty pounds rateable estate at the least in the government.—*Ibid.*, p. 258.

#### Penalty for Traveling on the Lord's Day, 1682

*To prevent profanation of the Lord's day by foreigners or any other unnecessary traveling through our towns on that day; It is enacted by the Court, That a fit man in each town be chosen unto whom whosoever hath of travel on the Lord's day in case of danger of death or such necessitous occasions shall repair and making out such occasions satisfyingly to him shall receive a ticket from him to pass on about such like occasions which if the traveler attend not unto, it shall be lawful for the constable or any man that meets him to take him up and stop him until he be brought before authority or pay his fine for such transgression as by law in that case is provided; and if it after shall appear that his plea was false then may he be apprehended at another time and made to pay his fine as aforesaid.<sup>6</sup>—*Ibid.*, p. 199.*

## MASSACHUSETTS BAY<sup>7</sup>

### FUNDAMENTAL LAWS

#### Same Rights as in England

And, further our will and pleasure is, and we do hereby for us, our heirs and successors, ordain and declare, and grant to the said governor and company, and their successors, That all and

every the subjects of us, our heirs or successors, which shall go to and inhabit within the said lands and premises hereby mentioned to be granted, and every of their children which shall happen to be born there, or on the seas in going thither, or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within any of the dominions of us, our heirs or successors, to all intents, constructions and purposes whatsoever, as if they and every of them were born within the realm of England.—Charter of Massachusetts Bay, 1629, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 3, pp. 1856, 1857.

#### Religious Test for Admittance

And that the governor and deputy governor of the said company . . . shall and may at all times, and from time to time hereafter, have full power and authority to minister and give the oath and oaths of supremacy and allegiance, or either of them, to all and every person and persons, which shall at any time or times hereafter go or pass to the lands and premises hereby mentioned to be granted to inhabit in the same.\*—*Ibid.*, p. 1857.

#### Conversion of the Indians

To make, ordain, and establish all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions, and instructions, not contrary to the laws of this our realm of England, . . . for the directing, ruling, and disposing of all other matters and things, whereby our said people, inhabitants there, may be so religiously, peaceably, and civilly governed, as their good life and orderly conversation, may win and incite the natives of country, to the knowledge and obedience of the only true God and Saviour

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\* The Charter of 1691 recognized the substitution in England of oaths in place of those of allegiance and supremacy—milder, but still discriminatory against Catholics. These were required only of members of the general court, but the colonial governor was still empowered to administer the oath to any inhabitant. See Thorpe, vol. 3, pp. 1879, 1881.

of mankind, and the Christian faith, which in our royal intention, and the adventurers' free profession, is the principal end of this Plantation.\*—*Ibid.*, p. 1857.

### Toleration and Liberty of Conscience

We do by these presents for us our heirs and successors grant, establish and ordain that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all Christians (except Papists) inhabiting or which shall inhabit or be resident within our said province or territory.—Charter of 1691, *ibid.*, p. 1881.

### Church Membership Required for Commissioners of the New England Confederacy

That for the managing and concluding of all affairs proper, and concerning the whole confederation, two commissioners shall be chosen by and out of each of these four jurisdictions: namely, two for the Massachusetts, two for Plymouth, two for Connecticut, and two for New Haven, being all in church fellowship with us, which shall bring full power from their several general courts respectively to hear, examine, weigh, and determine all affairs of our war, or peace.†—Articles of Confederation of the United Colonies of New England, 1643-1682, *ibid.*, vol. 1, p. 79.

## RELIGIOUS ENACTMENTS

### The First "Sabbath" Regulation, 1629 \*

"To the end the Sabbath may be celebrated in a religious manner, we appoint, that all that inhabit the plantation, both for the general and particular employments, may surcease their labor every Saturday throughout the year at 3 of the clock in the afternoon, and

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\* The idea of the conversion of the Indians is repeated in the 1691 Charter. See Thorpe, vol. 3, p. 1882.

† This article is given under Massachusetts since that colony dominated the confederation.

that they spend the rest of that day in catechising and preparation for the Sabbath, as the ministers shall direct."—*Records of the Governor and Company of the Massachusetts Bay in New England* (Boston, 1853), vol. 1, p. 395.

### **First Prosecution Under Religious Rule, 1630**

Nov. 1630.—It is ordered, that John Baker shall be whipped for shooting at fowl on the Sabbath day.<sup>o</sup>—*Ibid.*, p. 82.

### **Franchise for Church Members Only, 1631**

To the end the body of the commons may be preserved of honest and good men, it was likewise ordered and agreed that for time to come no man shall be admitted to the freedom of this body politic, but such as are members of some of the churches within the limits of the same.<sup>o</sup>—*Ibid.*, p. 87.

### **Court Compels Church Attendance on Sundays, 1635**

March, 1635.—Whereas complaint hath been made to this Court that divers persons within this jurisdiction do usually absent themselves from church meetings upon the Lord's day, power is therefore given to any two Assistants to hear and censure, either by fine or imprisonment (at their discretion), all misdemeanors of that kind committed by any inhabitant within this jurisdiction, provided they exceed not the fine of 5 shillings for one offense.—*Ibid.*, p. 140.

### **Civil Government on Basis of Divine Government, 1636**

May, 1636.—The Governor, Deputy Governor, Tho. Dudley, John Haynes, Rich. Bellingham, Esqrs., Mr. Cotton, Mr. Peters, and Mr. Shephard are intreated to make a draft of laws agreeable to the word of God, which may be the fundamentals of this commonwealth, and to present the same to the next General Court. And it is ordered, that in the mean time the magistrates and their associates shall proceed in the courts to hear and determine all causes according to the laws now established, and where there is no

law, then as near the law of God as they can; and for all business out of court for which there is no certain rule yet set down, those of the standing council, or some two of them, shall take order by their best discretion, that they may be ordered and ended according to the rule of God's word, and to take care for all military affairs till the next General Court.<sup>11</sup>—*Ibid.*, pp. 174, 175.

### Religious Death Penalties, 1641

1. If any man after legal conviction shall have or worship any other god, but the Lord God, he shall be put to death. (Deut. 13.6, 10. Deut. 17.2, 6. Ex. 22.20.)

2. If any man or woman be a witch, (that is hath or consulteth with a familiar spirit,) they shall be put to death. (Ex. 22.18. Lev. 20.27. Deut. 18.10.)

3. If any man shall blaspheme the name of God, the Father, Son or Holy Ghost, with direct, express, presumptuous or high handed blasphemy, or shall curse God in the like manner, he shall be put to death. (Lev. 24. 15, 16.)\*—*The Body of Liberties*, sec. 94, p. 55, in *The Colonial Laws of Massachusetts*, reprinted from the revision of 1672, with the supplements through 1686 (Boston, 1890). (The Scripture references are marginal notes.)

### Compulsory Church Attendance, 1646

*Wherever the ministry of the Word is established, according to the order of the gospel throughout this jurisdiction: every person shall duly resort and attend thereunto respectively on the Lord's days, and upon such public fast days, and days of thanksgiving, as are to be generally observed by appointment of authority. And if any person within this jurisdiction shall without just and necessary cause, withdraw himself from the public ministry of*

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\* Repeated in the 1672 code, with number 3 expanded (as of 1646; see *Records of . . . Massachusetts Bay*, vol. 2, pp. 176, 177) to include any person, "whether Christian or pagan [who] shall wittingly and willingly presume to blaspheme . . . by willful or obstinate denying the true God, or His creation or government of the world, or . . . reproach the holy religion of God, as if it were but a politic device to keep ignorant men in awe, nor shall utter any other kind of blasphemy of the like nature and degree."—*The General Laws and Liberties of the Massachusetts Colony* (1672 revision), p. 14, in *The Colonial Laws of Massachusetts*.

the Word, after due means of conviction used, he shall forfeit for his absence from every such public meeting five shillings. And all such offenses may be heard and determined from time to time, by any one or more magistrates.—*The General Laws and Liberties of the Massachusetts Colony* (1672 revision), p. 45, in *The Colonial Laws of Massachusetts*.

#### **Banishment for Heresy, 1646**

*Although no human power be Lord over the faith and consciences of men, yet because such as bring in damnable heresies, tending to the subversion of the Christian faith, and destruction of the souls of men, ought duly to be restrained from such notorious impieties; it is therefore ordered and declared by the Court; That if any Christian within this jurisdiction, shall go about to subvert and destroy the Christian faith and religion, by broaching and maintaining any damnable heresies: as denying the immortality of the soul, or resurrection of the body, or any sin to be repented of in the regenerate, or any evil done by the outward man to be accounted sin, or denying that Christ gave Himself a ransom for our sins, or shall affirm that we are not justified by His death and righteousness, but by the perfections of our own works, or shall deny the morality of the fourth commandment, or shall openly condemn or oppose the baptizing of infants, or shall purposely depart the congregation at the administration of that ordinance, or shall deny the Ordinance of magistracy, or their lawful authority to make War, or to punish the outward breaches of the first table, or shall endeavor to seduce others to any of the errors or heresies above-mentioned; every such person continuing obstinate therein, after due means of conviction, shall be sentenced to banishment.—Ibid., pp. 58, 59.*

#### **Catholic Priests Banned on Penalty of Death, 1647**

*It is ordered and enacted by authority of this Court, That no Jesuit or spiritual or ecclesiastical person (as they are termed) ordained by the authority of the pope or see of Rome, shall henceforth at any time repair to, or come within this jurisdiction:*

And if any person shall give just cause of suspicion, that he is one of such society or order, he shall be brought before some of the magistrates, and if he cannot free himself of such suspicion, he shall be committed to prison, or bound over to the next Court of Assistants, to be tried and proceeded with, by banishment or otherwise as the Court shall see cause.

And if any person so banished, be taken the second time within this jurisdiction, upon lawful trial and conviction, he shall be put to death. Provided this law shall not extend to any such Jesuit, spiritual or ecclesiastical person, as shall be cast upon our shores by shipwreck or other accident, so as he continue no longer than till he may have opportunity of passage for his departure; nor to any such as shall come in company with any messenger hither upon public occasions, or merchant, or master of any ship belonging to any place, not in enmity with the State of England, or ourselves, so as they depart again with the same messenger, master, or merchant.—*Ibid.*, p. 67.

### Banishment or Death for Denying the Bible, 1651

*It is ordered by this court and the authority thereof,* That what person or persons soever professing the Christian religion, above the age of 16 years, that shall within this jurisdiction, wittingly and willingly, at any time after the publication of this order, deny either by word or writing, any of the Books of the Old Testament [Here are named the books of the Old Testament as found in the King James Version.], or New [Here are named the books of the New Testament.] to be the written and infallible word of God, . . . he shall be adjudged for his offense after legal conviction, to pay such a fine as the court which shall have cognizance of the crime shall judge meet, not exceeding the sum of fifty pounds, or shall be openly and severely whipped by the executioner, whether constable or any other appointed, not exceeding forty strokes, unless he shall publicly recant. . . .

*And it is further ordered and enacted,* That if the said offender after his recantation, sentence or execution, shall the second time

publish, and obstinately, and pertinaciously maintain the said wicked opinion, he shall be banished or put to death as the Court shall judge.\*—*Ibid.*, pp. 59, 60.

#### Banishment or Death for Vagabond Quakers, 1658 †

*This court doth order and enact*, That every person or persons of the cursed sect of the Quakers, who is not an inhabitant of but found within this jurisdiction, shall be apprehended (without warrant) where no magistrate is at hand by any constable, commissioner, or selectman, and conveyed from constable to constable until they come before the next magistrate, who shall commit the said person or persons to close prison, there to remain without bail until the next Court of Assistants where they shall have a legal trial by a special jury, and being convicted to be of the sect of the Quakers, shall be sentenced to banishment upon pain of death.

And that every inhabitant of this jurisdiction, being convicted to be of the aforesaid sect, either by taking up, publishing and defending the horrid opinions of the Quakers; . . . every such person upon examination, and legal conviction before the Court of Assistants in manner as aforesaid, shall be committed to close prison for one month, and then unless they choose voluntarily to depart the jurisdiction, shall give bond for their good abbearance and appearance at the next Court of Assistants, where continuing obstinate and refusing to retract and reform the aforesaid opinions and practices shall be sentenced to banishment upon pain of death.—*Ibid.*, pp. 61, 62.

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\* This penalty modified in 1697 to not more than two of the following punishments: imprisonment, the pillory, whipping, tongue boring, sitting on the gallows with a rope around the neck. (*Acts and Laws of the Province of Massachusetts Bay, 1692-1719*, p. 110.)

† The date 1646 is appended in brackets in the 1672 code, but this same law is recorded as passed October 19, 1658, in *The Records of . . . Massachusetts Bay* (vol. 4, part 1, p. 346), and the 1661 act (which see) refers to the statute of 1658. Evidently the date of the heresy law of 1646 (which see) was erroneously assigned to this act by the later revisers. It is agreed by authorities that George Fox, the Quaker founder, began his preaching in England about 1647, while his followers first arrived in America in 1656. (See *Encyclopaedia Britannica*, 1945 edition, vol. 9, pp. 849, 850, 852; *The New Schaff-Herzog Encyclopedia of Religious Knowledge*, vol. 4, pp. 393, 394.)

**Church Membership Mandatory for Franchise, 1660**

*This Court having considered of the proposals presented to this Court by several of the inhabitants of the county of Middlesex; Do declare and order, That no man whosoever, shall be admitted to the freedom of this body politic, but such as are members of some church of Christ and in full communion, which they declare to be the true intent of the ancient law, page the eighth of the second book, Anno. 1631.\*—Ibid., (1672), p. 56.*

**Death for Quakers Only as Last Resort, 1661<sup>22</sup>**

*This Court being desirous to try all means, with as much lenity as may consist with our safety, to prevent the intrusions of the Quakers, who besides their absurd and blasphemous doctrines, do like rogues and vagabonds come in upon us, and have not been restrained by the laws already provided;*

Have Ordered, That every such vagabond Quaker, found within any part of this jurisdiction, shall be apprehended by any person or persons, or by the constable of the town wherein he or she is taken, and by the constable or in his absence, by any other person or persons conveyed before the next magistrate of that shire wherein they are taken, or commissioner invested with magisterial power: and being by the said magistrate or magistrates, commissioner or commissioners adjudged to be a wandering Quaker, viz. one that hath not any dwelling, or orderly allowance as an inhabitant of this jurisdiction, and not giving civil respect by the usual gestures thereof, or by any other way or means manifesting himself to be a Quaker, shall by warrant under the hand of the said magistrate or magistrates, commissioner or commissioners, directed to the constable of the town wherein he or she is taken, or in absence of the constable, to any other meet person, be stripped naked from the middle upwards, and tied to a cart's tail, and whipped through the town, and from thence immediately conveyed to the constable of the next town towards the borders of our

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\* Repealed 1664. See note 10, p. 81.

jurisdiction, as their warrant shall direct, and so from constable to constable till they be conveyed through any the outwardmost towns of our jurisdiction.

And if such vagabond Quaker shall return again, then to be in like manner apprehended and conveyed as often as they shall be found within the limits of our jurisdiction; provided every such wandering Quaker, having been thrice convicted and sent away as abovesaid, and returning again into this jurisdiction, shall be apprehended, and committed by any magistrate or commissioner as abovesaid unto the house of correction within that county wherein he or she is found, until the next Court of that county; where if the Court judge not meet to release them, they shall be branded with the letter R on their left shoulder, and be severely whipped and sent away in manner as before.

And if after this, he or she shall return again; then to be proceeded against as incorrigible rogues and enemies to the common peace, and shall immediately be apprehended, and committed to the common jail of the country, and at the next Court of Assistants shall be brought to their trial, and proceeded against according to the law made anno 1658, page 36, for their punishment on pain of death. And for such Quakers as shall arise from amongst ourselves, they shall be proceeded against as the former law of anno 1658, page 36, doth provide, until they have been convicted by a Court of Assistants: and being so convicted, he or she shall then be banished this jurisdiction; and if after that they shall be found in any part of this jurisdiction, then he or she so sentenced to banishment, shall be proceeded against as those that are strangers and vagabond Quakers, in manner as is above expressed.

And it is further ordered, That whatsoever charge shall arise about apprehending, whipping, conveying, or otherwise about the Quakers, to be laid out by the constables of such towns where it is expended, and to be repaid by the Treasurer out of the next county levy.

And further, that the constables of the several towns are hereby empowered from time to time, as necessity shall require, to impress

cart, oxen, and other assistance for the execution of this order.—*Ibid.*, pp. 62, 63.

### Traveling to Unlawful Assemblies a Profanation of Sunday, 1668

*This Court doth order*, That whatsoever person in this jurisdiction shall travel upon the Lord's day, either on horseback or on foot, or by boats, from, or out of their own town, to any unlawful assembly or meeting, not allowed by law; are hereby declared to be profaners of the Sabbath, and shall be provided against as the persons that profane the Lord's day, by doing servile work.—*Ibid.*, p. 134.

### An Act for the Better Observation and Keeping of the Lord's Day, 1692

That all and every person and persons whatsoever, shall on that day carefully apply themselves to duties of religion and piety, publicly and privately; and that no tradesman, artificer, laborer, or other person whatsoever, shall upon the land or water, do or exercise any labor, business or work of their ordinary callings; nor use any game, sport, play, or recreation on the Lord's day, or any part thereof (works of necessity and charity only excepted); upon pain that every person so offending shall forfeit five shillings. . . . And in case any such offender be unable or refuse to satisfy such fine, to cause him to be put in the cage, or set in the stocks, not exceeding three hours.—*Acts and Laws of His Majesty's Province\* of the Massachusetts-Bay in New-England* (Boston, 1759), pp. 13, 14.

### Law of 1716 Requiring Church Attendance

If any person, being able of body and not otherwise necessarily prevented, shall, for the space of one month together absent themselves from the public worship on the said day the grand jurors are hereby directed and required to present such persons to the general sessions of the peace, who unless they can make

\* In 1692 Plymouth was incorporated with Massachusetts under a royal charter.

proof they have not so absented themselves, but have attended divine worship in some public assembly, shall forfeit and pay the sum of twenty shillings. And in case any of the offenders mentioned in this act shall be unable or refuse to satisfy this fine; they shall be adjudged to be set in the cage or stocks, not exceeding three hours, according to the discretion of the justices.—*Ibid.*, p. 194.

## CONNECTICUT AND NEW HAVEN<sup>13</sup>

### FUNDAMENTAL LAWS

#### Religious Test for Officeholding

That no person be chosen governor above once in two years, and that the governor be always a member of some approved congregation, and formerly of the magistracy within this jurisdiction.—Fundamental Orders of Connecticut, 1638-39, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 1, p. 520.

#### Religious Test for Free Burgesses

It was agreed and concluded as a fundamental order not to be disputed or questioned hereafter, that none shall be admitted to be free burgesses in any of the plantations within this jurisdiction for the future, but such planters as are members of some or other of the approved churches of New England, nor shall any but such free burgesses have any vote in any election, . . . nor shall any power or trust in the ordering of any civil affairs, be at any time put into the hands of any other than such church members.—Government of New Haven Colony, 1643, *ibid.*, p. 526.

### RELIGIOUS ENACTMENTS

#### An Act for Preventing and Punishing the Profanation of the Sabbath, or the Lord's Day, 1721<sup>14</sup>

*Whereas notwithstanding the liberty by law granted to all persons to worship God in such places as they shall for that end provide, and in such manner as they shall judge to be most agreeable*

*to the Word of God; and notwithstanding the laws already provided for the sanctification of the Lord's day or the Christian sabbath, many disorderly persons, in abuse of that liberty and regardless of those laws, neglect the public worship of God on the said day, and profane the same by their rude and unlawful behavior.*

*Be it therefore enacted by the Governor, the Council and Representatives, in General Court assembled, and by the authority of the same, That whatsoever person shall not duly attend the public worship of God on the Lord's day in some congregation by law allowed, unless hindered by sickness, or otherways necessarily detained; and be thereof convicted before an assistant or justice of the peace, either by confession or sufficient witnesses, or being presented to such authority for such neglect, shall not be able to prove to the satisfaction of the said authority, that he or she has attended the said worship, shall incur the penalty of five shillings money for every such offense.—Acts and Laws, of His Majesty's Colony of Connecticut in New-England (1715-1730), p. 261.*

**An Act for the Due Observation, and Keeping the Sabbath,  
or Lord's Day, 1750<sup>15</sup>**

*Be it enacted by the Governor, Council, and Representatives, in General Court Assembled, and by the Authority of the same, That all, and every person, and persons whatsoever, shall, and they are hereby required on the Lord's day carefully to apply themselves to duties of religion, and piety, publicly, and privately: and that whatsoever person shall not duly attend the public worship of God on the Lord's day, in some congregation by law allowed, unless hindered by sickness, or otherways necessarily detained, or hindered, shall incur the penalty of three shillings for every such offense: and being presented to authority for such neglect, shall be deemed guilty thereof, if such person shall not be able to prove to the satisfaction of said authority; that he, or she has attended the said worship. . . .*

That no tradesman, artificer, laborer, or other person whatsoever, shall upon the land, or water, do, or exercise any labor, business, or work of their ordinary callings, or of any other kind whatsoever, (works of necessity, and mercy only excepted) nor use any game, sport, play, or recreation on the Lord's day, or day of public fasting or thanksgiving, or any part thereof, on pain that every person so offending, shall for every offense forfeit the sum of *ten shillings*. . . .

That no traveler, drover, horse-courser, wagoner, carter, butcher, higgler, or any of their servants, shall travel on that day, or part thereof: except by some adversity they are belated, and forced to lodge in the woods, wilderness, or highways the night before; and in such case to travel no farther than to the next inn, or place of shelter on that day, upon penalty of forfeiting the sum of *twenty shillings*.

Nor shall any person go from his, or her place of abode on the Lord's day, unless to, or from the public worship of God attended or to be attended upon, by such person in some place allowed by law for that end: or unless it be on some work, or business of necessity, or mercy then to be done, or attended upon, on the penalty of *five shillings* for every such offense.

Nor shall any person, or persons keep, or stay at the outside of the meetinghouse during the time of public worship, (there being convenient room in the house) nor unnecessarily withdraw themselves from the public worship to go without doors, nor profane the time by playing, or talking; on the penalty of *three shillings* for every such offense.

That if any heads of families, or single persons, boarders, or sojourners; or any young persons under the government of parents, guardians, or masters shall convene, and meet together in company, or companies in the street, or elsewhere on the evening next before, or on the evening next following the Lord's day; or on the evening next following any public day of fast, and be thereof convict, shall suffer the penalty of *three shillings*, or sit in the stocks, not exceeding two hours.

*Always Provided,* This Act shall not be taken, or construed to hinder the meetings of such persons upon any religious occasion.

That no innholder, or other person keeping any public house of entertainment, shall entertain, or suffer any of the inhabitants of the respective towns where they dwell, or others not being strangers, or lodgers in such houses, to abide, or remain in their houses, back-sides, gardens, orchards, fields, or any other of the dependencies thereof, drinking, or idly spending their time on Saturday night after sunset, or on the Lord's day, or on the evening following; upon penalty that every person that shall be found so abiding, spending his time, or drinking, shall forfeit the sum of *five shillings*. . . .

That no vessel shall depart out of any harbor, port, creek, or river within this colony upon the Lord's day without the master thereof, (upon some emergent, or extraordinary occasion) hath special order, or license from some magistrate. . . .

That the grandjurymen, and the said tithingmen, and constables of each town shall carefully inspect the behavior of all persons on the Sabbath, or Lord's day; and especially between the meetings for divine worship on said day, whether in the place of such public meeting, or elsewhere; and due presentment make of any profanation of the worship of God on the Lord's day; or on any day of public fast, or thanksgiving; and of every breach of Sabbath which they, or any of them shall see, or discover any person to be guilty of, to the next assistant, or justice of the peace; who is hereby empowered to proceed therein according as the nature of the offense requires. . . .

That whatsoever person shall be convicted of any profanation of the Lord's day . . . and shall, being fined for such offense neglect, or refuse to pay the same . . . may . . . be publicly whipped; not exceeding twenty stripes. . . .

And all, and every assistant, justice of the peace, constable, grandjurymen, and tithingman are hereby required to take effectual care, and endeavor that this Act in all the particulars thereof be duly observed: as also to restrain all persons from unnecessarily

walking in the streets, or fields; swimming in the water, keeping open their shops, or following their secular occasions, or recreations in the evening preceding the Lord's day, or on said day, or evening following.—*Acts and Laws of His Majesty's English Colony of Connecticut in New England* (1750 code), pp. 139-142.

## MARYLAND

### FUNDAMENTAL LAWS

#### Religious Toleration

His Lordship requires his said governor and commissioners that in their voyage to Maryland they be very careful to preserve unity and peace among all the passengers on shipboard, and that they suffer no scandal nor offense to be given to any of the Protestants, whereby any just complaint may hereafter be made, by them, in Virginia or in England, and that for that end, they cause all acts of Roman Catholic religion to be done as privately as may be, and that they instruct all the Roman Catholics to be silent upon all occasions of discourse concerning matters of religion; and that the said governor and commissioners treat the Protestants with as much mildness and favor as justice will permit. And this to be observed at land as well as at sea.—Instructions to the Colonists by Lord Baltimore, 1633, *Original Narratives of Early American History, Narratives of Early Maryland* (Scribner's, 1910), p. 16.

#### Civil Concern With Religion

Also we do grant and likewise confirm unto the said Baron of Baltimore, his heirs, and assigns; . . . furthermore the patronages, and advowsons of all churches which (with the increasing worship and religion of Christ) within the said region, islands, islets, and limits aforesaid, hereafter shall happen to be built, together with license and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premises, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of Eng-

land, with all, and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets, and limits aforesaid, to be had, exercised, used, and enjoyed, as any bishop of Durham, within the bishopric or County Palatine of Durham, in our Kingdom of England, ever heretofore hath had, held, used, or enjoyed, or of right could, or ought to have, hold, use, or enjoy. . . .

[In any question or interpretation, of the wording of the charter, it is to be construed in the sense judged more favorable to the proprietor] Provided always, that no interpretation thereof be made, whereby God's holy and true Christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution.—The Charter of Maryland, 1632, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 3, pp. 1678, 1679, 1686.

#### RELIGIOUS ENACTMENTS

“An Act Concerning Religion” (popularly known as the  
“Act of Toleration”), 1649<sup>16</sup>

[Blasphemy]

*Forasmuch as in a well governed and Christian Commonwealth matters concerning religion and the honor of God ought in the first place to be taken, into serious consideration and endeavored to be settled. Be it therefore ordered and enacted by the Right Honorable Cecilius Lord Baron of Baltimore absolute Lord and Proprietary of this province with the advice and consent of this General Assembly. That whatsoever person or persons within this province and the islands thereunto belonging shall from henceforth blaspheme God, that is curse Him, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity the Father Son and Holy Ghost, or the Godhead of any of the said three Persons of the Trinity or the unity of the Godhead, or shall use or*

utter any reproachful speeches, words or language concerning the said Holy Trinity, or any of the said three persons thereof, shall be punished with death and confiscation or forfeiture of all his or her lands and goods to the Lord Proprietary and his heirs, *And be it also enacted by the authority and with the advice and assent aforesaid.* That whatsoever person or persons shall from henceforth use or utter any reproachful words or speeches concerning the blessed Virgin Mary the mother of our Saviour or the holy apostles or evangelists or any of them shall in such case for the first offense forfeit to the said Lord Proprietary and his heirs Lords and Proprietaries of this province the sum of five pound sterling or the value thereof to be levied on the goods and chattels of every such person so offending, but in case such offender or offenders, shall not then have goods and chattels sufficient for the satisfying of such forfeiture, or that the same be not otherwise speedily satisfied that then such offender or offenders shall be publicly whipped and be imprisoned during the pleasure of the Lord Proprietary or the Lieutenant or chief Governor of this province for the time being. And that every such offender or offenders for every second offense shall forfeit ten pound sterling or the value thereof to be levied as aforesaid, or in case such offender or offenders shall not then have goods and chattels within this province sufficient for that purpose then to be publicly and severely whipped and imprisoned as before is expressed. And that every person or persons before mentioned offending herein the third time, shall for such third offense forfeit all his lands and goods and be forever banished and expelled out of this province.

[Ridicule or Intolerance in Religious Matters]

*And be it also further enacted by the same authority advice and assent,* That whatsoever person or persons shall from henceforth upon any occasion of offense or otherwise in a reproachful manner or way declare call or denominate any person or persons whatsoever inhabiting residing trafficking trading or commercing within this province or within any the ports, harbors, creeks or havens to

the same belonging an heretic, schismatic, idolator, Puritan, Independent, Presbyterian, popish priest, Jesuit, Jesuited papist, Lutheran, Calvinist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or term in a reproachful manner relating to matter of religion shall for every such offense forfeit and lose the sum of ten shillings sterling or the value thereof to be levied on the goods and chattels of every such offender and offenders, the one half thereof to be forfeited and paid unto the person and persons of whom such reproachful words are or shall be spoken or uttered, and the other half thereof to the Lord Proprietary and his heirs Lords and Proprietaries of this province, but if such person or persons who shall at any time utter or speak any such reproachful words or language shall not have goods or chattels sufficient and overt within this province to be taken to satisfy the penalty aforesaid or that the same be not otherwise speedily satisfied, that then the person or persons so offending shall be publicly whipped, and shall suffer imprisonment without bail or mainprize until he she or they respectively shall satisfy the party so offended or grieved by such reproachful language by asking him or her respectively forgiveness publicly for such his offense before the magistrate or chief officer or officers of the town or place where such offense shall be given.

[Profanation of the Lord's Day]

*And be it further likewise enacted by the authority and consent aforesaid,* That every person and persons within this province that shall at any time hereafter profane the Sabbath or Lord's day called Sunday by frequent swearing, drunkenness or by any uncivil or disorderly recreation, or by working on that day when absolute necessity doth not require it shall for every such first offense forfeit 2s 6d sterling or the value thereof, and for the second offense 5s sterling or the value thereof, and for the third offense and so for every time he shall offend in like manner afterwards 10s sterling or the value thereof. And in case such offender and offenders shall not have sufficient goods or chattels within this province to satisfy

any of the said penalties respectively hereby imposed for profaning the Sabbath or Lord's day called Sunday as aforesaid, That in every such case the party so offending shall for the first and second offense in that kind be imprisoned till he or she shall publicly in open Court before the chief commander judge or magistrate, of that county town or precinct where such offense shall be committed acknowledge the scandal and offense he hath in that respect given against God and the good and civil government of this province. And for the third offense and for every time after shall also be publicly whipped.

[Religious Toleration]

*And whereas the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealths where it hath been practiced, and for the more quiet and peaceable government of this province, and the better to preserve mutual love and amity amongst the inhabitants thereof. Be it therefore also by the Lord Proprietary with the advice and consent of this Assembly ordained and enacted (except as in this present act is before declared and set forth) That no person or persons whatsoever within this province, or the islands, ports, harbors, creeks, or havens thereunto belonging, professing to believe in Jesus Christ, shall from henceforth be any ways troubled, molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this province or the islands thereunto belonging nor any way compelled to the belief or exercise of any other religion against his or her consent, so as they be not unfaithful to the Lord Proprietary, or molest or conspire against the civil government established or to be established in this province under him or his heirs. And that all and every person and persons that shall presume contrary to this act and the true intent and meaning thereof directly or indirectly either in person or estate willfully to wrong disturb trouble or molest any person whatsoever within this Province professing to believe in Jesus Christ for or in respect of his or her religion or the*

free exercise thereof within this province other than is provided for in this act that such person or persons so offending, shall be compelled to pay treble damages to the party so wronged or molested, and for every such offense shall also forfeit 20s sterling in money or the value thereof, half thereof for the use of the Lord Proprietary, and his heirs Lords and Proprietaries of this province, and the other half for the use of the party so wronged or molested as aforesaid, or if the party so offending as aforesaid shall refuse or be unable to recompense the party so wronged, or to satisfy such fine or forfeiture, then such offender shall be severely punished by public whipping and imprisonment during the pleasure of the Lord Proprietary, or his Lieutenant or chief Governor of this province for the time being without bail or mainprize. *And be it further also enacted by the authority and consent aforesaid,* That the Sheriff or other Officer or Officers from time to time to be appointed and authorized for that purpose, of the county town or precinct where every particular offense in this present act contained shall happen at any time to be committed and whereupon there is hereby a forfeiture fine or penalty imposed shall from time to time distrain and seize the goods and estate of every such person so offending as aforesaid against this present act or any part thereof, and sell the same or any part thereof for the full satisfaction of said forfeiture, fine, or penalty as aforesaid, restoring unto the party so offending the remainder or overplus of the said goods or estate after such satisfaction so made as aforesaid.—*Archives of Maryland* [Vol. 1], *Proceedings and Acts of the General Assembly of Maryland* (1637/8-1664), pp. 244-247.

**An Act for Sanctifying and Keeping Holy the Lord's Day,  
Commonly Called Sunday, 1696**

Forasmuch as the sanctifying and keeping holy of the Lord's day commonly called Sunday, hath been and is esteemed by the present and all primitive Christians<sup>m</sup> and people, to be a principal part of the worship of Almighty God, and the honor which is due to His holy name.

*Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of this present General Assembly and by the authority of the same,* That from and after the publication of this law, no person or persons whatsoever, within this Province, shall work or do any bodily labor or occupation upon the Lord's day, commonly called Sunday, nor shall command or willfully suffer any of his, her or their children, servants or slaves to work or labor as aforesaid (the works of absolute necessity and mercy always excepted) nor shall suffer or permit any of his, her or their children, servants or slaves, or any other under their authority to abuse or profane the Lord's day as aforesaid; by drunkenness, swearing, gaming, fowling, fishing, hunting, or any other sports or pastimes or recreations, whatsoever. And if any person or persons within this province, from and after the publication hereof, shall offend in all or any the premises; he, she or they so offending shall forfeit and pay, for every offense, the sum of one hundred pounds of tobacco. . . .

*Be it likewise enacted by the authority aforesaid, by and with the advice and consent aforesaid,* That no ordinary keeper or any other master or mistress of a family, from and after the time aforesaid, either directly or indirectly, by any color or pretense whatsoever, (unless in cases of absolute necessity) shall or may upon the Lord's day sell any strong liquor whatsoever, to any person whatsoever, or knowingly or wittingly suffer or permit in or about his, her or their house, or houses any tippling, drunkenness, gaming, exercise or pastime whatsoever, as aforesaid; being convicted thereof by two sufficient witnesses, shall forfeit the sum of two thousand pounds of tobacco, one moiety thereof to our sovereign Lord the King, his heirs and successors, to the use aforesaid, the other half to him or them that shall sue for the same, to be recovered as aforesaid, and if an ordinary keeper to lose his license.—*The Laws of the Province of Maryland (1692-1718), pp. 6, 7.*

**"An Act to Punish Blasphemers, Swearers, Drunkards, and Sabbath-breakers," 1723.**

*Be it enacted, by the right honorable the Lord Proprietor, by and with the advice and consent of his lordship's Governor, and the upper and lower Houses of Assembly, and the authority of the same,* That if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blaspheme or curse God, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son and Holy Ghost, or the Godhead of any of the three persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity, or any the persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offense be bored through the tongue, and fined twenty pounds sterling to the Lord Proprietor, to be applied to the use of the county where the offense shall be committed, to be levied on the offender's body, goods and chattels, lands or tenements; and in case the said fine cannot be levied, the offender to suffer six months' imprisonment without bail or mainprize; and that for the second offense, the offender being thereof convict as aforesaid, shall be stigmatized by burning in the forehead with the letter B, and fined forty pounds sterling to the Lord Proprietor, to be applied and levied as aforesaid; and in case the same cannot be levied, the offender shall suffer twelve months' imprisonment without bail or mainprize; and that for the third offense, the offender being convict as aforesaid, shall suffer death without the benefit of the clergy.

II. *And be it enacted,* That every person that shall hereafter profanely swear or curse, in the presence and hearing of any magistrate, minister, the commissary general, secretary, sheriff, coroner, provincial or county clerk, vestryman, church warden, or constable, or be convicted thereof, before any magistrate, by the oath of one lawful witness, or confession of the party, shall, for the first oath or curse, be fined two shillings and sixpence current money; and for every oath or curse after the first, five shillings like money, to be applied to the uses aforesaid. . . .

IV. *And be it enacted*, That where the said fines shall not be immediately paid on conviction, that it shall and may be lawful for the magistrates, or other officers aforesaid, and they are hereby required, to order the offender (not being a freeholder, or other reputable person) to be whipped, or put in the stocks. . . .

V. *Provided always*, That no offender shall receive above thirty-nine lashes, or be kept in the stocks above three hours, upon any one conviction. . . .

X. *And be it enacted*, That no person whatsoever, shall work, or do any bodily labor on the Lord's Day, commonly called Sunday, and that no person, having children, servants or slaves, shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's Day, (works of necessity and charity always excepted) nor shall suffer or permit any children, servants, or slaves, to profane the Lord's Day, by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations; and that every person transgressing this act, and being thereof convict, by the oath of one sufficient witness, or confession of the party before a single magistrate, shall forfeit two hundred pounds of tobacco to be levied and applied as aforesaid.

XI. *And be it likewise enacted*, That no housekeeper shall sell any strong liquor on Sunday, (except in cases of absolute necessity) or suffer any drunkenness, gaming, or unlawful sports or recreations, in his or her house, on pain of forfeiting two thousand pounds of tobacco to his lordship, one half to the use aforesaid, and the other half to him that will sue for the same; to be recovered by action of debt, bill, plaint or information, wherein no essoin, protection or wager of law shall be allowed. . . .

XIII. *Provided always, and be it enacted*, That all informations for blasphemy and Sabbath breaking, shall be made within one month after the fact; and that all prosecutions and informations for swearing, cursing, drunkenness, and omission to punish the same, shall be made within ten days after the fact; and that all prosecutions for not reading this act, and for selling liquors, and suffering drunkenness and gaming on the Sabbath day, shall be

commenced within six months after such omission, and not after.—THOMAS BACON, *Laws of Maryland (Province)*, Laws of 1723, chap. 16.

## RHODE ISLAND<sup>28</sup>

### FUNDAMENTAL LAWS

#### Providence Compact, "Only in Civil Things," 1636[37?]

"We whose names are hereunder, desirous to inhabit in the town of Providence, do promise to subject ourselves in active and passive obedience to all such orders or agreements as shall be made for public good of the body in an orderly way, by the major consent of the present inhabitants, masters of families—incorporated together in a town fellowship, and others whom they shall admit unto them *only in civil things.*"<sup>29</sup>—*Records of the Colony of Rhode Island and Providence Plantations*, vol. 1, 1636-1663, p. 14.

#### Liberty of Conscience

We agree, as formerly hath been the liberties of the town, so still, to hold forth liberty of conscience.—Plantation Agreement at Providence, August 27-September 6, 1640, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 6, p. 3206.

In due consideration of the said premises, the said Robert Earl of Warwick, governor in chief, and Lord High Admiral of the said plantations, and the greater number of the said commissioners, whose names and seals are here under-written and subjoined, out of a desire to encourage the good beginnings of the said planters, do, by the authority of the aforesaid ordinance of the Lords and Commons, give, grant, and confirm, to the aforesaid inhabitants of the towns of Providence, Portsmouth, and Newport, a free and absolute charter of incorporation, to be known by the name of the Incorporation of Providence Plantations, in the Narragansett-Bay, in New-England. Together with full power and authority

to rule themselves, and such others as shall hereafter inhabit within any part of the said tract of land, by such a form of civil government, as by voluntary consent of all, or the greater part of them, they shall find most suitable to their estate and condition; and, for that end, to make and ordain such civil laws and constitutions, and to inflict such punishments upon transgressors, and for execution thereof, so to place, and displace officers of justice, as they, or the great part of them, shall by free consent agree unto. Provided nevertheless, that the said laws, constitutions, and punishments, for the civil government of the said plantations, be conformable to the laws of England, so far as the nature and constitution of the place will admit.—Patent for Providence Plantations, 1643, *ibid.*, pp. 3210, 3211.

Charles the Second, by the grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c., to all to whom these presents shall come, greeting: Whereas we have been informed, by the humble petition of our trusty and well beloved subject, John Clarke, on the behalf of . . . the colony of Providence Plantations, in the Narragansett-Bay, in New-England, in America, that they, pursuing, with peaceable and loyal minds, their sober, serious and religious intentions, of godly edifying themselves, and one another, in the holy Christian faith and worship as they were persuaded; together with the gaining over and conversion of the poor ignorant Indian natives, in those parts of America, to the sincere profession and obedience of the same faith and worship, did, not only by the consent and good encouragement of our royal progenitors, transport themselves out of this kingdom of England into America, but also, since their arrival there, after their first settlement amongst other our subjects in those parts, for the avoiding of discord, and those many evils which were likely to ensue upon some of those our subjects not being able to bear, in these remote parties, their different apprehensions in religious concernments, and in pursuance of the aforesaid ends, did once again leave their desirable stations and habitations, and with excessive labor and travel, hazard and charge, did

transplant themselves into the midst of the Indian natives. . . .

And whereas, in their humble address, they have freely declared, that it is much on their hearts (if they may be permitted), to hold forth a lively experiment, that a most flourishing civil state may stand and best be maintained, and that among our English subjects, with a full liberty in religious concernments; and that true piety rightly grounded upon gospel principles, will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyalty: Now know ye, that we being willing to encourage the hopeful undertaking of our said loyal and loving subjects, and to secure them in the free exercise and enjoyment of all their civil and religious rights, appertaining to them, as our loving subjects; and to preserve unto them that liberty, in the true Christian faith and worship of God, which they have sought with so much travail, and with peaceable minds, and loyal subjection to our royal progenitors and ourselves, to enjoy; and because some of the people and inhabitants of the same colony cannot, in their private opinions, conform to the public exercise of religion, according to the liturgy, forms and ceremonies of the Church of England, or take or subscribe the oaths and articles made and established in that behalf; and for that the same, by reason of the remote distances of those places, will (as we hope) be no breach of the unity and uniformity established in this nation: have therefore thought fit, and do hereby publish, grant, ordain and declare, That our royal will and pleasure is, that no person within the said colony, at any time hereafter, shall be any wise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, and do not actually disturb the civil peace of our said colony; but that all and every person and persons may, from time to time, and at all times hereafter, freely and fully have and enjoy his and their own judgments and consciences, in matters of religious concernments, throughout the tract of land hereafter mentioned; they behaving themselves peaceably and quietly, and not using this liberty to licentiousness and profaneness, nor to the civil injury

or outward disturbance of others; any law, statute, or clause, therein contained, or to be contained, usage or custom of this realm, to the contrary hereof, in any wise, notwithstanding. And that they may be in the better capacity to defend themselves, in their just rights and liberties against all the enemies of the Christian faith, and others, in all respects, we have further thought fit, and at the humble petition of the persons aforesaid are graciously pleased to declare, That they shall have and enjoy the benefit of our late act of indemnity and free pardon, as the rest of our subjects in other our dominions and territories have; and to create and make them a body politic or corporate, with the powers and privileges hereinafter mentioned.—*Charter of Rhode Island and Providence Plantations, 1663, ibid., pp. 3211-3213.*

#### No Religious Test for Citizenship

The general court of election began and held at Portsmouth, from the 16th of March, to the 19th of the same month, 1641. . . .

4. It was further ordered, by the authority of this present court, that none be accounted a delinquent for doctrine: Provided, it be not directly repugnant to the government or laws established.—*Government of Rhode Island, 1641, ibid., pp. 3207, 3208.*

#### RELIGIOUS ENACTMENTS

##### Freedom of Religion, 1647

These are the laws that concern all men, and these are the penalties for the transgression thereof, which, by common consent, are ratified and established throughout the whole colony; and, otherwise than thus what is herein forbidden [all civil laws], all men may walk as their consciences persuade them, every one in the name of his God; and let the saints of the Most High walk in this colony without molestation, in the name of Jehovah their God, for ever and ever.<sup>20</sup>—*Proceedings of the First General Assembly [of Rhode Island] . . . and The Code of Laws . . . 1647 (Providence, 1847), p. 50.*

### An Act Prohibiting Sports and Labors on the First Day of the Week, 1679

*Be it enacted by the General Assembly, and by the authority of the same,* That no person or persons within this colony, shall do or exercise any labor or business, or work of their ordinary calling, nor use any game, sport, play or recreation, on the first day of the week, nor suffer the same to be done, by their children, servants or apprentices (works of necessity and charity only excepted), on the penalty of five shillings, for every such offense, . . . together with the reasonable charges accruing thereon. And in case such offender shall not have sufficient to satisfy the same, then to be set in the stocks, by the space of three hours.<sup>21</sup>—“Passed by the General Assembly . . . held at Newport, the sixth day of May, 1679,” *Acts and Laws, of His Majesty’s Province of Rhode-Island* (Newport, 1730), p. 27.

## SOUTH CAROLINA

### FUNDAMENTAL LAWS

#### Civil Concern With Religion

And furthermore, the patronage and advowsons of all the churches and chapels, which as Christian religion shall increase within the country, isles, islets and limits aforesaid, shall happen hereafter to be erected, together with license and power to build and found churches, chapels and oratories, in convenient and fit places, within the said bounds and limits, and to cause them to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England, together with all and singular the like, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities and franchises of what kind soever, within the countries, isles, islets and limits aforesaid.\*—Charter of Carolina, 1663, FRANCIS NEWTON THORPE, *The Federal and State Con-*

\* This is also provided for in the Charter of Carolina of 1665.

*stitutions, Colonial Charters, and Other Organic Laws*, vol. 5, p. 2744.

### Toleration and Liberty of Conscience

And because it may happen that some of the people and inhabitants of the said province, cannot in their private opinions, conform to the public exercise of religion, according to the liturgy, form and ceremonies of the church of England, or take and subscribe the oaths and articles, made and established in that behalf, and for that the same, by reason of the remote distance of these places, will, we hope be no breach of the unity and uniformity established in this nation; our will and pleasure therefore is, and we do by these presents, for us, our heirs and successors, give and grant unto the said [proprietors] . . . full and free license, liberty and authority, by such legal ways and means as they shall think fit, to give and grant unto such person or persons, inhabiting and being within the said province, or any part thereof, who really in their judgments, and for conscience' sake, cannot or shall not conform to the said liturgy and ceremonies, and take and subscribe the oaths and articles aforesaid, or any of them, such indulgencies and dispensations in that behalf, for and during such time and times, and with such limitations and restrictions as they, . . . their heirs or assigns, shall in their discretion think fit and reasonable; and with this express proviso, and limitation also, that such person and persons, to whom such indulgences and dispensations shall be granted as aforesaid, do and shall from time to time declare and continue, all fidelity, loyalty and obedience to us, our heirs and successors, and be subject and obedient to all other the laws, ordinances, and constitutions of the said province, in all matters whatsoever, as well ecclesiastical as civil, and do not in any wise disturb the peace and safety thereof, or scandalize or reproach the said liturgy, forms and ceremonies, or anything relating thereunto, or any person or persons whatsoever, for or in respect of his or their use or exercise thereof, or his or their obedience and conformity, thereunto.\*—*Ibid.*, pp. 2752, 2753.

### Support of State Religion

That no pretense may be taken by us our heirs or assigns for or by reason of or right of patronage and power of advowson granted unto us by His Majesty's Letters Patents aforesaid to infringe thereby the general clause of liberty of conscience aforementioned. We do hereby grant unto the general assemblies of the several counties power by act to constitute and appoint such and so many ministers or preachers as they shall think fit, and to establish their maintenance giving liberty besides to any person or persons to keep and maintain what preachers or ministers they please.—Concessions and Agreements of the Lords Proprietors of the Province of Carolina, 1665, *ibid.*, p. 2757.

[The Sunday law of South Carolina passed December 12, 1712, was so nearly identical with the law of Georgia that it is unnecessary to reproduce it here. (See *Laws of the Province of South-Carolina*, Trott's edition, 1736, vol. 1, pp. 230-234.) Compare the English Sunday law of 29 Charles II (see p. 575), after which both laws were modeled. This South Carolina law superseded an earlier act passed October 15, 1692.]

## NORTH CAROLINA

### RELIGIOUS ENACTMENTS

#### An Act for Keeping Holy the Lord's Day, Commonly Called Sunday, 1741

1. *Whereas in well-regulated governments, effectual care is always taken, that the day set apart for public worship, be observed and kept holy, and to suppress vice and immorality: Wherefore, . . .*

2. *Be it enacted, . . .* That all and every person and persons whatsoever, shall, on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety; and

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\* Liberty of conscience was recognized in the "declaration and proposals of the proprietors of Carolina" of the same year, and in the "concessions and agreements of the Lord's proprietors of the province of Carolina" for 1665. Also in the Charter of Carolina of 1665.

that no tradesman, artificer, planter, laborer, or other person whatsoever, shall, upon the land or water, do or exercise any labor, business, or work, of their ordinary callings (works of necessity and charity only excepted), nor employ themselves either in hunting, fishing, or fowling, nor use any game, sport, or play, on the Lord's day aforesaid, or any part thereof, upon pain that every person so offending, being of the age of fourteen years, and upwards, shall forfeit and pay the sum of ten shillings.—*Laws of the State of North-Carolina* (revision of 1821), vol. 1, p. 142.

## NEW JERSEY

### FUNDAMENTAL LAWS

#### Toleration and Liberty of Conscience

That no person qualified as aforesaid within the said province, at any time shall be any ways molested, punished, disquieted or called in question for any difference in opinion or practice in matter of religious concerns, who do not actually disturb the civil peace of the said province; but that all and every such person and persons may from time to time, and at all times, freely and fully have and enjoy his and their judgments and consciences in matters of religion throughout the said province they behaving themselves peaceably and quietly, and not using this liberty to licentiousness, nor to the civil injury or outward disturbance of others; any law, statute or clause contained, or to be contained, usage or custom of this realm of England, to the contrary thereof in any wise notwithstanding.—Concession and Agreement of 1664, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 5, p. 2537.

Forasmuch as . . . amongst the present proprietors there are several that declare, that they have no freedom to defend themselves with arms, and others who judge it their duty to defend themselves, wives and children, with arms; it is therefore agreed and consented to, and they the said proprietors do by these presents agree

and consent, that they will not in this case force each other against their respective judgments and consciences; in order whereunto it is resolved, that on the one side, no man that declares he cannot for conscience sake bear arms, whether proprietor or planter, shall be at any time put upon so doing in his own person, nor yet upon sending any to serve in his stead. And on the other side, those who do judge it their duty to bear arms for the public defense, shall have their liberty to do in a legal way. . . . Provided, that they shall not conclude any thing but by the consent of at least five parts out of six of their number; and that none of the proprietors and other inhabitants may be forced to contribute any money for the use of arms, to which for conscience sake they have not freedom, that which is necessary for the public defense, shall be born by such as judge themselves in duty bound to use arms. Provided, that the other, that for conscience sake do oppose the bearing of arms, shall on the other hand bear so much in other charges, as may make up that portion in the general charge of the province. And as the refusing to subscribe such acts concerning the use and exercise of arms abovesaid, in the governor and secretary, if scrupulous in conscience so to do, shall not be esteemed in them an omission or neglect of duty, so the wanting thereof shall not make such acts invalid, they being in lieu thereof, subscribed by the major part of the six proprietors of the committees for the preservation of the public peace.\*—Fundamental Constitutions for the Province of East New Jersey, 1683, *Ibid.*, pp. 2576-2578.

That no men, nor number of men upon earth, hath power or authority to rule over men's consciences in religious matters, therefore it is consented, agreed and ordained, that no person or persons whatsoever within the said province, at any time or times hereafter, shall be any ways upon any pretense whatsoever, called in question, or in the least punished or hurt, either in person, estate, or privilege, for the sake of his opinion, judgment, faith or

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\* Here is an interesting provision inserted for the benefit of those proprietors and planters who were members of the Society of Friends, and therefore pacifists.

worship toward God in matters of religion. But that all and every such person, and persons, may from time to time, and at all times, freely and fully have, and enjoy his and their judgments, and the exercises of their consciences in matters of religious worship throughout all the said province.—Fundamental Laws of West New Jersey, 1676, *ibid.*, p. 2549.

### Support of State Religion

That no pretense may be taken by our heirs or assigns for or by reason of our right of patronage and power of advowson, granted by His Majesty's Letters Patents, unto His Royal Highness James Duke of York, and by His said Royal Highness unto us, thereby to infringe the general clause of liberty of conscience, aforementioned: we do hereby grant unto the general assembly of the said province, power by act to constitute and appoint such and so many ministers or preachers as they shall think fit, and to establish their maintenance, giving liberty beside to any person or persons to keep and maintain what preachers or ministers they please.—Concessions and Agreement of 1664, *ibid.*, p. 2537.

### Civil Concern With Religion

To enact and make all such laws, acts and constitutions as shall be necessary for the well government of the said province, and them to repeal: provided, that the same be consonant to reason, and as near as may be conveniently agreeable to the laws and customs of His Majesty's kingdom of England: provided also, that they be not against the interest of us the Lords Proprietors, our heirs or assigns, nor any of those our concessions, especially that they be not repugnant to the article for liberty of conscience above-mentioned.—Concessions and Agreement of 1664, *ibid.*, pp. 2537, 2538.

### Religious Test for Officeholding

All persons living in the province who confess and acknowledge the one Almighty and Eternal God, and holds themselves obliged

in conscience to live peaceably and quietly in a civil society, shall in no way be molested or prejudged for their religious persuasions and exercise in matters of faith and worship; nor shall they be compelled to frequent and maintain any religious worship, place or ministry whatsoever: Yet it is also hereby provided, that no man shall be admitted a member of the great or common council, or any other place of public trust, who shall not profess in Christ Jesus, and solemnly declare that he doth no ways hold himself obliged in conscience to endeavor alteration in the government, or seeks the turning out of any of it or their ruin or prejudice, either in person or estate, because they are in his opinion heretics, or differ in their judgment from him: nor by this article is it intended, that any under the notion of this liberty shall allow themselves to avow atheism, irreligiousness, or to practice cursing, swearing, drunkenness, profaneness, whoring, adultery, murdering or any kind of violence, or indulging themselves in stage plays, masks, revels or such like abuses; for restraining such and preserving of the people in diligence and in good order, the great council is to make more particular laws, which are punctually to be put in execution. . . .

That all marriages not forbidden in the law of God, shall be esteemed lawful, where the parents or guardians being first acquainted, the marriage is publicly intimated in such places and manner as is agreeable to men's different persuasions in religion being afterwards still solemnized before creditable witnesses, by taking one another as husband and wife, and a certificate of the whole, under the parties and witnesses hands, being brought to the proper register for that end, under a penalty if neglected.—Fundamental Constitutions of the Province of East New Jersey, 1683, *ibid.*, pp. 2579-2581.

That liberty of conscience in matters of faith and worship towards God, shall be granted to all people within the province aforesaid; who shall live peaceably and quietly therein; and that none of the free people of the said province, shall be rendered

uncapable of office in respect of their faith and worship.—Fundamental Laws of West New Jersey, 1676, *ibid.*, p. 2567.

## RELIGIOUS ENACTMENTS

### Sunday Law of 1675

XI. *It is further enacted* by this assembly, that whosoever shall profane the Lord's day, otherwise called Sunday by any kind of servile work, unlawful recreations, or unnecessary travels on that day, not falling within the compass of works of mercy or necessity, either willfully or through careless neglect, shall be punished by fine, imprisonment, or corporally, according to the nature of the offense, at the judgment of the Court justice or justices where the offense is committed.—*The Grants, Concessions, and Original Constitutions of the Province of New-Jersey. The Acts Passed during the Proprietary Governments* (Leaming and Spicer ed.), p. 98.

### Against Profaning the Lord's Day, 1683

*Be it enacted by the Governor, Council, and Deputies in General Assembly met and assembled, and by the Authority of the same,* That all and every person or persons whatsoever, who from and after the tenth day of the month called May, *Anno Domini*, 1683, do or shall upon the first day of the week, commonly called the Lord's day, on foot or horseback, or otherwise travel on any pretended journey, or be found rudely, or otherwise to ride from town to town, or elsewhere, except it be for or on the account to go unto or return from some place, or assembly of people for some religious exercise, or other matter or thing of necessity; or shall be found or known to ride on horse-hunting or beast-hunting, or be known or found in any other work, or ordinary trade, or drinking in any ordinary, or gaming, sporting or playing at, or in any games, sports or plays, or be found in any other exercise, than sober and religious exercise, (works and things of necessity only excepted) shall forfeit for every such

offense, the first time of offense five shillings, and for the second offense ten shillings, and for every after offense ten shillings, to be levied by distress and sale of the offender's goods and chattels, by warrant from any justice of peace, who shall convict such offender, or before whom such offender shall be convicted. *And be it enacted* By the authority aforesaid, that every justice of peace within this province, shall and may inquire of, and upon information of such offenses and testimony thereof, and by notorious circumstances of the fact, and by his own knowledge, and by the confession of the party, or by any the ways or means aforesaid, convict such person offending; all which said fines shall be and go to the use of the poor of the place, parish, town or county where such offender did commit such offense as aforesaid.—*Ibid.*, pp. 245, 246.

#### **An Act for Preventing Profanation of the Lord's Day, 1693**

Whereas it hath been the practice of all societies of Christian professors to set apart one day in the week for the worship and service of God, and that it hath been and is the ancient law of England, (according to the practice of the primitive Christians) to set apart the first day of the week to that end, and finding by experience that the same good practice and law, hath been greatly neglected in this province, to the grief of such as profess the Christian religion, and to the scandal thereof. *Be it therefore enacted*, . . . that if any person or persons, . . . shall within this province be found doing any unnecessary servile labor, or shall travel upon the Lord's day, or first day (except to some religious service or worship, or otherwise in case of necessity) or shall be found tippling, sporting or gaming, thereby profaning the Lord's day, or first day, shall upon conviction thereof before one justice of the peace, forfeit and pay for each such offense six shillings.—*Ibid.*, p. 519.

#### **An Act for the Suppression of Immorality, 1704**

*Whereas profaneness and immorality have too much abounded in this province, to the shame of Christianity, and the great grief*

of all good and sober men; for the suppressing whereof for the future, Sect. I. Be it enacted by the Governor, Council, and Assembly, now met and assembled, and by the authority of the same, That all and every person and persons whatsoever within this province, who shall be convicted of drunkenness, cursing, swearing, or breaking the Lord's day, by doing any ordinary work or labor thereon (excepting works of necessity or mercy). . . . Every person so convicted shall be fined by the said justice of the peace, for drunkenness or breaking the Lord's day, in the sum of six shillings, . . . for each offense besides cost. And for cursing or swearing, the sum of three shillings. . . .

2. And be it further enacted, . . . That no public-house keeper within this province shall suffer any person or persons to tippie and drink in his house on the Lord's day, especially in the time of divine worship (excepting for necessary refreshment), under the penalty of six shillings.<sup>22</sup>—*Acts of the General Assembly of the Province of New Jersey (1702-1776)*, pp. 3, 4.

## PENNSYLVANIA

### FUNDAMENTAL LAWS

#### Conversion of the Indians

Charles the Second, by the grace of God, King of England, . . . Greeting. Whereas our trusty and well-beloved subject William Penn, Esquire, son and heir of Sir William Penn deceased, out of a commendable desire to enlarge our English Empire, and promote such useful commodities as may be of benefit to us and our Dominions, as also to reduce the savage natives by gentle and just manners to the love of civil society and Christian religion, hath humbly besought leave of us to transport an ample colony unto a certain country hereinafter described.—Province of Pennsylvania Charter of 1681, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 5, p. 3036.

### Religious Test for Officeholders

That all treasurers, judges, masters of the rolls, sheriffs, justices of the peace, and other officers and persons whatsoever, relating to courts, or trials of causes, or any other service in the government; and all members elected to serve in provincial council and general assembly, and all that have right to elect such members, shall be such as possess faith in Jesus Christ, and that are not convicted of ill fame, or unsober and dishonest conversation, and that are of one and twenty years of age, at least; and that all such so qualified, shall be capable of the said several employments and privileges, as aforesaid.—Frame of Government of Pennsylvania, 1682, under Laws Agreed Upon in England, *ibid.*, pp. 3062, 3063.

### Religious Test for Citizenship

That all persons living in this province, who confess and acknowledge the one Almighty and Eternal God, to be the Creator, Upholder and Ruler of the world; and that hold themselves obliged in conscience to live peaceably and justly in civil society, shall, in no ways, be molested or prejudiced for their religious persuasion, or practice, in matters of faith and worship, nor shall they be compelled, at any time, to frequent or maintain any religious worship, place or ministry whatever.—*Ibid.*, p. 3063.

### Sunday Observance

That according to the good example of the primitive Christians, and the ease of the creation, every first day of the week, called the Lord's day, people shall abstain from their common daily labor, that they may the better dispose themselves to worship God according to their understandings.—*Ibid.*

## RELIGIOUS ENACTMENTS

### "The Great Law" or "The Body of Laws," 1682

*Whereas, the glory of Almighty God and the good of mankind, is the reason and end of government, and therefore, government in*

*itself is a venerable ordinance of God. And forasmuch as it is principally desired and intended by the proprietary and governor and the freemen of the Province of Pennsylvania and territories thereunto belonging, to make and establish such laws as shall best preserve true Christian and civil liberty, in opposition to all unchristian, licentious, and unjust practices (Whereby God may have his due, Caesar his due, and the people their due), from tyranny and oppression on the one side, and insolence, and licentiousness on the other, so that the best and firmest foundation may be laid for the present and future happiness of both the governor and people, of the Province and territories aforesaid, and their posterity:*

*Be it therefore enacted by William Penn, Proprietary and Governor, by, and with the advice and consent of the deputies of the freemen of this province and counties aforesaid, in assembly met, and by the authority of the same, That these following chapters and paragraphs shall be the Laws of Pennsylvania and the territories thereof.*

[Freedom of Conscience]

Chap. I. Almighty God, being only Lord of conscience, Father of lights and spirits, and the author as well as object of all divine knowledge, faith, and worship, who only can enlighten the mind, and persuade and convince the understandings of people. In due reverence to His sovereignty over the souls of mankind. . . .

*Be it enacted by the authority aforesaid, That no person, now, or at any time hereafter, living in the province, who shall confess and acknowledge one Almighty God to be the creator, upholder and ruler of the world, and who professes, him or herself obliged in conscience to live peaceably and quietly under the civil government, shall in any case be molested or prejudiced for his, or her conscientious persuasion or practice.<sup>24</sup> Nor shall he or she at any time be compelled to frequent or maintain any religious worship, place or ministry whatever, contrary to his, or her mind, but shall freely and fully enjoy his, or her, Christian liberty in that respect.*

without any interruption or reflection. And if any person shall abuse or deride any other, for his, or her different persuasion and practice in matters of religion, such person shall be looked upon as a disturber of the peace, and be punished accordingly.

[Sunday Law]

*But to the end that looseness, irreligion, and atheism may not creep in under pretense of conscience in the province, be it further enacted by the authority aforesaid, That, according to the example of the primitive Christians, and for the ease of the creation, every first day of the week, called the Lord's day, people shall abstain from their usual and common toil and labor, that whether masters, parents, children, or servants, they may the better dispose themselves to read the Scriptures of truth at home, or frequent such meetings of religious worship abroad, as may best suit their respective persuasions.*

[Religious Test for Public Office]

Chap. II. *And be it further enacted by &c.* That all officers and persons commissioned and employed in the service of the government in this province, and all members and deputies elected to serve in the assembly thereof, and all that have a right to elect such deputies, shall be such as profess and declare they believe in Jesus Christ to be the Son of God, the Saviour of the world, and that are not convicted of ill-fame, or unsober and dishonest conversation, and that are of twenty one years of age at least.

[Swearing]

Chap. III. *And be it further enacted &c.* That whosoever shall swear in their common conversation, by the name of God, or Christ, or Jesus, being legally convicted thereof, shall pay for every such offense five shillings, or suffer five days imprisonment in the house of correction, at hard labor, to the behoof of the public, and be fed with bread and water only, during that time.

## [Blasphemy]

Chap. V. *And be it further enacted &c. for the better prevention of corrupt communication*, That whosoever shall speak loosely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of truth, and is legally convicted thereof, shall, for every such offense, pay five shillings, or suffer five days imprisonment in the house of correction, at hard labor, to the behoof of the public, and be fed with bread and water only, during that time.—*Charter to William Penn, and Laws of the Province of Pennsylvania* (1682-1700), pp. 107-109.

**An Act to Restrain People From Labor on the  
First Day of the Week, 1705<sup>25</sup>**

No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly business or work of their ordinary callings, on the first day, or any part thereof (works of necessity and charity only excepted) upon pain that every person so offending shall for every offense, forfeit the sum of twenty shillings. . . . *Provided always*, that nothing in this act contained shall extend to prohibit the dressing of victuals in families, cook shops and victualing-houses, or to watermen landing their passengers on the first day of the week; nor to butchers their killing and selling of meat, or fishermen from selling fish on the morning of the first day of the week, in the fourth, fifth and sixth months, called June, July, and August; nor to the crying of milk, before nine of the clock in the morning, or after five in the afternoon. *Provided also*, that no person shall be impeached, presented or molested for any offense before mentioned in this act, unless he or they be prosecuted for the same within ten days after the offense committed. . . .

*And be it further enacted*, That all persons who are found drinking and tippling in ale-houses, taverns, or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense, forfeit and pay one shilling and sixpence to any constable that shall demand the same, to the

use of the poor: and all constables are hereby empowered, and by virtue of their office, required to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks, or bind them to their good behavior, as to him shall seem requisite.—*The Charters and Acts of Assembly of the Province of Pennsylvania* (1700-1743), vol. 1, sec. 2, *The Acts of Assembly*, pp. 19, 20.

## DELAWARE

### FUNDAMENTAL LAWS

#### Toleration and Liberty of Conscience

Because no people can be truly happy, though under the greatest enjoyment of civil liberties, if abridged of the freedom of their consciences, as to their religious profession and worship: And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine knowledge, faith and worship, who only doth enlighten the minds, and persuade and convince the understandings of people, I do hereby grant and declare, That no person or persons, inhabiting in this province or territories, who shall confess and acknowledge one Almighty God, the Creator, Upholder and Ruler of the world; and professes him or themselves obliged to live quietly under the civil government, shall be in any case molested or prejudiced, in his or their person or estate, because of his or their conscientious persuasion or practice, nor be compelled to frequent or maintain any religious worship, place or ministry, contrary to his or their mind, or to do or suffer any other act or thing, contrary to their religious persuasion.—Charter of Delaware, 1701, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 1, p. 558.

### Religious Test for Citizenship

And that all persons who also profess to believe in Jesus Christ, the Saviour of the world, shall be capable (notwithstanding their other persuasions and practices in point of conscience and religion) to serve this government in any capacity, both legislatively and executively, he or they solemnly promising, when lawfully required, allegiance to the King as Sovereign, and fidelity to the Proprietary and Governor, and taking the attests as now established by the law made at Newcastle, in the year one thousand and seven hundred, entitled, *An Act directing the Attests of several Officers and Ministers*, as now amended and confirmed this present Assembly.—*Ibid.*

### RELIGIOUS ENACTMENTS

#### Branding for Blasphemy, 1739-1740

“If any person within this government, shall . . . profanely swear, by the name of God, Christ Jesus, or the Holy Spirit . . . the person so offending shall, for every such offense, forfeit and pay the sum of five shillings, . . . or the party offending shall be set in the stocks, there to remain any time not exceeding three hours.

*And be it further enacted by the authority aforesaid*, That if any person shall willfully or premeditatedly be guilty of blasphemy, and shall thereof be legally convicted, the person so offending shall, for every such offense, be set in the pillory for the space of two hours, and be branded in his or her forehead with the letter B, and be publicly whipped, on his or her bare back, with thirty-nine lashes well laid on.”—*Dated 13 George II, in Laws of the Government of . . . Delaware* (Philadelphia, 1741), pp. 120, 121.

#### An Act to Prevent the Breach of the Lord's Day Commonly Called Sunday, 1739-40

*WHEREAS many loose and disorderly persons do make a frequent practice of profaning the Lord's day, commonly called Sunday, to the great reproach of the Christian religion. For prevention*

*whereof, be it enacted by the Honourable George Thomas, Esq., . . . by and with the advice and consent of the representatives of the Freemen of the said counties in General Assembly met, and by the Authority of the same,* That if any person or persons within this government, shall, after the publication of this act, do any servile work, labor or business, upon the Lord's day, commonly called Sunday (excepting works of necessity, charity and mercy) and be duly convicted thereof, by his or her own confession, the testimony of one or more credible witnesses, before any one justice of the peace, or by the view of such justice, such person or persons so offending shall, for every such offense, forfeit the sum of ten shillings; or, upon refusal to pay the said fine, be set in the stocks, for any space of time not exceeding four hours.

*And be it enacted by the authority aforesaid,* That if any carrier, peddler, wagoner, carter, butcher or drover, with horse, pack or drove shall travel upon the Lord's day, or if any person or persons within this government shall expose any goods, wares or merchandizes to sale on the said day, and shall thereof be duly convicted, the person or persons so offending, shall, for every such offense, forfeit the sum of twenty shillings.

*And be it further enacted by the authority aforesaid,* That if any person shall be duly convicted of fishing, fowling, oystering, horse-hunting or horse-racing on the Lord's day, the person so offending, shall, for every such offense, forfeit the sum of ten shillings, or upon refusal to pay the said fine, be set in the stocks, there to remain the space of four hours.

*And be it further enacted by the authority aforesaid,* That if any number of persons shall meet to game, play or dance on the Lord's day, every person so offending shall forfeit the sum of five shillings, or upon refusal to pay the said fine, be set in the stocks, there to remain for the space of four hours.

*And be it further enacted by the authority aforesaid,* That if any innholder, ordinary or tavern-keeper shall suffer any person or persons to sit tipping or drinking in his or her house on the said day during the time of divine service, and be thereof duly convicted

before any two justices of the peace of the county where such offense is committed, the person or persons so offending, shall, for every such offense, forfeit the sum of forty shillings.

*And be it further enacted by the Authority aforesaid, That all the fines and forfeitures mentioned in this act, shall be levied by distress and sale of the offender's goods and chattels respectively, by warrant under the hand and seal of such justice or justices before whom such conviction shall be made, returning the overplus, if any be, to the owner or owners thereof, and shall be applied to the use of the poor of the town or hundred where such offense is committed, any law, usage or custom to the contrary in anywise notwithstanding.—Ibid., pp. 121-123.*

## GEORGIA

### FUNDAMENTAL LAWS

#### Toleration and Liberty of Conscience

GEORGE the second, by the grace of God, of Great Britain, France [etc.]. . . . And for the greater ease and encouragement of our loving subjects and such others as shall come to inhabit in our said colony, we do by these presents, for us, our heirs and successors, grant, establish, and ordain, that forever hereafter, there shall be a liberty of conscience allowed in the worship of God, to all persons inhabiting, or which shall inhabit or be resident within our said province, and that all such persons, except papists, shall have a free exercise of their religion, so they be contented with the quiet and peaceable enjoyment of the same, not giving offense or scandal to the government.\*—Charter of Georgia, 1732, FRANCIS NEWTON THORPE, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws*, vol. 2, pp. 765, 773.

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\* Notice that Catholics are here denied the right of the free exercise of their faith.

## RELIGIOUS ENACTMENTS

An Act for Punishing Vice, Profaneness, and Immorality, and  
for Keeping Holy the Lord's Day, Commonly  
Called Sunday, 1762

*Whereas there is nothing more acceptable to God than the true and sincere worship and service of Him, according to His holy will, and that the keeping holy the Lord's day, is a principal part of the true service of God, which in this province is too much neglected by many. . . . Be it enacted . . .* That all and every person and persons whatsoever, shall, on every Lord's day, apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly or privately, or having no reasonable or lawful excuse, on every Lord's day shall resort to their parish church, or some meeting or assembly of religious worship, tolerated and allowed by the laws of England, and there shall abide, orderly and soberly, during the time of prayer and preaching, on pain or forfeiture for every neglect of the sum of two shillings and sixpence sterling.

II. . . . That no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings, upon the Lord's day, or any part thereof (works of necessity or charity only excepted) and that every person being of the age of fifteen years or upwards offending in the premises, shall for each such offense, forfeit the sum of ten shillings. . . .

III. . . . No drover, wagoner, butcher, higgler, they or any of their servants, or any other traveler, or persons whatsoever, shall travel on the Lord's day . . . except it be to the place of religious worship, and to return again, or to visit or relieve any sick person, or unless the person or persons were belated the night before, and then to travel no farther than to some convenient inn or place of shelter for that day, or upon some extraordinary occasion for which he, she, or they shall be allowed to travel under the hand of some justice of the peace of this province. . . .

VI. . . . That the church wardens and constables of each parish respectively, or any one or more of them, shall once in the forenoon and once in the afternoon, in the time of divine service, walk through the town of Savannah, and the respective towns of this province, to observe, suppress and apprehend all offenders whatsoever, contrary to the true intent and meaning of this act; . . . and all persons whatsoever are strictly commanded and required to be aiding and assisting to any constables, or other officers, in their execution of this act, on the penalty of ten shillings sterling for every refusal.

VII. . . . In case of default of such distress, or in case of insufficiency or inability of the said offender, to pay the said forfeiture or penalties, that then the party offending be set publicly in the stocks for the space of two hours.—*Acts of the General Assembly of Georgia (1755-1770)*, pp. 215-217.

## NEW YORK

### RELIGIOUS ENACTMENTS

#### An Act Against the Profanation of the Lord's Day, Called Sunday, 1695

*Whereas the true and sincere service and worship of God, according to His holy will and commandments, is often profaned and neglected by many of the inhabitants and sojourners within this province, who do not keep holy the Lord's day, but in a disorderly manner, accustom themselves to travel, laboring, working, shooting, fishing, sporting, playing, horse-racing, frequenting of tippling-houses, and the using many other unlawful exercises and pastimes upon the Lord's day, to the great scandal of the holy Christian faith: "*

*Be it therefore enacted . . . That . . . there shall be no traveling, servile laboring and working, shooting, fishing, sporting, playing, horse-racing, hunting, or frequenting of tippling-houses, or the using of any other unlawful exercises or pastimes, by any of the*

inhabitants or sojourners within this province, or by any of their slaves or servants, on the Lord's day; and that every person or persons offending in the premises, shall forfeit for every offense the sum of six shillings. . . . And in default of such distress, the party to be set publicly in the stocks by the space of three hours. . . . *Provided*, That it shall be lawful for any person to travel upon the Lord's day, or to do any act of necessity, and to go to the service and worship of God in any church or lawful meeting within this province, and from thence to return; provided such journey shall not exceed the number of twenty miles . . . or for any person employed to bring a physician or a midwife to travel upon the Lord's day.—*Acts of Assembly Passed in the Province of New-York, From 1691 to 1718*, pp. 24, 25.

## NEW HAMPSHIRE RELIGIOUS LAWS

### RELIGIOUS ENACTMENTS

#### An Act for the Better Observance of the Lord's Day, 1700

*Be it enacted and ordained by the Lieutenant Governor, Council, and Representatives, convened in general assembly, and it is enacted by the authority of the same*, That all and every person and persons whatsoever, shall on that day carefully apply themselves to duties of religion and piety, publicly and privately: and that no tradesman, artificer, or other person whatsoever, shall upon the land or water, do or exercise any labor, business, or work of their ordinary calling; nor use any game, sport, play, or recreation on the Lord's day, or any part thereof, (works of necessity and mercy only excepted:) upon pain that every person so offending shall forfeit five shillings.

*Further, It is ordered and declared*, That no traveler, drover, horse-courser, wagoner, butcher, higgler, or any of their servants, shall travel on that day, or any part thereof, except, by some adversity they were belated, and forced to lodge in the woods, wilderness, or highways the night before; and in such case to travel no further

than the next inn, or place of shelter, on that day, upon the penalty of twenty shillings.

*Further, It is ordered,* That no vintner, innholder, or other person, keeping any public house of entertainment, shall entertain or suffer any of the inhabitants of the respective towns where they dwell, or others not being strangers, or lodgers in such houses, to abide or remain in the houses, yards, orchards, or fields, drinking or idly spending their time on Saturday night after the sun is set, or on the Lord's day, or the evening following; upon the pain and penalty of five shillings for every person, payable by themselves respectively, that shall be found so drinking, or abiding in any such house, or dependencies thereof, as aforesaid; and the like sum of five shillings to be paid by the keepers of such houses, for every person entertained by them. . . .

And all masters and governors of families, are hereby required to take effectual care, that their children, servants and others under their immediate government, do not transgress in any of the foregoing particulars.

And all and every justices of the peace, constables, and selectmen, are required to take effectual care, and endeavor that this act in all the particulars thereof be duly observed: as also to restrain all persons from swimming in the water unnecessarily; and unseasonable walking in streets or fields in any part of this province; keeping open their shops, or following their secular occasions, or recreations in the evening preceding the Lord's day, or any part of the said day, or evening following.—*Acts and Laws of His Majesty's Province of New-Hampshire* (Portsmouth, 1771), pp. 8, 9.

### Blasphemy, 1718

*Be it likewise enacted by the authority aforesaid,* That if any person shall presume willfully to blaspheme the holy name of God, Father, Son, or Holy Ghost, either by denying, cursing or reproaching the true God, His creation or government of the world; or by denying, cursing, or reproaching the holy word of God, that is, the canonical Scriptures, contained in the books of the Old and New

Testament, [here are named the books of the Bible] . . .; every one so offending shall be punished by imprisonment, not exceeding six months, and until they find sureties for their good behaviour, by setting in the pillory, by whipping, boring through the tongue with a red hot iron, or setting upon the gallows with a rope about the neck, at the discretion of the court of assize and general jail delivery, before which the trial shall be, according to the circumstances, which may aggravate or alleviate the offense.

*Provided*, That no more than two of the aforementioned punishments, shall be inflicted for one and the same fact.—*Ibid.*, pp. 125, 126.

## DISCUSSION

### Are the Blue Laws Authentic? (P. 17)

<sup>1</sup> Because certain blue laws popularly attributed to New Haven colony were not genuine, the impression has arisen that all such laws were mythical. But most of them have been shown to be based on bona fide statutes of one colony or another (see Note 13, page 84). The blue laws were actually enacted and often enforced, according to authentic official records. Some may think we ought not to republish them now, as they cast serious reflection on the wisdom of our forefathers and upon their religious practices; but we believe that the mistakes which our forefathers made in their zeal to uphold and enforce religious obligations by civil authority, were due to wrong principles and policies received as a legacy from the past. These facts ought, in justice, to be revealed to their posterity today so that they may not repeat mistakes which can result only in bringing reproach and humiliation upon religion in general. Any church which enters the political arena and seeks to control the state to further her own ends through civil enactments is destined to lose her prestige and influence, and to suffer the corruption of her own purity and spirituality.

### No Death Penalties Inflicted in Virginia (P. 19)

<sup>2</sup> The Virginia colonists did not yet have self-government when these harsh early laws were in force, and they seem not to have inflicted the death penalty. Thomas Jefferson wrote: "The first settlers in this

country [Virginia] were emigrants from England, of the English Church, just at a point of time when it was flushed with complete victory over the religious of all other persuasions. Possessed, as they became, of the powers of making, administering and executing the laws, they showed equal intolerance in this country with their Presbyterian brethren, who had emigrated to the northern government. . . . Several acts of the Virginia Assembly, of 1659, 1662, and 1693, had made it penal in parents to refuse to have their children baptized; had prohibited the unlawful assembling of Quakers; had made it penal for any master of a vessel to bring a Quaker into the state; had ordered those already here, and such as should come thereafter, to be imprisoned till they should abjure the country; provided a milder punishment for their first and second return, but *death* for their third. . . . If no execution took place here, as did in New England, it was not owing to the moderation of the church, or spirit of the legislature, as may be inferred from the law itself; but to historical circumstances which have not been handed down to us."—*Notes on Virginia*, in *The Works of Thomas Jefferson* (P. L. Ford ed., 1904-05), vol. 4, pp. 74, 75.

### Quakers and Separatists Driven From Virginia (P. 21)

<sup>a</sup> In "1659-60, when the Quakers made their first appearance in Virginia" says Semple, "the utmost degree of persecution was exercised towards them."—ROBERT B. SEMPLE, *History of the Rise and Progress of the Baptists of Virginia* (1849 ed.), p. 48.

But the Quakers were not the only dissenters who suffered under the Conventicle Act, which had been passed by the British Parliament. After stating that Sir William Berkeley became governor in 1642, Robert Brock says, "During the year three Congregational ministers came from Boston to Virginia to disseminate their doctrines. Their stay, however, was but short; for, by an enactment of the Assembly, all ministers other than those of the Church of England were compelled to leave the colony."—JUSTIN WINSOR, *Narrative and Critical History of America*, vol. 3, p. 147. C. B. Hassell's *History of the Church of God*, page 523, says: "In 1643 the 'Church of England' was established by law in Virginia. In 1653 Sir William Berkeley, royal governor of Virginia, strove, by whippings and brandings, to make the inhabitants of that colony conform to the Established 'Church,' and thus drove out the Baptists and Quakers, who found a refuge in the Albemarle county of North Carolina, a colony which 'was settled,' says Bancroft, 'by the freest of the free, by men to whom the restraints of other colonies were too severe.'"

### Plymouth Religious Legislation (P. 25)

<sup>4</sup> Although Plymouth was settled ten years earlier than Boston, its religious legislation developed much later. There were Sunday prosecutions, as in Massachusetts Bay, based on general custom and Bible laws, but this 1650 law was the first Sunday statute, and almost the first religious enactment. Preceding it were laws against witchcraft (1636) and swearing by the name of God (1639). (See *The Compact With the Charter and Laws of . . . Plymouth*, pp. 43, 65, 66.) The religious laws of the 1672 revised code were comparable to, but frequently milder than, the Massachusetts legislation of many years earlier.

### Death Penalties for Religious Offenses (P. 26)

<sup>5</sup> The Sunday desecration statute of 1671 is a revision of previously enacted Sunday observance laws, with the death penalty attached for its presumptuous violation. Neither the Pilgrims nor the Virginians, so far as the official records disclose, ever put so-called heretics or dissenters to death for their faith, as did the Puritans of Massachusetts. This law may be taken as an extended application of one of the three religious death penalties of the same year, which included in "willful or highhanded blasphemy" the "willful or obstinate denying of the true God or His government." These three acts were modeled after the corresponding Massachusetts Bay laws of thirty years earlier (see p. 31). They follow the wording of the Massachusetts statutes of 1641 and 1646, except that they are binding only on Christians, while the Massachusetts laws include pagans.

Death penalties for law violations were much more common in those days than they are today. Historians tell us that there were about thirty-five offenses punishable by death in England in the seventeenth century. These increased year by year until they rose to more than four times that number in the next century. The New England colonies averaged twelve to sixteen death penalties. Of these, the common religious offenses were idolatry, witchcraft, and blasphemy; persistent, highhanded, and presumptuous Sunday desecration; and the return of heretics (Quakers and Catholics) after banishment.

The execution of religious dissenters is the logical outcome of the union of church and state. When a religious law with a mild penalty is persistently disobeyed, lawmakers seek to compel obedience by stricter measures and harsher punishments. The Massachusetts laws against Quakers are a prime example.

While some may seek to excuse the early colonists for their dealings

with religious opponents because they were simply reflecting the spirit of the times, the lesson of their fundamental mistake should not be lost upon their descendants who wish to preserve their hard-bought liberties.

### George Washington and the Tithingman (P. 27)

<sup>6</sup> "The tithingman also watched to see that 'no young people walked abroad on the eve of the Sabbath,' that is, on a Saturday night [after sundown]. He also marked and reported all those 'who lye at home,' and others who 'prophanely behaved, lingered without dores at meeting time on the Lordes Daie,' all the 'sons of Belial strutting about, setting on fences, and otherwise desecrating the day.' These last two classes of offenders were first admonished by the tithingman, then 'sett in stocks,' and then cited before the Court. They were also confined in the cage on the meeting-house green, with the Lord's Day sleepers. The tithingman could arrest any who walked or rode at too fast a pace to and from meeting, and he could arrest any who 'walked or rode unnecessarily on the Sabbath.' Great and small alike were under his control."—ALICE M. EARLE, *The Sabbath in Puritan New England*, pp. 74, 75.

This is illustrated in a later period by a notice from *The Massachusetts Centinel* of December 16, 1789, entitled "The President and the Tithingman:"

"The President [George Washington], on his return to New York from his late tour through Connecticut, having missed his way on Saturday, was obliged to ride a few miles on Sunday morning in order to gain the town at which he had previously proposed to have attended divine service. Before he arrived, however, he was met by a tithingman, who commanding him to stop, demanded the occasion of his riding; and it was not until the President had informed him of every circumstance and promised to go no further than the town intended that the tithingman would permit him to proceed on his journey."

### Puritans and "Pilgrims" (Pp. 27, 29)

<sup>7</sup> The Massachusetts Bay Puritans were non-Separatist Congregationalists; they regarded the Church of England as their "dear mother" while rejecting her ceremonialism. The "Pilgrims" of Plymouth, similarly Congregationalists, departed still farther from the Church of England; they have generally been considered Separatists, although not of the Rigid Separatist type of Roger Williams. But the term did not mean for them separation of church and state. The Pilgrims had re-

ligious laws, although they were more tolerant than the Puritans, and never went to such extremes in enforcing religious penalties.

<sup>8</sup> Although Plymouth was settled earlier, the Massachusetts Bay religious legislation developed first. The Puritans began settlement under the Massachusetts Bay patent at Salem in 1628. Until the arrival of the Boston group under Winthrop in 1630, the government of the colony was not in the hands of the settlers. This direction for stopping work early on Saturday in preparation for celebrating Sunday "in a religious manner" was part of the first general letter from the governor of the colonizing company in England to the Salem settlers under Endicott.

### Persecution Begins (P. 29)

<sup>9</sup> The official record of the General Court and Court of Assistants of Boston shows that the first prosecution for a religious offense was a violation of Sunday observance as prescribed by custom or perhaps on the basis of divine law. The courts decided cases at first "according to the laws and the Word of God," as they interpreted the Scriptures, whenever they were without specific enactments or statutes of their own making.

The Massachusetts General Court and Court of Assistants were the legislative, judicial, and executive departments of the government all combined in one. They made, judged, and executed the laws.

### Church Membership and the Franchise (P. 29)

<sup>10</sup> The "Pilgrim" Separatists who came to Plymouth on the *Mayflower*, and the Massachusetts Bay Puritans who followed them at Salem and Boston, were members of dissenting religious groups which wished to establish their particular brand of church organization in the New World because they had been denied the privilege in the Old. It was natural, therefore, that they were determined to keep the government in the hands of those who would preserve the religion they had come to establish. Each colony in which a particular church group held dominant control presented a similar picture.

While Plymouth never went further than to specify orthodoxy "in the fundamentals of religion" in 1672, Massachusetts Bay as early as 1631 required church membership (which meant Puritan Congregationalism) as a prerequisite to being admitted as a freeman. It is interesting to note that the first franchise law in Massachusetts Bay was passed right after the principles of church in government had been

challenged by Roger Williams. (See James Ernst, *Roger Williams, New England Firebrand*, New York, 1932, pp. 67, 68.)

The large inflow of immigrants in the decade 1630-1640 placed the franchised church members in the minority, estimates placing the proportions as low as one in sixteen. The spectacle of otherwise reputable Anglicans being denied their rights, simply because they did not agree in all things with the religious oligarchy of Massachusetts, evidently stirred the English monarch. In 1664 the General Court repealed the law concerning franchise of church members only, "in answer to that part of his Majesty's letter of June 28, 1662, concerning admission of freemen." The new regulations required only that freemen be "orthodox in religion, and not vicious in their lives."—*Records of . . . Massachusetts Bay*, vol. 4, part 2, pp. 117, 118.

### The New World Theocracy (P. 31)

<sup>11</sup> The Massachusetts Bay General Court wished to re-establish the ancient theocracy in the New World, ignorant of the fact that God Himself abolished the theocracy at the time of the Babylonian captivity and decreed that it should not be re-established "until He come whose right it is; and I will give it Him." Ezekiel 21:26, 27. This mistaken conception that the kingdom of God is to be set up again upon earth through human legislation and that the obligations men owe to God are to be enforced by the civil magistrates, has been the primary cause of all the religious persecutions of the past.

### Execution of Quakers (P. 35)

<sup>12</sup> The law of 1661 seems to have been a desperate effort to frighten the Quakers away after the colony had been forced to defend itself to the king for the execution of several Quakers under the 1658 law (see p. 34). This death sentence appears in the Massachusetts court records of October 18, 1659:

"After a full hearing of what the prisoners could say for themselves, it was put to the question, whether Wm. Robinson, Marmaduke Stephenson, and Mary Dyer, the persons now in prison, who have been convicted for Quakers, and banished this jurisdiction on pain of death, should be put to death according as the law provides in that case.

"The Court resolved this question on the affirmative. . . .

"Whereas William Robinson, Marmaduke Stephenson, and Mary Dyer, are sentenced by this Court to death for their rebellion, etc., it is ordered, that the secretary issue out his warrant to Edward

Michelson, marshal general, for repairing to the prison on the twenty-seventh of this instant October, and take the said William Robinson, Marmaduke Stephenson, and Mary Dyer into his custody, and them forthwith, by the aid of captain James Oliver, with one hundred soldiers, taken out by his order proportionably out of each company in Boston, completely armed with pike, and musketeers, with powder and bullet, to lead them to the place of execution, and there see them hang till they be dead."—*Records of . . . Massachusetts Bay*, vol. 4, part 1, p. 383. (Mrs. Dyer's sentence was changed to banishment, but she returned later and was hanged.)

The new law was carried into effect six days after its passage by the following General Court order of May 28, 1661, against two Quakers who had twice refused to testify under trial: "That they shall by the constable of Boston, be forthwith taken out of the prison, and stripped from the girdle upwards, by the executioner, and tied to the cart's tail and whipped through the town with twenty stripes, and then carried to Roxbury, and delivered to the constable there, who is also to tie them, or cause them, in like manner, to be tied to a cart's tail, and again whip them through the town with ten stripes, and then carried to Dedham, and delivered to the constable there, who is again in like manner to cause them to be tied to the cart's tail and whipped with ten stripes through the town, and from thence they are immediately to depart this jurisdiction at their peril."—*Ibid.*, part 2, p. 20.

### Connecticut and New Haven (Pp. 38, 39)

<sup>33</sup> Although they were distinct colonies until 1665, Connecticut and New Haven are not treated separately or in detail, because so much of the legislation of both was copied from Massachusetts laws which have already been given. Both were theocratic in government, but Connecticut, like Plymouth and unlike New Haven, did not require church membership for the franchise. New Haven originally made the Bible supreme in legislation, claiming that "the supreme power of making laws, and of repealing them, belongs to God only, and that by Him this power is given to Jesus Christ. . . . And that the laws for holiness, and righteousness, are already made, and given us in the Scriptures, which *in matters moral, or of moral equity*, may not be altered by human power, or authority. . . . Yet civil rulers, and courts, . . . are the ministers of God, for the good of the people; and have power to declare, publish, and establish, for the plantations within their jurisdictions, the laws He hath made, and to make, and repeal orders for smaller matters, not particularly determined in Scripture, according to the more

general rules of righteousness, and while they stand in force, to require due execution of them.”—*New Haven's Settling in New England*, (London, 1656), in *Records of the Colony or Jurisdiction of New Haven*, 1663-1665 (Hartford, 1858), p. 569.

### Early Laws Copied From Massachusetts

The earliest full codes are those of 1650 in Connecticut and 1656 in New Haven. The following laws from these codes were copied almost verbatim from the Massachusetts laws (which see): the Bible used as law (p. 30); church membership required for franchise, in New Haven (p. 30); death for idolatry, witchcraft, blasphemy (p. 31); compulsory church attendance (p. 31); fine or banishment for heresy, in New Haven (p. 32; almost verbatim except no specific heresies named); presumptuous profanation of the Lord's day, in New Haven, (see Plymouth law of 1671, except for the alternative for the death penalty, p. 26).

### The Famous Blue Laws

It was in connection with New Haven that the term “blue law” came into vogue, an expression later used to refer to any rigorous or “puritanical” law regulating individual conduct or conscience.

For many years the original blue laws have been assailed as unauthentic. It is claimed that they are an invention of the Reverend Samuel Peters, and that they have no foundation in law. The American Historical Association, in its annual report for the year 1898, published the Reverend Mr. Peters' blue laws compared with the abridgment of the laws as given in Daniel Neal's *History of New England*, and with the actual statutes of the various New England colonies. In most instances Peters' code and the actual statutes are alike; and where the wording is not similar, the subject matter is substantially the same.

“1. Over one half of Peters' ‘Blue Laws’ did exist in New Haven, expressly or in the form of judicial customs under the common law.

“2. More than four-fifths of them existed, in the same fashion, in one or more of the colonies of New England.

“3. Were the ‘Blue Laws’ shown to be forgeries, Peters could not be made to shoulder the whole burden of guilt, since he derived nearly two-thirds of them directly from other writers on New England history.”—WALTER F. PRINCE, “An Examination of Peters' ‘Blue Laws’ ” in *Report of the American Historical Association*, 1898, p. 99. (H.R. Document No. 295, Fifty-fifth Congress, 3d session.)

If there are still any who have doubts regarding the authenticity of these blue laws, let them read this report and look up the legal and

historical references cited. The American Historical Association has rendered the cause of truth a great service in revealing the real historical facts and actual statutes as it found them in the official records.

<sup>14</sup> Although Connecticut and New Haven had enacted laws (without the death penalty) against Quakers and other heretics, the united colony granted the right of dissenting worship in 1708. The fact that this liberty did not bring about universal church attendance is complained of in the preamble to the 1721 Sunday law.

<sup>15</sup> The Sunday statute in the 1750 code is an example of a blue law in full flower; it is a combination of various earlier laws beginning with a single church-attendance law in the 1650 code. (See *The Public Records of the Colony of Connecticut Prior to the Union With New Haven Colony* [vol. 1], p. 524.)

In their laudable attempt to forsake worldliness and ritualism for the religion of the Bible, the Puritans committed the double error of applying the fourth commandment to the first day of the week and making the Mosaic legal code the basis for its enforcement. In the Puritan colonies there arose the practice of applying to Sunday the sunset-to-sunset reckoning of the Biblical Sabbath, while the English law began Sunday at midnight. So in New Haven we find legal Sunday observance beginning at sunset (1647), and later in Connecticut and New Hampshire a thirty-hour "Sabbath."

### Maryland's "Act of Toleration" (P. 43)

<sup>16</sup> It is very evident that the Act of 1649 "Concerning Religion" was in reality an act of intolerance when it meted out the death penalty upon all who denied belief in a particular form concerning the Trinity, the legally prescribed form of faith in "the unity of the Godhead." That is not religious liberty or freedom of conscience as Americans understand it. Toleration may be a step in the direction of religious liberty, but it is far from the goal of liberty of conscience in religious matters as conceived by the founders of the American Republic. Religious liberty imposes no creed by law, but lets each individual follow the dictates of his own conscience without magisterial interference as long as the individual respects the equal rights of others.

Some overzealous Marylanders have contended that the colony was the first home of religious freedom in America. It is true that Maryland was settled in 1634 by Catholics and Protestants under a policy of greater toleration than existed in America at that time, but that was not religious freedom. It was *toleration* only, dependent on Lord Baltimore's personal policy, and even when it was put on the statute

books in the Act of 1649 it was limited and incomplete. Maryland colony never had true religious freedom; under the Catholics it had limited toleration, and later under Protestant control it lost even that: Catholics were denied religious and civil freedom, Quakers were persecuted, and the Anglican Church made the state establishment.

### Primitive Christians and the Sabbath (P. 47)

<sup>17</sup> However much or little it was the practice of the "primitive Christians" to observe the first day of the week, it was not their practice to make laws compelling others, regardless of their faith, religious convictions, or desires, to observe it. They did not seek to force their religious views and practices upon others by law. In this is shown the grievous departure of the English and early colonial Christians from "primitive" Christianity. And there is abundant evidence that for a considerable time the early Christians did not themselves observe the first day as a Sabbath, or day of rest, but continued to observe the seventh day, the day specified in the fourth precept of the decalogue, as such.

### Rhode Island and Religious Liberty (Pp. 51-55)

<sup>18</sup> The reader is impressed, or perhaps *depressed*, by the weary round of drastic laws against freedom of conscience during the early days of the American colonies. Was there any exception to this seemingly universal intolerance in matters of religion? Yes, there was; and it shines forth as a light in a dark place.

The notable exception was the colony of Rhode Island, or "Providence Plantation," as it was first called.

Religious liberty has always been a cardinal principle in which the people of Rhode Island have taken a just pride. A good proportion of its people in former times were Baptists and Seventh Day Baptists. The bell placed in the Baptist church built at Providence in 1774 and dedicated May 28, 1775, bore a most significant motto which made it like its famous "sister bell," in Independence Hall, Philadelphia, proclaiming "liberty to all the inhabitants throughout all the land." That motto reads:

"For freedom of conscience, the town was first planted,  
Persuasion, not force, was used by the people.  
This church is the eldest, and has not recanted,  
Enjoying and granting, bell, temple, and steeple."

—WILLIAM R. STAPLES, *Annals of the Town of Providence* (Providence, R. I., 1843), p. 417.

### Roger Williams

The light of true religious freedom was kindled by one man, Roger Williams, a figure unique in his times. We do well to note the background of this intrepid pioneer of religious liberty and to study the principles by which he guided his fellow countrymen to a happier day of freedom of worship.

Roger Williams, founder of Rhode Island, is now generally believed to have been born in London about 1604. He was educated at Cambridge University under the patronage of the great English jurist, Coke. He came to Massachusetts in 1631 as a Separatist. His pastorate at Salem was ended by clashes with the Puritan administrators, mainly over his principle that civil government should by right deal only with civil affairs.

Williams began to oppose Sunday laws and all other forms of religious legislation in the first months of his arrival. In his *History of the Baptists* (1887), page 628, Thomas Armitage says: "He [Roger Williams] foresaw at a glance that corruption and persecution must work out in America the same results that they had wrought in England. At once, therefore, he protested, as a sound-minded man, that the magistrate might not punish a breach of the first table of the law, comprised in the first four of the ten commandments."

In 1631 Governor Winthrop wrote in the first volume of his journal:

"At a court holden at Boston . . . a letter was written from the court to Mr. Endicott to this effect: that . . . Mr. Williams . . . had declared his opinion that the magistrate might not punish the breach of the Sabbath, nor any other offense [that was religious], as it was a breach of the first table [of the law of God]."—*Winthrop's Journal, 1640-1649*, vol. 1 (vol. 18 of *Original Narratives of Early American History*, Scribner, 1908), pp. 61, 62.

Williams continued to oppose the religious and civil policies of the Massachusetts government until in 1635 he was sentenced to banishment. The causes of his sentence were both civil and religious: his outspoken opposition to taking lands from the Indians under the royal patent without payment, the civil use of the oath, which he regarded as religious, church legislation and support by the state, as well as his insistence on complete separation from the Church of England and complete separation of church and state. (See James Ernst, *The Political Thought of Roger Williams*, pp. 17, 18.)

He avowed that "the sovereign power of all civil authority is founded in the consent of the people" and that the majority had no control over the conscience of the individual in religion nor over inalien-

able rights. (See *The Bloody Tenent of Persecution*, Underhill ed., chap. 78, p. 183.)

Bancroft, the historian, says of Roger Williams:

"He was the first person in modern Christendom to establish a civil government on the doctrine of the liberty of conscience, the equality of opinions before the law. . . . Williams would permit persecution of no opinion, no religion, leaving heresy unharmed by law, and orthodoxy unprotected by the terrors of penal statutes."—*History of the United States* (1888), vol. 1, part 1, p. 255.

<sup>19</sup> Sentenced to be banished, Williams escaped custody by flight into the wilderness and reached a place of refuge among the Indians. Soon persons oppressed for religion gathered about him. In June, 1636, he began in a formal way to establish the principles of the new settlement of Providence, built on land purchased from the Indians, which grew into the State of Rhode Island. His first concern was to provide that the settlement should be "a shelter to persons distressed for conscience" and that here should be "a civil government" that exercised authority "only in civil things."

As at Plymouth, the government at Providence was based on a written agreement of the settlers in the absence of a legal charter. Here began, long before the Maryland or Pennsylvania declarations of incomplete religious freedom, what the 1663 royal charter referred to as a "livelie experiment" in "full libertie in religious concernments." David Masson calls this experiment "the organization of a community on the unheard-of principle of absolute religious combined with perfect civil democracy." (See his *Life of John Milton*, vol. 2, pp. 600, 601.)

<sup>20</sup> Others, oppressed in Massachusetts, enlisted Williams' help in obtaining land from the Indians and settled on Aquidneck (renamed Rhode) Island at Portsmouth and Newport. Although they began with the theocratic rule of "judges" and "elders," (*Records of the Colony of Rhode Island and Providence Plantations*, vol. 1, 1636-1663, pp. 52, 53, 63, 113.) both soon adopted more democratic ideas from Providence, and by 1641 had granted religious freedom to all Protestants.

In 1643 three settlements in Rhode Island sent Williams to England to get a charter for a colony, with guarantees of protection from the aggressive Puritans of the Massachusetts Bay Colony. The charter was obtained. In 1647 the General Assembly of Rhode Island adopted a code of laws, which culminated in the declaration that "all men may walk as their consciences persuade them, without molestation—every one in the name of his God." It was not an "Act of Toleration," as in

Maryland in 1649 (see p. 43), by which liberty of conscience was granted only to those making profession of the Christian religion, accepting orthodox views of the Trinity, etc.; nor did it limit religious freedom to those who believed in God as the Creator, as in Pennsylvania (see p. 65); it was a charter of liberty of conscience as of natural right, to believers and nonbelievers alike.

The religious liberty clause of 1647 ends the general acts of the first code adopted under the 1644 charter. It applies to "all men" without discrimination. The qualifying phrase "otherwise than what is herein forbidden" is not, as in the case of Maryland, a loophole to admit laws prescribing death or imprisonment for religious offenses. The only law in this Rhode Island code relating to religion is that prohibiting witchcraft, which was regarded not simply as a religious allegiance to the devil, but also as a menace to life and property. This code classes it under the law for man-slaughter, but the penalty is not directly decreed, further than the citation of English law: "The penalty imposed by the authority that we are subjected to is felony of death. 1 Jac. 12." Says William R. Staples:

"No prosecution for this offense was ever had in this colony or state. It is remarkable, that, in this and in some other instances, the penalty is referred to the law of England, the Assembly expressing no opinion as to its justice or expediency. In the age in which this code was adopted, no legislature would have dared to do less than is here done."—*Rhode Island, Proceedings of the First General Assembly . . . and the Code of Laws, 1647*, p. 27, footnote.

<sup>21</sup> As long as Roger Williams held office in the Rhode Island government, that colony did not enact religious laws. After being "president" from 1654 to 1657, assistant in 1663, 1667, and 1670, he declined the office of assistant in 1677 although he still took part in local affairs. (See *The Dictionary of National Biography*, 1908-09 ed., vol. 21, pp. 448, 449.)

In the 1679 Session Laws appears this act prohibiting sports and labor "on the first day of the week." Although no reference is made to religion, the religious character of the day is evident; the wording seems to be condensed from the contemporary colonial Sunday laws which were modeled after that of 29 Charles II.

It is true that the colony records mention an earlier enactment of 1673 against "debaistness, or immodesty, or concourse of people, tippling or gaming, or wantonness, that all modest assemblies may not be interrupted" on the first day of the week. This is a most peculiar law; any intent to prescribe Sunday observance is disclaimed, and the

reason offered is the excess of "debaistness or tippling, and unlawful games, and wantonness" indulged in by children, servants, and some others, because of not being employed on that day. (See *The Records of the Colony of Rhode Island*, vol. 2, 1664-77, pp. 503, 504.) If the intent of the lawmaker is the law, this is definitely not a religious enactment, yet it established the precedent for a general Sunday law six years later.

Mention should perhaps be made of a clause excluding Catholics and non-Christians from the privileges of citizenship, purported to have been enacted in 1663, but unknown except in considerably later codes. It is variously designated by authorities as "passed later than 1688," or first found in the 1719 code, or validated by the adoption of the 1730 revision containing it. It should not, therefore, be attributed to the time of Roger Williams. (See Samuel G. Arnold, *History of the State of Rhode Island*, 1894 ed., vol. 2, p. 491; Sidney S. Rider, *Rhode Island Historical Tracts*, Second Series, no. 1.)

#### Reasons for Prohibiting Labor on Sunday (Pp. 64, 74)

<sup>22</sup> The reason for prohibiting tippling and drinking on Sunday is made quite apparent here. It was not simply to guard against the increased occasion and temptation to drink in consequence of the enforced idleness resulting from the general laws forbidding labor, business, and trade on that day, but to guard "the time of divine worship." No supplying of drinks on Sunday, except for "necessary refreshment," was allowed; but to do so "in the time of divine worship" was especially forbidden. It was a religious law.

<sup>23</sup> The reason for prohibiting labor, pastimes, drinking, and the like on Sunday, is here plainly stated. It is not because men need physical rest one day in seven, but because "the true and sincere service and worship of God, according to His holy will and commandments, is often profaned and neglected by many, . . . to the great scandal of the holy Christian faith." The law was made to prevent the doing of things on Sunday which were considered perfectly right and proper on other days of the week, and to punish those "who do not keep holy the Lord's day."

#### Both Liberty and Restrictions in Pennsylvania (Pp. 66-69)

<sup>24</sup> Pennsylvania's grant of freedom of conscience, like Maryland's, was limited, and accompanied by a Sunday law in the same act. In 1705 this grant was further restricted to include only those "who shall profess faith in God the Father, and in Jesus Christ His only Son, and

in the Holy Spirit, one God blessed forevermore, and shall acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration." (See *The Charters and Acts of Assembly of the Province of Pennsylvania, 1700-1743*, vol. 1, sec. 2, "The Acts of Assembly," p. 19.)

<sup>25</sup> The sections quoted are modeled after the Sunday law of the 29th year of Charles II. The first part of the law is substantially the Sunday section of the "Great Law" of 1682, except that its avowed object is that people may "devote themselves to religious and pious exercises." They are to "read and hear the Holy Scriptures," and "frequent such meetings" "as may best suit their respective persuasions." Under this law only religious acts, with a few exceptions, were permissible on Sundays. All "worldly business or work" was forbidden, and the same prohibition is in the present-day Pennsylvania Sunday law. This law made honest labor and honorable business on Sunday a crime, granting no quarter to those who observed another day than Sunday as holy time.

Here we have a good illustration of some of the evils of Sunday legislation. The earlier part of the law made honest labor and business on Sunday a crime, virtually putting a premium upon idleness, and making it compulsory. The inquisitorial spirit was also encouraged by this law. The constable was ordered to search public houses for tipplers on this day, but not on other days. The same evils still cling to Sunday legislation.

## A GENERAL STATEMENT ON THE COLONIAL PERIOD

It is sad to record that most of those who sought freedom of conscience in America were unwilling to grant it to others. Nearly all the religious groups preached religious freedom only when they were in the minority, but the Quakers and Baptists (the latter including such groups as the Mennonites and the Dunkers) stood for it from principle. While the Quakers contended for religious liberty chiefly by "witnessing" under persecution, the Baptists more than any others fought with propaganda, persistently and with increasing activity.

The growth of religious freedom might have had a different story but for America's novel situation of having no majority religion. Puritan New England, which clung longest to the old intolerance, and Anglican Virginia, which was hardly less intolerant in the early days, were the only areas dominated by single religious groups. The Quaker colonies—Pennsylvania, New Jersey, and Delaware, none of which had

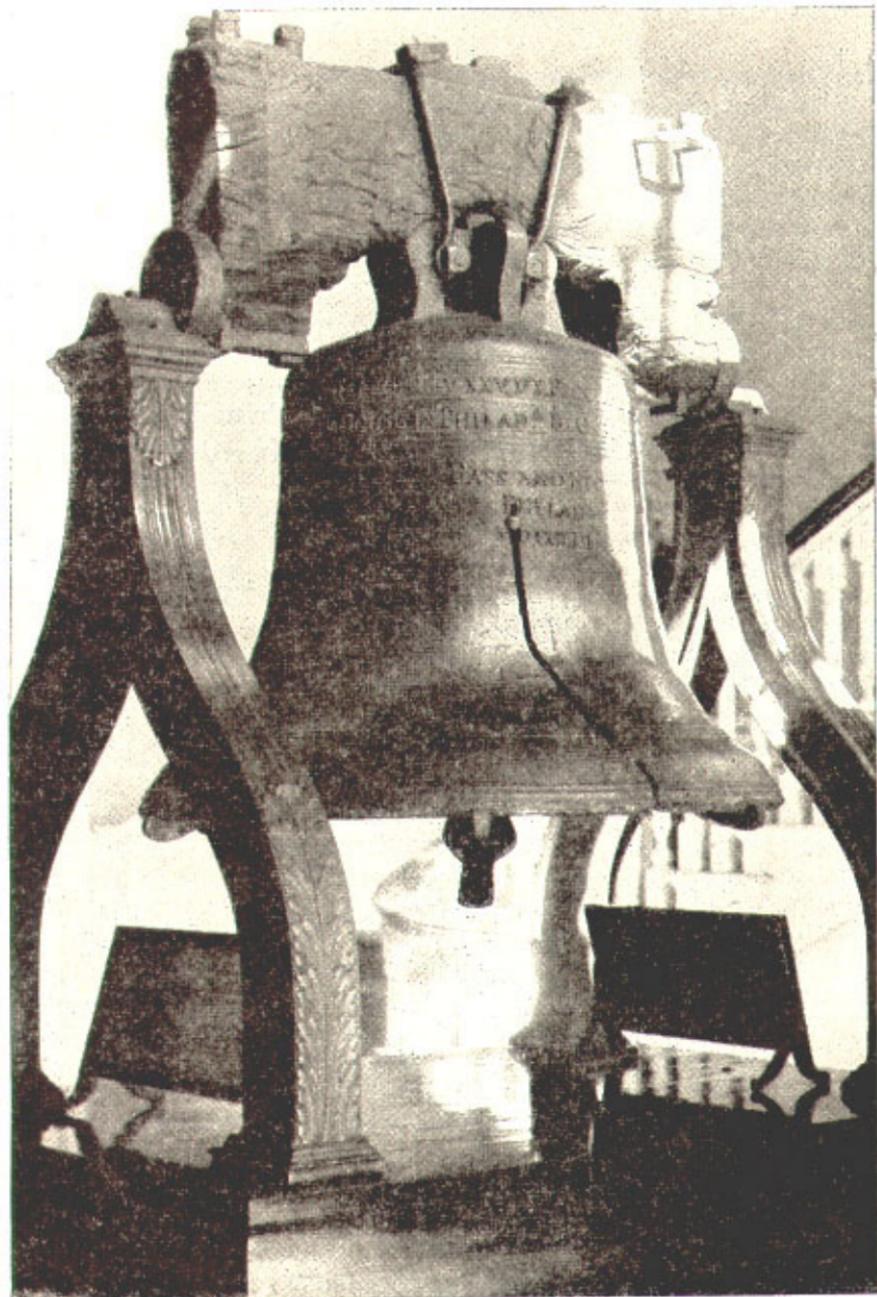
religious establishments, came nearest, after Rhode Island, to realizing complete religious liberty, but the Proprietary colonies in general developed liberal tendencies. Business considerations would naturally operate to induce Proprietors to grant a measure of tolerance, for they needed to attract industrious settlers and promote peace and prosperity. This was at least partly responsible for writing liberty-of-conscience clauses into the charters of New York, New Jersey, the Carolinas, and Georgia.

Aside from the increase of dissenters, the growing number of the unchurched was a factor. Even in Puritan New England the majority of the masses were not church members, and the wave of popular resentment against the magistrates prevented the continuance of severe persecution of Quakers. Indeed, the increasing strictness of the Puritan legislation attests the inability to enforce such laws on the population at large. Toward the beginning of the Revolution there was a large class of people who were religious, and believed in all the churches, but remained outside of membership and disapproved of giving preference to any one church. In this group were such leaders as Jefferson and Madison. By the time of the Revolution, the battle was practically won for religious freedom and separation of church and state, but the final settlements were not made all at once. In the first constitutions, during the war period, only two of the thirteen new States, Rhode Island and Virginia, had complete freedom and separation of church and state. Six required Protestantism, two the Christian religion, and five a nominal establishment; and seven retained other provisions concerning such points as the Bible, the Trinity, and belief in heaven and hell. By the end of the Revolution nearly all the States had accepted the principle of separation of church and state. The overwhelming sentiment of the people for religious liberty was demonstrated and brought to focus at the time of the adoption of the Federal Constitution, in the demand for the first ten amendments. For excellent summaries of the colonial period and the situation at the time of independence, see William Warren Sweet, *Religion in Colonial America* (New York, 1942), pp. 322-339, and Sanford H. Cobb, *The Rise of Religious Liberty in America* (New York, 1902), pp. 482-509.

**PART II**

**Federation Period**

**Time of Awakening to the Principles  
of Civil and Religious Liberty**



W. H. LAYTON

The Liberty Bell, Which Rang Out the News of the Signing of the Declaration of Independence.

## Civil and Religious Liberty Come Hand in Hand

**B**EFORE, during, and after the period of the Revolutionary War in America, the people of the colonies dreamed and wrote and spoke of political and economic freedom from a foreign power. They called for a free state, free trade, free speech, and a free press. But they demanded no less vehemently absolute liberty of religion in doctrine and life, and the sanguinary struggle which won civil liberty won also religious liberty. In fact, liberty begot liberty.

Our objective in dealing with this period is to show that, by a break with the mother country, the colonists fought not only for freedom from domination from abroad, but also for the severing of civil and religious shackles at home. Political and religious freedom were born as twins—not identical twins, but nevertheless twins. They were so conceived in the hearts and minds of the people, and by their representatives in constitutional assemblies and legislative bodies.

Note, therefore, what the forefathers said as they broke with the tyrannies of the past. The urge for freedom of conscience and of opinion was in the very air. We reproduce some of the records of resolutions and declarations passed in legislatures, conventions, assemblies, and various other gatherings, religious and secular.

### AN APPEAL FOR AN INTER-COLONIAL CONFERENCE OF CIVIL AND RELIGIOUS RIGHTS

#### An Action of the Massachusetts Legislature, 1774

[The Legislature of Massachusetts, on motion of Samuel Adams, issued the first appeal on June 17, 1774, for the convening of the first Continental Congress in September of that year for the purpose of bringing about a reconciliation between Great Britain and the thirteen colonies in America. That appeal, drawn by Samuel Adams, ran as follows:]

A meeting of Committees from the several Colonies on this Continent is highly expedient and necessary, to consult upon the

present state of the Colonies, and the miseries to which they are and must be reduced by the operation of certain acts of Parliament respecting America, and to deliberate and determine upon wise and proper measures, to be by them recommended to all the Colonies, for the recovery and establishment of their just rights and liberties, civil and religious, and the restoration of union and harmony between Great Britain and the Colonies, most ardently desired by all good men.—*Journals of the Continental Congress*, vol. 1, pp. 15, 16. Published by the Library of Congress.

## PLAN OF ACCOMMODATION WITH GREAT BRITAIN

RESOLUTION ADOPTED BY THE NEW YORK PROVINCIAL CONGRESS, JUNE 21, 1775

As the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of popery all along the interior confines of the old Protestant colonies tends not only to obstruct their growth but to weaken their security, [*Resolved,*] that neither the Parliament of Great Britain, *nor any other earthly legislature or tribunal, ought or can of right interfere or interpose in anywise howsoever in the religious and ecclesiastical concerns of the colonies.*—*American Archives*, Fourth Series, vol. 2, pp. 1317, 1318.

## VIRGINIA DECLARATION OF RIGHTS

ADOPTED JUNE 12, 1776

A Declaration of Rights, made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, *as the basis and foundation of government.*

SECTION 1. That all men are by nature *equally* free and independent, and have certain inherent rights, of which, when they enter into a state of society, *they cannot, by any compact, deprive or divest their posterity;* namely, the enjoyment of life and liberty,

with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

SECTION 2. That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

SECTION 15. That no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

SECTION 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.<sup>1</sup>—*American Archives*, Fourth Series, vol 6, pp. 1561, 1562.

IN CONGRESS, JULY 4, 1776.

# A DECLARATION

BY THE REPRESENTATIVES OF THE  
UNITED STATES OF AMERICA,  
IN GENERAL CONGRESS ASSEMBLED. \*

WHEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent

\* The Declaration of Independence as here given is the form used in Senate Document no. 79, 73d Congress, 1st Session, printed at the United States Government Printing Office in 1934. The resolution authorizing the publication of the document was Senate Concurrent Resolution no. 2 under date of June 13, 1933.

Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

WE hold these Truths to be self-evident, that all Men are created equal,<sup>2</sup> that they are endowed by their Creator<sup>3</sup> with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great-Britain is a History of repeated Injuries and Usurpation, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World.

HE has refused his Assent to Laws, the most wholesome and necessary for the public Good.

HE has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in their Operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

HE has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

HE has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

HE has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.

HE has refused for a long Time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the Dangers of Invasion from without, and Convulsions within.

HE has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands.

HE has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

HE has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

HE has erected a Multitude of new Offices, and sent hither Swarms of Officers to harrass our People, and eat out their Substance.

HE has kept among us, in Times of Peace, Standing Armies, without the consent of our Legislatures.

HE has affected to render the Military independent of and superior to the Civil Power.

HE has combined with others to subject us to a Jurisdiction

foreign to our Constitution, and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation:

FOR quartering large Bodies of Armed Troops among us:

FOR protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

FOR cutting off our Trade with all Parts of the World:

FOR imposing Taxes on us without our Consent:

FOR depriving us, in many Cases, of the Benefits of Trial by Jury:

FOR transporting us beyond Seas to be tried for pretended Offenses:

FOR abolishing the free System of English Laws in a neighbouring Province, establishing therein an arbitrary Government, and enlarging its Boundaries, so as to render it at once an Example and fit Instrument for introducing the same absolute Rule into these Colonies:

FOR taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

FOR suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

HE has abdicated Government here, by declaring us out of his Protection and waging War against us.

HE has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the Lives of our People.

HE is, at this Time, transporting large Armies of foreign Mercenaries to compleat the Works of Death, Desolation, and Tyranny, already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy the Head of a civilized Nation.

HE has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the

Executioners of their Friends and Brethren, or to fall themselves by their Hands.

HE has excited domestic Insurrections amongst us, and has endeavoured to bring on the Inhabitants of our Frontiers, the merciless Indian Savages, whose known Rule of Warfare, is an undistinguished Destruction, of all Ages, Sexes and Conditions.

IN every stage of these Oppressions we have petitioned for Redress in the most humble Terms: Our repeated Petitions have been answered only by repeated Injury. A Prince, whose Character is thus marked by every act which may define a Tyrant, is unfit to be the Ruler of a free People.

NOR have we been wanting in Attentions to our British Brethren. We have warned them from Time to Time of Attempts by their Legislature to extend an unwarrantable Jurisdiction over us. We have reminded them of the Circumstances of our Emigration and Settlement here. We have appealed to their native Justice and Magnanimity, and we have conjured them by the Ties of our common Kindred to disavow these Usurpations, which, would inevitably interrupt our Connections and Correspondence. They too have been deaf to the Voice of Justice and of Consanguinity. We must, therefore, acquiesce in the Necessity, which denounces our Separation, and hold them, as we hold the rest of Mankind, Enemies in War, in Peace, Friends.

WE, therefore, the Representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS, Assembled, appealing to the Supreme Judge of the World for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great-Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce,

and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.\*

Signed by ORDER and in BEHALF of the CONGRESS,  
JOHN HANCOCK, PRESIDENT.

ATTEST.

CHARLES THOMSON, SECRETARY.

### SIGNERS OF THE DECLARATION OF INDEPENDENCE

ACCORDING TO THE AUTHENTICATED LIST PRINTED BY  
ORDER OF CONGRESS OF JANUARY 18, 1777

*John Hancock.*

NEW-HAMPSHIRE.	{ Josiah Bartlett, Wm. Whipple, Matthew Thornton.	DELAWARE.	{ Cæsar Rodney, Geo. Read, (Tho M:Kean.)
MASSACHUSETTS- BAY.	{ Sam <sup>l</sup> . Adams, John Adams, Robt. Treat Paine, Elbridge Gerry.	MARYLAND.	{ Samuel Chase, Wm. Paca, Tho <sup>s</sup> . Stone, Charles Carroll, of Car- rollton.
RHODE-ISLAND AND PROVIDENCE, &C.	{ Step. Hopkins, William Ellery.		
CONNECTICUT.	{ Roger Sherman, Sam <sup>l</sup> . Huntington, Wm. Williams, Oliver Wolcott.	VIRGINIA.	{ George Wythe, Richard Henry Lee, Tho <sup>s</sup> . Jefferson, Benja <sup>d</sup> . Harrison, Tho <sup>s</sup> . Nelson, jr. Francis Lightfoot Lee, Carter Braxton.
NEW-YORK.	{ Wm. Floyd, Phil. Livingston, Frans. Lewis, Lewis Morris.		
NEW-JERSEY.	{ Rich <sup>d</sup> . Stockton, Jno. Witherspoon, Frans. Hopkinson, John Hart, Abra. Clark.	NORTH- CAROLINA.	{ Wm. Hooper, Joseph Hewes, John Penn.

PENNSYLVANIA.	{ <i>Robt. Morris,</i> <i>Benjamin Rush,</i> <i>Benja. Franklin,</i> <i>John Morton,</i> <i>Geo. Clymer,</i> <i>Jas. Smith,</i> <i>Geo. Taylor,</i> <i>James Wilson,</i> <i>Geo. Ross.</i>	SOUTH-CAROLINA.	{ <i>Edward Rutledge,</i> <i>Thos. Heyward, junr.</i> <i>Thomas Lynch, junr.</i> <i>Arthur Middleton.</i>
		GEORGIA.	

DISSENTERS' PETITION <sup>5</sup>

Memorial of the Presbytery of Hanover to the  
General Assembly of Virginia

*To the Honourable the General Assembly of Virginia.*

The Memorial of the Presbytery of Hanover humbly represents, That your memorialists are governed by the same sentiments which have inspired the united States of America, and are determined that nothing in our power and influence shall be wanting to give success to their common Cause. We would also represent, that, Dissenters from the Church of England in this Country, have ever been desirous to conduct themselves as peaceable members of the civil government; for which reason, they have hitherto submitted to several ecclesiastic burthens and restrictions that are inconsistent with equal liberty. But now, . . . we flatter ourselves, that we shall be freed from all the encumbrances which a spirit of Domination, prejudice, or bigotry hath interwoven with most other political Systems. This we are the more strongly encouraged to expect by the *Declaration of Rights*, so universally applauded for that dignity, firmness, and precision with which it delineates, and asserts the privileges of society, and the prerogatives of human nature; and which we embrace as the *Magna Charta* of our Common-wealth, that can never be violated without endangering the grand superstructure it was destined to sustain. Therefore we rely upon this *Declaration*, as well as the Justice of our honourable Legislature, to secure us the *free exercise of Religion according to the dictates of our Consciences*. . . .

It is well known that in the frontier Counties, which are justly supposed to contain a fifth part of the inhabitants of Virginia, the dissenters have borne the heavy burthens of purchasing Glebes, building churches, and supporting the established Clergy, where there are very few Episcopalians, either to assist in bearing the expense or to reap the advantage; and that throughout the other parts of the Country, there are also many thousands of zealous friends and defenders of our State, who, besides the invidious, and disadvantageous restrictions to which they have been subjected, annually pay large taxes to support an Establishment from which their consciences and principles oblige them to dissent: all which are confessedly so many violations of their natural Rights; and in their consequences a restraint upon freedom of enquiry and private judgment. . . .

Neither can it be made appear that the Gospel needs any such civil aid. We rather conceive that when our Blessed Saviour declares his *kingdom is not of this world* he renounces all dependence upon state power; and as his *weapons are spiritual*, and were only designed to have influence upon the judgment and heart of man; we are persuaded that if mankind were left in the quiet possession of their unalienable religious privileges, Christianity, as in the days of the Apostles, would continue to prevail and flourish in the greatest purity, by its own native excellence, and under the all-disposing providence of God.

We would also humbly represent, that the only proper objects of civil Government are the happiness and protection of men in the present state of existence; the security of the life, liberty, and property of the Citizens; and to restrain the vicious and encourage the virtuous by wholesome laws equally extending to every individual. But that the *duty which we owe our Creator, and the manner of discharging it, can only be directed by reason and conviction*; and is nowhere cognizable but at the Tribunal of the Universal Judge.

Therefore we ask no Ecclesiastical Establishment for ourselves, neither can we approve of them when granted to others. . . . And

for the reasons recited, we are induced earnestly to entreat that all laws now in force in this Common Wealth which countenance religious domination may be speedily repealed;—that all of every religious Sect may be protected in the full exercise of their several modes of worship; and exempted from all taxes for the support of any Church whatsoever, further than what may be agreeable to their own private choice, or voluntary obligation.

Signed by Order of the Presbytery.

JOHN TODD, Moderator.

CALEB WALLACE, P[resbytery] Clerk.

—Labeled “Dissenters’ Pet’n, 1776, Oct. 24. Ref’d to Com. of Religion;” original manuscript in Virginia State Library; see also *Journal of the General Assembly of Virginia, House of Delegates*, Oct. 24, 1776, p. 24.

## RELIGIOUS LEGISLATION SUBVERSIVE OF LIBERTY

### Memorial of the Presbytery of Hanover to the General Assembly of Virginia Presented to the House June 3, 1777

*To the Honourable the General Assembly of Virginia.*

The Memorial of the Presbytery of Hanover humbly represents. That your Memorialists, and the religious denomination with which we are connected, are most sincerely attached to the common interests of the American States, and are determined that our most fervent prayers, and strenuous endeavours, shall ever be united with our fellow Subjects, to repel the assaults of Tyranny and to maintain our common Rights. In our former Memorial we have expressed our hearty approbation of the Declaration of Rights, which has been made and adopted as the Basis of the Laws and Government of this State; and now we take the opportunity of testifying, that nothing has inspired us with greater confidence in our Legislature, than the late Act of Assembly declaring, that equal Liberty, as well Religious as Civil, shall be universally extended to the good people of this Country; and that

all the oppressive Acts of Parliament respecting religion, which have been formerly enacted in the mother Country, shall henceforth be of no validity or force in this Common Wealth; as also exempting Dissenters from all Levies, Taxes, and impositions whatsoever towards supporting the Church of England as it now is, or hereafter may be established.

We would therefore have given our Honorable Legislature no further trouble on this Subject, but we are sorry to find that there yet remains a variety of Opinions touching the propriety of a general Assessment; or whether every religious Society shall be left to voluntary Contributions for the maintenance of the Ministers of the Gospel who are of different persuasions. . . .

To illustrate and confirm these Assertions, we beg leave to observe; That to judge for ourselves, and to engage in the exercise of religion agreeable to the dictates of our own Consciences, is an unalienable right, which, upon the principles that the Gospel was first propagated, . . . can never be transferred to another. . . . If the Legislature has any rightful authority over the Ministers of the Gospel in the exercise of their sacred office, and it is their duty to levy a maintenance for them as such; then it will follow, That we may revive the old Establishment in its former extent, or ordain a new one for any Sect they think proper; they are invested with a power, not only to determine, but it is incumbent upon them to declare, who shall preach; what they shall preach; to whom, when, and at what places they shall preach; or to impose any regulations and restrictions upon religious Societies that they may judge expedient. These consequences are so plain as not to be denied; and they are so entirely subversive of Religious Liberty, that if they should take place in Virginia, we should be reduced to the melancholy necessity of saying with the Apostles in like Cases,—Judge ye, whether it is best to obey God or man; and also of acting as they acted.

Therefore, as it is contrary to our Principles and Interest; and as we think, subversive of Religious Liberty, we do again and most earnestly entreat, that our Legislature would never extend any

Assessment, for Religious purposes, to us, or to the Congregations under our Care. And your Memorialists, as in duty bound, shall ever pray for, and demean themselves as peaceable subjects of Civil Government.

Signed by order of the Presbytery.

RICHD SANKEY,  
MODR.

TIMBER RIDGE, April 25, 1777.

—From original manuscript, Virginia State Library.

### PRINCIPLES OF RELIGIOUS LIBERTY

Memorial of the Presbytery of Hanover to the General Assembly of Virginia Presented to the House Nov. 12, 1784

*To the honourable, the Speaker and House of Delegates of Virginia—*

GENTLEMEN: The united clergy of the Presbyterian church in Virginia, assembled in Presbytery, beg leave to again address your honourable house, upon a few important subjects in which we find ourselves interested as Citizens of this State.

The freedom we possess is so rich a blessing, and the purchase of it has been so high, that we would ever wish to cherish a spirit of vigilant attention to it in every circumstance of possible danger. . . . Conscious of the rectitude of our intentions and the strength of our claims, we wish to speak our sentiments freely upon these occasions, but at the same time with all that respectful regard which becomes us when addressing the Representatives of a great and virtuous people. It is with pain that we find ourselves obliged to renew our complaints upon the subject stated in our Memorial last spring. We deeply regret that such obvious grievances [particularly the partial retention of the official status of the Episcopal Church] should exist unredressed in a Republic whose end ought to be the happiness of all the Citizens. . . .

The uneasiness which we feel from the continuance of the

grievances just referred to, is increased under the prospect of an addition to them by certain exceptionable measures said to be proposed to the Legislature— We have understood that a comprehensive incorporating act, has been, and is at present in agitation, whereby Ministers of the gospel as such, of certain descriptions, shall have legal advantages which are not proposed to be extended to the people at large of any Denomination. A proposition has been made by some Gentlemen of the house of Delegates, we are told, to extend the grace to us, amongst others, in our professional Capacity. If this be so, we are bound to acknowledge with gratitude our obligation to such Gentlemen for their inclination to favor us with the sanction of public authority in the discharge of our duty. But as the scheme of incorporating clergymen, independent of the religious communities to which they belong, is inconsistent with our ideas of propriety, we request the liberty of declining any such solitary honour should it be again proposed. . . .

The principle too, which this System aims to establish, is both false and dangerous to religion, and we take this opportunity to remonstrate and protest against it. The real Ministers of true religion, derive their authority to act in the duties of their profession from an higher source than any Legislature, on earth, however respectable. Their office relates to the care of the soul, and preparing it for a future state of existence, and their administrations are or ought to be of a spiritual nature suited to this momentous concern. And it is plain from the very nature of the case, that they should neither expect nor receive from government any permission or direction in this respect. . . .

This interference [by the government in religious matters] ought only to extend to the preserving of the public worship of the Deity, and the supporting of Institutions for inculcating the great fundamental principles of all Religion without which Society could not easily exist.

Should it be thought necessary at present for the Assembly to exert the right of supporting Religion in General by an Assess-

ment on all the people; we would wish it to be done on the most liberal plan.\* A General Assessment of the kind we have heard proposed is an object of such consequence that it excites much anxious speculation amongst your Constituents. We therefore earnestly pray that nothing may be done in the case inconsistent with the proper objects of human legislation or the Declaration of rights as published at the revolution. We hope that the Assessment will not be proposed under the idea of supporting religion as a spiritual system, relating to the care of the soul and preparing it for its future destiny. We hope that [no ?] attempt will be made to point out articles of faith, that are not essential to the preservation of society; or to settle [modes of ?] worship; or to interfere in the internal government of religious communities; or to render the Ministers of religion independent of the will of the people whom they serve. We expect from our representatives that careful attention to the political equality of all the Citizens, which a Republic ought ever to cherish; and that no scheme of an assessment will be encouraged which will violate the happy privilege we now enjoy of thinking for ourselves in all cases where conscience is concerned. . . .

THE PRESBYTERY OF HANOVER.

—From original manuscript, Virginia State Library.

### REASONS FOR REMONSTRATION

#### Memorial of the Presbytery of Hanover to the General Assembly of Virginia Presented to the House Nov. 3, 1785

*To the Honourable the General Assembly of the Commonwealth of Virginia:*

The Ministers and Lay representatives of the Presbyterian Church in Virginia, assembled in Convention, beg leave to address you. . . .

When the late happy revolution secured to us an exemption from British control, we hoped that the gloom of Injustice and Usurpation would have been forever dispelled, by the chearing rays of Liberty and Independence. . . . But our hopes have since

been overcast with apprehension, when we found how slowly and unwillingly, ancient distinctions among the Citizens on account of religious opinions, were removed by the Legislature. . . .

To increase the Evil, a manifest disposition has been shown by the State, to consider itself as possessed of Supremacy in Spirituals, as well as Temporals; and our fears have been realized, by certain proceedings of the General Assembly, at their last Sessions—The Engrossed “Bill for establishing a Provision for teachers of the Christian Religion,” and the act for incorporating the Protestant Episcopal Church, so far as it secures to that [?] church the Churches, Glebes, etc., procured at the expense of the whole comm[unity,] are not only evidences of this; but of an impolitic partiality which we are sorry to have observed so long—

We therefore, in the name of the Presbyterian Church in Virginia, beg leave to exercise our privilege as Freemen, in remonstrating against the former, absolutely; and against the latter, under the restrictions above expressed—

We oppose the Bill,

Because it is a departure from the proper lines of Legislation—

Because it is unnecessary, and inadequate to its professed end—impolitic, in many respects—and a direct Violation of the Declaration of Rights—

The end of Civil Government is security to the temporal liberty and property of Mankind; and to protect them in the free Exercise of Religion— Legislators are invested with powers from their Constituents, for these purposes only; and their duty extends no farther— Religion is altogether personal, and the right of exercising it unalienable; and it is not, cannot, and ought not to be, resigned to the will of the society at large; and much less to the Legislature,—which derives its authority wholly from the consent of the People; and is limited by the Original intention of Civil Associations—

We never resigned to the control of Government, our right of determining for ourselves, in this important article; and acting agreeably to the convictions of Reason and Conscience, in discharg-

ing our duty to our Creator. . . . We are fully persuaded of the happy influence of Christianity upon the Morals of Men; but, we have never known it, in the history of its progress, so effectual for this purpose, as when left to its native Excellence and Evidence to recommend it, under the all-directing Providence of God; and free from the intrusive hand of the civil magistrate. . . .

It [this bill] establishes a precedent for further Encroachments, by making the Legislature a judge of religious Truth—. If the Assembly have a right to determine the preference between Christianity and the other systems of Religion that prevail in the World, they may also, at a convenient time, give a preference to some favoured Sect among Christians—

It discourages the population of our Country, by alarming those who may have been oppressed by religious Establishments, in other Countries, with fears of the same, in this—: and by exciting our own Citizens to emigrate to other lands of greater freedom—

It revives the principle which our Ancestors contested to blood,—of attempting to reduce all religions to one Standard, by the force of Civil Authority.

And it naturally opens a door for contention, among Citizens of different creeds, and different opinions respecting the extent of the Powers of Government—

The Bill is also a direct violation of the Declaration of Rights—which ought to be the Standard of all our Laws— The sixteenth article is clearly infringed upon by it—and any explication which may have been given of it, by the friends of this measure, in the Legislature, so as to justify a departure from its literal construction, might also be used to deprive us of the other fundamental principles of our Government—.

For these reasons, and others that might be produced, we conceive it our duty to remonstrate and protest against the said Bill, and earnestly urge that it may not be enacted into a Law. . . .

We regret that full Equality in all things, and ample protection and security to religious liberty, were not incontestably fixed in the Constitution of the Government— But, we earnestly request

that the defect may be remedied, so far as it is possible for the Legislature to do it, by adopting the Bill in the revised Laws, for establishing religious freedom. . . .

That Heaven may illuminate your Minds, with all that Wisdom, which is necessary for the important purposes of your delegation, is our [earn]est wish. And we beg leave to assure you, that however warmly we may engage, in preserving our Religion free from the Shackles of Human Authority—; and opposing claims of Spiritual Domination in Civil Powers, we are zealously disposed to support the Government of our Country, and to maintain a due submission to the Lawful Exercise of its Authority.

Signed by order of the Convention—

JOHN TODD,  
Chairman.

Bethel, Augusta County—13 Aug., 1785.

—From original manuscript, Virginia State Library.

### MADISON'S MEMORIAL, 1785 \*

To the Honorable the General Assembly of the Commonwealth of Virginia.

#### A Memorial and Remonstrance

We the subscribers, citizens of the said commonwealth, having taken into serious consideration, a bill printed by order of the last session of General Assembly, entitled "A Bill establishing a provision for Teachers of the Christian Religion,"<sup>7</sup> and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill,

1. Because we hold it for a fundamental and undeniable truth "that religion or the duty which we owe to our Creator and the

\* Written by James Madison in remonstrance to the general tax bill to provide for the support of "teachers of the Christian religion."

manner of discharging it, can be directed only by reason and conviction, not by force or violence." (Virginia "Declaration of Rights," Art. 16.) The religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right toward men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to Him. This duty is precedent, both in order of time and in degree of obligation, to the claims of civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the universe: And if a member of civil society, who enters into any subordinate association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular civil society, do it with a saving of his allegiance to the universal Sovereign. We maintain therefore that in matters of religion, no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its cognizance. True it is, that no other rule exists, by which any question which may divide a society, can be ultimately determined, but the will of the majority; but it is also true that the majority may trespass on the rights of the minority.

2. Because if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments; more necessarily is it limited with regard to the constituents. The preservation of a free government requires, not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them

be suffered to overleap the great barrier which defends the rights of the people. The rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are tyrants. The people who submit to it, are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

3. Because it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish with the same ease any particular sect of Christians, in exclusion of all other sects? that the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be impeached. If "all men are created equally free and independent" (*Ibid.*, Art. I), all men are to be considered as entering into society on equal conditions; as relinquishing no more, and therefore retaining no less, one than another, of their natural rights. Above all are they to be considered as retaining an "equal title to the free exercise of religion according to the dictates of conscience." (*Ibid.*, Art. 16.) Whilst we assert for ourselves a freedom to embrace, to profess and to observe the religion which we believe to be of divine origin, we cannot deny an equal freedom to those whose minds have not yet yielded to the evidence which has convinced us. If this freedom be abused, it is

an offense against God, not against man: To God, therefore, not to man, must an account of it be rendered—As the bill violates equality by subjecting some to peculiar burdens; so it violates the same principle, by granting to others peculiar exemptions. Are the Quakers and Menonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet preeminences over their fellow citizens, or that they will be seduced by them from the common opposition to the measure.

5. Because the bill implies, either that the civil magistrate is a competent judge of religious truths: or that he may employ religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of rulers in all ages, and throughout the world: the second an unhallowed perversion of the means of salvation.

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion. To say that it is, is a contradiction to the Christian religion itself; for every page of it disavows a dependence on the powers of this world: it is a contradiction of fact; for it is known that this religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of providence: Nay, it is a contradiction in terms; for a religion not invented by human policy, must have preexisted and been supported, before it was established by human policy. It is moreover to weaken in those who profess this religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect, point to the ages prior to its incorporation with civil policy. Propose a restoration of this primitive state, in which its teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within the cognizance of civil government, how can its legal establishment be necessary to civil government? What influence in fact have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of the civil authority: in many instances they have been seen upholding the thrones of political tyranny: in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found in established clergy convenient auxiliaries. A just government instituted to secure and perpetuate it needs them not. Such a government will be best supported, by protecting every citizen in the enjoyment of his religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any sect, nor suffering any sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering an asylum to the persecuted

and oppressed of every Nation and Religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the legislative authority. Distant as it may be in its present form from the inquisition, it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign regions, must view the bill as a beacon on our coast, warning him to seek some other haven, where liberty and philanthropy in their due extent, may offer a more certain repose from his troubles.

10. Because it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion, has produced among its several sects. Torrents of blood have been spilt in the old world, by vain attempts of the secular arm, to extinguish religious discord, by proscribing all differences in religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theater has exhibited proofs, that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the state. If with the salutary effects of this system under our own eyes, we begin to contract the bounds of religious freedom, we know no name which will too severely reproach our folly. At least let warning be taken at the first-fruits of the threatened innovation. The very appearance of the bill has transformed "that Christian forbear-

ance, love and charity" (*Ibid.*, Art. 16), which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet, be armed with the force of a law?

12. Because the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false religions; and how small is the former! Does the policy of the bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the region of it; and countenances by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the bill, with an ignoble and unchristian timidity would circumscribe it with a wall of defense against the encroachments of error.

13. Because attempts to enforce by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bands of society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case, where it is deemed invalid and dangerous? and what may be the effect of so striking an example of impotency in the government, on its general authority?

14. Because a measure of such singular magnitude and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are indeed requested to signify their opinion respecting the adoption of the bill to the next session of the Assembly." But the representation must be made equal before the voice either of the representatives or of the counties

will be that of the people. Our hope is that neither of the former will, after due consideration, espouse the dangerous principle of the bill. Should the event disappoint us, it will still leave us in full confidence, that a fair appeal to the latter will reverse the sentence against our liberties.

15. Because, finally, "the equal right of every citizen to the free exercise of his religion, according to the dictates of conscience" is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the "Declaration of those rights which pertain to the good people of Virginia as the basis and foundation of government" (*Preamble to Virginia "Declaration of Rights"*), it is enumerated with equal solemnity, or rather with studied emphasis. Either then, we must say, that the will of the legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred: Either we must say, that they may control the freedom of the press, may abolish the trial by jury, may swallow up the executive and judiciary powers of the State; nay that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary assembly or, we must say, that they have no authority to enact into a law the bill under consideration.

We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the universe, by illuminating those to whom it is addressed may on the one hand turn their councils from every act which would affront His holy prerogative, or violate the trust committed to them; and on the other, guide them into every measure which may be worthy of His blessing, redound to their own praise, and may establish more firmly the liberties, the prosperity, and the happiness of the

Commonwealth.<sup>8</sup>—*The Papers of James Madison*, vol. 6, Manuscript Division, Library of Congress; see also *Writings of James Madison* (G. Hunt ed.), vol. 2, p. 183.

## AN ACT

### For Establishing Religious Freedom \*

I. Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His Almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time: that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, any more than on our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by lay-

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\* Passed in Assembly of Virginia, December, 1785; approved, January, 1786.

ing upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy, which, at once destroys all religious liberty, because he being of course judge of that tendency will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order; and finally, that truth is great and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

II. *Be it enacted by the General Assembly,* That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

III. And though we well know that this assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies, constituted

with powers equal to our own, and that therefore to declare this act to be irrevocable would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right.<sup>9</sup>—WILLIAM W. HENING, *Statutes at Large . . . of Virginia*, vol. 12, pp. 84-86; see also *Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 2, pp. 438-441.

## DISCUSSION

### Virginia Declaration of Rights (Pp. 96, 97)

<sup>1</sup> These sixteen articles became the basis in principle of the government in Virginia. George Mason wrote the first fourteen articles and Patrick Henry, the fifteenth and sixteenth. In Henry's original draft the sixteenth article had this expression, "that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience."—MOSES COIT TYLER, *Patrick Henry*, pp. 183, 184. James Madison strongly opposed the use of the word "toleration" and succeeded in having this objectionable and un-American word eliminated.

*Appleton's Cyclopaedia of American Biography* (1888 edition) gives Madison's position on this question as follows:

"Religious liberty was a matter that strongly enlisted his feelings. When it was proposed that, under the new [Virginia] constitution, 'all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience,' Madison pointed out that this provision did not go to the root of the matter. The free exercise of religion, according to the dictates of conscience, is something which every man may demand as a right, not something for which he must ask as a privilege. To grant to the state the power of tolerating is implicitly to grant to it the power of prohibiting: whereas Madison would deny to it any jurisdiction whatever in the matter of religion. The clause in the bill of rights, as finally adopted, at his suggestion, accordingly declares that 'all men are equally entitled to the free exercise of religion, according to the dictates of conscience.' The incident not only illustrates Madison's liberality of spirit, but also his precision and forethought in so drawing up an instrument as to make it mean all that it was intended to mean."—Vol. 4, p. 165.

### All Men Created Equal (P. 98)

<sup>2</sup>“They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness in what respects they did consider all men created equal—equal with ‘certain inalienable rights, among which are life, liberty, and the pursuit of happiness.’ This they said, and this they meant. . . .

“Its authors meant it to be—as, thank God, it is now proving itself—a stumbling block to all those who in after times, might seek to turn a free people back into the hateful paths of despotism. They knew the proneness of prosperity to breed tyrants, and they meant when such should reappear in this fair land and commence their vocation, they should find left for them at least one hard nut to crack.”—Speech of Lincoln, Springfield, Illinois, June 26, 1857, *Complete Works of Abraham Lincoln* (Nicolay and Hay, eds.), vol. 2, pp. 330, 331.

### Endowed by Their Creator (P. 98)

<sup>3</sup>“The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sun-beam, in the whole volume of human nature, by the hand of the Divinity itself, and can never be erased or obscured by mortal power. This is what is called the law of nature, which, being coeval with mankind, and dictated by God himself, is, of course, superior in obligations to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this.”—*The Farmer Refuted*, in *The Works of Alexander Hamilton* (Constitutional ed.), vol. 1, pp. 113, 62.

### Jefferson Author of Declaration of Independence (P. 102)

<sup>4</sup>Thomas Jefferson was the chairman of the committee appointed to draft the Declaration of Independence, and he was the author of the original, which was only slightly altered in adoption. He was outstanding among scholars, lawyers, and statesmen of his time, and he was chosen because of his fitness for this task. He studied the works of Locke, Coke, and Roger Williams, and the times had no firmer advocate and exponent of the great ideals of true Americanism, of human rights, of religious liberty, and of the proper functions of civil government than Thomas Jefferson.

Jefferson exposed the fallacious theory that the civil government had unlimited powers and that the individual surrendered his natural

rights upon entering the "social compact," for the benefit of society as a whole. Upon this subject he wrote in a letter to F. W. Gilmer (dated Monticello, [Virginia,] June 7, 1816): "Our legislators are not sufficiently apprised of the rightful limits of their power; that their true office is to declare and enforce only our natural rights and duties, and to take none of them from us."—*Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 11, pp. 533, 534.

### The Motto on the Liberty Bell

"Proclaim liberty throughout all the land unto all the inhabitants thereof." Lev. 25:10.

One of the most revered objects of admiration and patriotic interest of colonial and Revolutionary times is the famous Liberty Bell in Independence Hall, Philadelphia. This bell played a prominent part in announcing to the citizens of Philadelphia the adoption of the Declaration of Independence on July 4, 1776, the adoption of the Federal Constitution by the Constitutional Convention on September 17, 1787, and other events of national importance.

The Pennsylvania Assembly of 1750-51 passed a resolution ordering the bell to be made for the Pennsylvania Statehouse, originally erected in 1732-41. In 1776 this Statehouse was the meeting place of the second Continental Congress and was known as Independence Hall after the Declaration of Independence was adopted. Here Washington was appointed commander in chief of the Revolutionary Army, and in the east room the Declaration of Independence was signed. The famous Liberty Bell hangs in the rear hall of the first floor, instead of in its original cupola.

The Liberty Bell was cast by a firm in England, but was not satisfactory; it was therefore recast twice in America before it gave a satisfactory tone. Each time there was inscribed upon its vibrant lips the motto: "Proclaim liberty throughout all the land unto all the inhabitants thereof."

When God met Moses on Mt. Sinai after He had given him the ten commandments written with His own finger on two tables of stone, He directed Moses to command the rulers of the land to issue a jubilee proclamation throughout all the land every fifty years, when every servant was to be given his liberty, every debt was to be canceled, and every man was to be given the right to return to his original possession, which through misfortune or adversity he had lost or pledged away. This divine conception of setting men free from the bondage of men and allowing them to enjoy the blessings of liberty and the

fruits of their own labors as expressed in the jubilee proclamation made a strong appeal to the legislators of Pennsylvania, even in 1751, when they ordered this motto inscribed on the bell. Little did the English bell founders dream that this bell, with its significant motto, should be an instrument to announce to the world the important news of American independence.

The adoption of the Declaration of Independence on July 4, 1776, was one of the most important transactions and events in human history. It was a bold step and meant much to every patriot who placed his name on that document. It was treason in the sight of the English law. It meant the continuation of the war with the mother country through eight long years. It meant much suffering and sacrifice by an impoverished people, as they struggled with the most powerful nation in the world for the vindication of human rights and justice. It was a tremendous undertaking to found a new nation on the basis of "a new order of things."

The American people were by no means united on the proposition. There were many loyalists and Tories scattered through all the colonies whose sympathies were with the mother country. Others were fearful of the outcome of such a daring and experimental undertaking, and honestly questioned its propriety; and some lacked courage and had serious doubts. Tradition has it that the old bell was rung on July 4, 1776, immediately after the adoption of the Declaration of Independence. But careful historians tell us that the ringing of the bell in honor of the Declaration took place during the public celebration on July 8, 1776. The old Liberty Bell for hours pealed forth the glad tidings that a new nation was born and dedicated to freedom. With great rapidity the joyful news was broadcast from village to village, and from State to State, and literally the word was fulfilled, "Proclaim liberty throughout all the land unto all the inhabitants thereof."

When General Howe approached Philadelphia with the British army in September, 1777, the Continental Congress suggested and the Supreme Executive Council ordered the bells of all the public buildings of the city to be taken down and removed to a place of safety. Allentown claims the honor of sheltering the Liberty Bell during the period of exile. A tablet has been placed on the Zion Reformed church there to commemorate the concealment of the famous bell in the basement. Soon after the British were driven from Philadelphia, the bell was restored to its place, though the exact time of the return is not recorded. It was rung "by order of the Council" at the surrender of Cornwallis

in 1781. On July 8, 1835, while being tolled during the funeral of Chief Justice John Marshall, it cracked. It has been and undoubtedly will remain silent henceforth. The cracking of the Liberty Bell seems almost prophetic of the terrible strain human liberty was put under after the death of Chief Justice John Marshall, in events leading on to the Civil War between the North and the South. The Union was threatened, and with it ideals of human rights and freedom for all men. Since then, the most precious right of all, guaranteed under the Federal Constitution, namely, the free exercise of the conscience of the individual in religious matters, has been placed in jeopardy again and again, by efforts of religious organizations to press religious legislation in Congress, which would turn us back to the "old order of things."

It is possible for Americans to hold to the old forms and formulas of freedom, but to lose sight of the spirit and the fundamental principles of liberty of conscience in practice. The original parchments of the Declaration of Independence and the Constitution of the United States, as the Magna Charta of the Republic, as well as the old Liberty Bell, are now carefully preserved and protected. We need not fear that any foe will steal the Liberty Bell or these priceless parchments, but it is for us to guard and preserve with the same vigilance and spirit of liberty, civil and religious, the heritage of freedom which our fathers have bequeathed to us. "Eternal vigilance," now as ever, "is the price of liberty."

### Memorial of the Presbytery of Hanover (P. 103)

<sup>5</sup> The dissenters of Virginia during the close of the eighteenth century were largely instrumental in giving effect to American political principles in their times. These memorials are but a few among that noted series which followed the Virginia Declaration of Rights, and led to the adoption of Jefferson's bill for the establishment of religious freedom, which has had such an extensive influence in the subsequent constitutional history of every State. The earnestness of the campaign for religious liberty was witnessed to by a secretary of state of Virginia, who wrote: "Numbers of petitions, memorials, etc., in manuscript are on file in the archives here from religious bodies of almost every denomination, from nearly every county in this State, during the period of the Revolution."—Letter of Secretary of State of Virginia, to the editor, December 20, 1893.

Associated with others in the Virginia Convention, and in the Constitutional Convention of the United States, James Madison was one of the ablest champions of civil and religious liberty during this

formative and critical period in American jurisprudence. Jefferson and Madison endeavored to bring about a disestablishment of religion during the Virginia General Assembly of 1776. Speaking of that Assembly, Parton says:

"Petitions for the repeal of statutes oppressive of the conscience of dissenters came pouring in upon the Assembly from the first day of the session. These, being referred to the committee of the whole, led to the severest and longest struggle of the session. 'Desperate contests,' as Jefferson records, 'continued almost daily from the 11th of October to the 5th of December.' He desired to sweep away the whole system of restraint and monopoly, and establish perfect liberty of conscience and opinion, by a simple enactment of half a dozen lines:—

"'No man shall be compelled to frequent or support any religious worship, ministry, or place whatsoever; nor shall be enforced, restrained, molested, or burdened in his body or goods; nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in no wise diminish, enlarge, or affect their civil capacities.'

"It required more than nine years of effort on the part of Jefferson, Madison, and their liberal friends, to bring Virginia to accept this solution of the religious problem [Jefferson's "Act for Establishing Religious Freedom"; see pp. 96, 120], in its simplicity and completeness."—*Life of Thomas Jefferson* (1874), p. 210.

### Religious Legislation Subversive of Liberty (P. 109)

<sup>o</sup> The position taken by the early Presbyterians in the memorials of 1776 and 1777 was that religion, being a matter of conscience, can be directed only "by reason and conviction," and not by civil legislation; that the church of Christ stands in need of no state-imposed tax for its support, and that to exact such a tax would be "subversive of religious liberty." But after the dissenters' partial victory in cutting off the Episcopal Church from official support and functions, the Presbyterian clergy expressed in 1784 a willingness to assent to a general tax to support all denominations without discrimination or control. Still the laity, like the Baptists and other dissenters, opposed the bill; and by the next year the Presbytery stopped wavering and came out unanimously, in the 1785 memorial, against the assessment and in support of Jefferson's bill for religious freedom, declaring that the only duty of government is to secure "the temporal liberty and property of mankind, and to protect them in the free exercise of religion."

In more modern times Presbyterian leaders have sadly departed from these principles in attempts to justify Sunday laws, which are relics of the old establishments and are perpetual barriers to complete religious liberty. (See quotations on page 527 from Rev. W. F. Crafts, a Presbyterian, and Dr. R. C. Wylie, a Reformed Presbyterian.)

### Madison's Memorial and Jefferson's "Act for Establishing Religious Freedom" (P. 112)

<sup>7</sup> Patrick Henry introduced a resolution, in the General Assembly of Virginia in May, 1784, favoring a general tax for the support of religion. Madison vigorously opposed this and made a motion that the general tax bill be conditioned upon approval of the vote of the people. Patrick Henry, who sponsored the tax bill for religion, gave his consent to Madison's proposal, fully expecting that the people would vote for his bill.

In a letter to Thomas Jefferson, dated Richmond, January 9, 1785, Madison gave the following account of the bill:

"A resolution for a legal provision for the 'teachers of the Christian Religion' had early in the session been proposed by Mr. Henry, and in spite of all the opposition that could be mustered, carried by forty-seven against thirty-two votes. Many petitions from below the Blue Ridge had prayed for such a law; and though several from the Presbyterian laity beyond it were in a contrary style, the clergy of that sect favoured it. The other sects seemed to be passive. The resolution lay some weeks before a bill was brought in, and the bill some weeks before it was called for; after the passage of the incorporating act [incorporating the Protestant Episcopal Church], it was taken up, and on the third reading, ordered by a small majority to be printed for consideration. The bill in its present dress proposes a tax of blank per cent on all taxable property for support of teachers of the Christian religion. Each person when he pays his tax is to name the society to which he dedicates it, and in case of refusal to do so, the tax is to be applied to the maintenance of a school in the county. As the bill stood for some time, the application in such cases was to be made by the Legislature to pious uses. In a committee of the whole it was determined by a majority of seven or eight that the word 'Christian' should be exchanged for the word 'religious.' On the report to the House the pathetic zeal of the late Governor Harrison gained a like majority for reinstating discrimination. Should the bill pass into a law in its present form it may and will be easily eluded. It is chiefly

obnoxious on account of its dishonorable principle and dangerous tendency.”—*Writings of James Madison* (Hunt ed.), vol. 2, pp. 113, 114; see also *Papers of James Madison*, vol. 5, Manuscript Division, Library of Congress.

George and Wilson Cary Nicholas, members of the General Assembly, earnestly entreated James Madison that he write a remonstrance against the proposed tax bill supporting religion and they would carry it to the people. Madison wrote his famous Religious Remonstrance (given in full in preceding pages), and placed it in the hands of George Nicholas in July, 1785. It at once became the campaign “platform.”

“As a result of this “Memorial and Remonstrance,” the bill “establishing a provision for teachers of the Christian religion” was defeated, and Jefferson’s “Act for Establishing Religious Freedom” was passed by the Assembly in its place in December, 1785. Madison’s “Remonstrance” and Jefferson’s “Act for Establishing Religious Freedom” are two invaluable documents, setting forth the true American ideals as conceived by the founders of this Republic, on the question of the proper functions of church and state and of civil and religious liberty.

In a letter to General Lafayette, dated Montpelier, Virginia, November, 1826, Madison gave the following account of the religious controversy of the hour:

“In the year 1785 [1784], a bill was introduced under the auspices of Mr. Henry, imposing a general tax for the support of ‘Teachers of the Christian Religion.’ It made a progress, threatening a majority in its favor. As an expedient to defeat it, we proposed that it should be postponed to another session, and printed in the meantime for public consideration. Such an appeal in a case so important and so unforeseen could not be resisted. With a view to arouse the people, it was thought proper that a memorial should be drawn up, the task being assigned to me, to be printed and circulated through the State for a general signature. The experiment succeeded. The memorial was so extensively signed, by the various religious sects, including a considerable portion of the old hierarchy, that the projected innovation was crushed, and under the influence of the popular sentiment thus called forth, the well-known bill prepared by Mr. Jefferson, for ‘establishing religious freedom,’ passed into a law, as it now stands in our Code of Statutes.”—*Papers of James Madison*, vol. 76, Manuscript Division, Library of Congress; see also *Letters and Other Writings of James Madison* (official ed., 1865), vol. 3, p. 543.

The cause of civil and religious liberty had no abler supporters than Jefferson and Madison. They were strenuously opposed to the civil government's having anything to do with regulating and enforcing by law religious customs and observances of any kind. They were desirous of having all religious laws wiped off the statute books, not willing that they should even remain as dead letters, lest some overzealous religious partisans might revive them and bring persecution again upon dissenters and nonconformists. Jefferson realized that the liberties gained might be lost through indifference and self-interest, and foreseeing this danger, he cautioned his countrymen thus:

“Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecution, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going downhill. It will not then be necessary to resort every moment to the people for support. They will be forgotten therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.”—THOMAS JEFFERSON, *Notes on Virginia*, Query XVII. (See p. 169.)

\* Thomas Jefferson estimated this Act for the Establishment of Religious Freedom in Virginia, which he wrote as part of the 1779 revised code for Virginia, and for which he worked so ardently for years, as among the greatest achievements in his life, next to the writing of the Declaration of Independence.

Jefferson worked untiringly for the repeal of religious laws. He was insistent that the rights of man and religious freedom should be given constitutional security.

Jefferson urged upon the statesmen of New England that they follow in the wake of Virginia by disestablishing the Congregational Church, and by repealing their religious laws so that all men might enjoy freedom of conscience in religious matters. John Adams replied: “I knew they [those endeavoring to unite the colonies] might as well turn the heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts at the present day from their meetinghouse and Sun-

day laws.”—Extract from the diary of John Adams, *The Works of John Adams* (Charles F. Adams, ed., 1865), vol. 2, p. 399.

“John Adams actually argued,” says the *Baptist Encyclopedia*, “that it was against the consciences of the people of his State to make any change in their laws about religion, even though others might have to suffer in their estates or in their personal freedom to satisfy Mr. Adams and his conscientious friends.”—Art. “United States, Religious Amendment of the Constitution of,” p. 1183. But in 1833, a few years after the death of John Adams, the whole religious establishment of Massachusetts, with the exception of the State Sunday laws, the legal precedent for all religious legislation, was abolished. Massachusetts was the last State among the original thirteen to disestablish the church. But when Massachusetts and the other States did this, they failed to repeal all their religious laws, leaving some still to impose inequalities upon the citizens and to interfere with the free exercise of conscience in religious matters. Many of the States retained laws which required a religious test for public officials, and required all citizens, irrespective of their religious persuasions, to observe Sunday under the penal code.

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**PART III**

**National Period**

**Foundation Principles of the  
United States Government**



HOWARD CHAMBERLAIN

The Constitutional Convention

HOWARD CHAMBERLAIN, ARTIST

## The Principles of Liberty Applied to National Life and Government

THE Revolution over, independence achieved, the new States having declared themselves and their principles in constitutions, there remained the task of establishing the Federal Government on the broad and solid foundations of liberty already laid down in the Constitution of the United States.

The Constitution is that of which this Government is constituted. It is a comprehensive statement of principles of democratic government, rather than a code of the laws of such a government. When applied to affairs, it requires interpretation, but it is crystal clear in its declaration of the rights of man. In the words of Gladstone, it is "the most wonderful work ever struck off at a given time by the brain and purpose of man." The Constitution is the bulwark of American liberties.

We give whole attention in this section to the Constitution, quoting it in full and adding copious comments on its principles from the great men of the times.

### THE CONSTITUTION OF THE UNITED STATES \*

WE, THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM a more perfect union,<sup>1</sup> establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty<sup>2</sup> to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

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\* This copy of the Constitution follows the style of the "final draft printed by (John) Dunlap & Claypoole at Philadelphia by order of the Federal Convention of 1787," republished 1934 in Senate Document no. 79, 73d Congress, 1st Session, under authorization of Senate Concurrent Resolution no. 2, June 13, 1933.

## ARTICLE I.

*Seēt.* 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Seēt.* 2. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representations from any state, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall chuse their Speaker and

other officers; and shall have the sole power of impeachment.

*Seçt.* 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be President of the senate, but shall have no vote, unless they be equally divided.

The Senate shall chuse their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

*Seçt.* 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of chusing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

*Seçt.* 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

*Seçt.* 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which

he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

*Seçt.* 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted)' after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

*Seçt.* 8. The Congress shall have power

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over

such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—  
And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

*Seçt.* 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States:—  
And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present,

emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

*Seçt.* 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and controul of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## II.

*Seçt.* 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows.

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for

each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately chuse by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner chuse the president. But in chusing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall chuse from them by ballot the vice-president.

The Congress may determine the time of chusing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president,

declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States.”

*Sec't. 2.* The president shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

*Secl.* 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

*Secl.* 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### III.

*Secl.* 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

*Secl.* 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a state and citizens of another state, between citizens of different States, between citizens of the same state claiming lands under grants of different States, and between a state, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases be-

fore mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

*Seçt.* 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

#### IV.

*Seçt.* 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

*Seçt.* 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.

*Seçt.* 3. New states may be admitted by the Congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

*Seçt.* 4. The United States shall guarantee to every state in this union a Republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

## V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided, that no amendment which may be made prior to the year one thousand eight\* hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

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\* Misprinted "seven" in the original broadside of September 17, 1787, when the figures of the preceding draft were spelled out. Corrected by Dunlap & Claypoole in their Pennsylvania Packet reprint of September 19, 1787. It was the only error of text in the original print. Noted in Edmund Pendleton's copy. Correct in engrossed copy.

## VI.

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives beforementioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.<sup>5</sup>

## VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

DONE IN CONVENTION, BY THE UNANIMOUS CONSENT OF THE STATES present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our Names.\*

GEORGE WASHINGTON, President,  
And Deputy from VIRGINIA.

NEW-HAMPSHIRE.	{ <i>John Langdon,</i> <i>Nicholas Gilman.</i>	NEW-YORK.	<i>Alexander Hamilton.</i>
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MASSACHUSETTS.	{ <i>Nathaniel Gorham,</i> <i>Rufus King.</i>	NEW-JERSEY.	{ <i>William Livingston,</i> <i>David Brearley,</i> <i>William Paterson,</i> <i>Jonathan Dayton.</i>
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\* Spelling of names conforms to original printed copy.

CONNECTICUT.	{ <i>William Samuel Johnson,</i> <i>Roger Sherman.</i>	MARYLAND.	{ <i>James M'Henry,</i> <i>Daniel of St. Tho. Jenifer,</i> <i>Daniel Carrol.</i>
PENNSYLVANIA.	{ <i>Benjamin Franklin,</i> <i>Thomas Mifflin,</i> <i>Robert Morris,</i> <i>George Clymer,</i> <i>Thomas Fitzsimons,</i> <i>Jared Ingersoll,</i> <i>James Wilson,</i> <i>Gouverneur Morris.</i>	VIRGINIA.	{ <i>John Blair,</i> <i>James Madison, Junior.</i>
DELAWARE.	{ <i>George Read,</i> <i>Gunning Bedford, Junior,</i> <i>John Dickinson,</i> <i>Richard Bassett,</i> <i>Jacob Broom.</i>	NORTH-CAROLINA.	{ <i>William Blount,</i> <i>Richard Dobbs Spaight,</i> <i>Hugh Williamson.</i>
		SOUTH-CAROLINA.	{ <i>John Rutledge,</i> <i>Charles Cotesworth Pinckney,</i> <i>Charles Pinckney,</i> <i>Pierce Butler.</i>
		GEORGIA.	{ <i>William Few,</i> <i>Abraham Baldwin.</i>

Attest, *William Jackson*, SECRETARY.

AMENDMENTS<sup>o</sup>

ARTICLE I.\*

Congress shall make no law respecting an establishment of religion,<sup>7</sup> or prohibiting the free exercise thereof or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE III.

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses,

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\* "The first twenty amendments were ratified by State legislatures. The Twenty-first Amendment, by its terms, was ratified by "conventions in the several States."

papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

#### ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

#### ARTICLE VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the 'United States,' than according to the rules of the common law.

#### ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

## ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

## ARTICLE XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be

taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

#### ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

#### ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation, incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

## ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

## ARTICLE XVII.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

## ARTICLE XVIII.

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Sec. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

#### ARTICLE XIX.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

#### ARTICLE XX.

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Sec. 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

#### ARTICLE XXI.

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

### COMMENTS ON THE CONSTITUTION IN THE STATE CONVENTIONS RATIFYING IT

#### Virginia Convention

[MR. MADISON:] *There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.* I can appeal to my uniform conduct on this subject, that I have warmly supported

religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular State. A particular State might concur in one religious project.<sup>7</sup>—JONATHAN ELLIOT, "*Debates . . . on the Federal Constitution*," vol. 3, p. 330.

MR. HENRY: Mr. Chairman. . . . You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. . . . Liberty, the greatest of all earthly blessings—give us that precious jewel, and you may take everything else! . . . Guard with jealous attention the public liberty. . . . We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of everything. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. . . . The great and direct end of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil.—*Ibid.*, pp. 43-45, 53, 54, 651.

### North Carolina Convention

MR. CALDWELL thought that some danger might arise. He imagined it\* might be objected to in a political as well as in a religious view. In the first place, he said, there was an invitation for Jews and pagans of every kind to come among us. . . . I think, then, added he, that, in a political view, those gentlemen who formed this Constitution should not have given this invitation to Jews and heathens.<sup>8</sup>—*Ibid.*, vol. 4, p. 199.

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\* Article six of the Federal Constitution, providing that no religious test shall ever be required as a qualification to any office or public trust under the United States.

### Massachusetts Convention

REV. MR. BACKUS: \* Mr. President, I have said very little to this honorable convention; but I now beg leave to offer a few thoughts upon some points in the Constitution proposed to us, and I shall begin with the exclusion of any religious test. Many appear to be much concerned about it; but nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals; and, therefore, no man or men can impose any religious test without invading the essential prerogatives of our Lord Jesus Christ. Ministers first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity as an engine of state policy. And let the history of all nations be searched from that day to this, and it will appear that the imposing of religious tests has been the greatest engine of tyranny in the world. And I rejoice to see so many gentlemen who are now giving in their rights of conscience in this great and important matter. Some serious minds discover a concern lest if all religious test should be excluded, the Congress would hereafter establish popery or some other tyrannical way of worship. But it is most certain that no such way of worship can be established without any religious test.—*Ibid.*, vol. 2, 148, 149.

## PROPOSED AMENDMENTS TO THE CONSTITUTION BY STATE CONVENTIONS RATIFYING IT \*

### New York Convention

That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion according to the dictates of conscience; and that no religious sect or society ought

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\* Rev. Mr. Isaac Backus was the author of the *History of New England* (three volumes), published 1777-96; and, as *Appleton's Cyclopaedia of American Biography* says, "Throughout his life he was an earnest and consistent advocate of the utmost religious freedom."

to be favored or established by law in preference to others.—*Ibid.*, vol. 1, p. 328.

### Pennsylvania Convention (minority statement)

The right of conscience shall be held inviolable, and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the Constitutions of the several States, which provide for the preservation of liberty in matters of religion.\*

### New Hampshire Convention

Congress shall make no laws touching religion, or to infringe the rights of conscience.—*Ibid.*, p. 326.

### Virginia Convention

That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

That all power is naturally invested in, and consequently derived from, the people; that magistrates therefore are their *trustees* and *agents*, at all times amenable to them. . . .

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established, by law, in preference to others.—*Ibid.*, vol. 3, pp. 657-659.

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\* In Pennsylvania, the minority of the convention issued an address entitled, "Reasons of Dissent," etc., in which several amendments were proposed, the first of which was the above. The "Reasons of Dissent" were published in Philadelphia, December 12, 1787, and reprinted in Carey's *American Museum*, vol. 2, no. 6, p. 540; quoted by Schaff in *Church and State in the United States*, p. 31.

### North Carolina Convention

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established by law in preference to others.\*—*Ibid.*, vol. 4, pp. 242, 244.

### Rhode Island Convention

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and, therefore, all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established, by law, in preference to others.—*Ibid.*, vol. 1, p. 334.

## DISCUSSION

### George Washington's Comment on the Constitution (P. 135)

<sup>1</sup> "Sensible of this momentous truth, you have improved upon your first essay [meaning the Articles of Confederation], by the adoption of a Constitution of Government, better calculated than your former for an intimate Union and for the efficacious management of your common concerns. This government, the offspring of your own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its Laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true Liberty. The basis of our political systems is the right

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\* This amendment was among twenty others proposed in the Convention of North Carolina as a "Declaration of Rights," the wording being substantially the same as the one proposed by Virginia.

of the people to make and to alter their Constitutions of Government. But the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People is sacredly obligatory upon all. The very idea of the power and the right of the People to establish Government presupposes the duty of every Individual to obey the established Government. . . .

"Toward the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles however specious the pretexts. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown."—GEORGE WASHINGTON, "Farewell Address," Sept. 19, 1796, *The Writings of George Washington* (Fitzpatrick ed., 1939), vol. 35, pp. 224, 225.

#### Bancroft on the Constitution (P. 135)

<sup>2</sup>"The Constitution establishes nothing that interferes with equality and individuality. It knows nothing of differences by descent, or opinions, of favored classes, or legalized religion, or the political power of property. It leaves the individual alongside of the individual. No nationality of character could take form, except on the principle of individuality, so that the mind might be free, and every faculty have the unlimited opportunity for its development and culture. . . .

"The rule of individuality was extended as never before. . . . Religion was become avowedly the attribute of man and not of a corporation. In the earliest states known to history, government and religion were one and indivisible. Each state had its special deity, and of these protectors one after another might be overthrown in battle, never to rise again. The Peloponnesian War grew out of a strife about an oracle. Rome, as it adopted into citizenship those whom it vanquished, sometimes introduced, and with good logic for that day, the worship of their gods. No one thought of vindicating liberty of religion for the conscience of the individual till a voice in Judea, breaking day for the greatest epoch in the life of humanity by establishing for all mankind a pure, spiritual, and universal religion, enjoined to render to Caesar only that which is Caesar's. The rule was upheld during the infancy of this gospel for all men. No sooner was the religion of freedom adopted by the chief of the Roman Empire, than it was shorn of its character of universality and enthralled by an unholy connection with

the unholy state; and so it continued till the new nation, the most sincere believer in Christianity of any people of that age, the chief heir of the Reformation in its purest form—when it came to establish a government for the United States, refused to treat faith as a matter to be regulated by a corporate body, or having a headship in a monarch or a state.

“Vindicating the right of individuality even in religion, and in religion above all, the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained in Judea. It left the management of temporal things to the temporal power; but the American Constitution, in harmony with the people of the several States, withheld from the Federal Government the power to invade the home of reason, the citadel of conscience, the sanctuary of the soul; and not from indifference, but that the infinite spirit of eternal truth might move in its freedom and purity and power.”—GEORGE BANCROFT, *History of the United States* (1888), vol. 6, pp. 443, 444.

#### Comments on the Historical Outworking of the Constitution (P. 135)

<sup>3</sup>“The people of these United States are the rightful masters of both Congresses and Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution.”—Speech of Lincoln, Cincinnati, Ohio, Sept. 17, 1859, *Complete Works of Abraham Lincoln*, Nicolay and Hay, vol. 5, p. 232.

“The American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man. It has had a century of trial, under the pressure of exigencies caused by an expansion unexampled in point of rapidity and range; and its exemption from formal change, though not entire, has certainly proved the sagacity of the constructors, and the stubborn strength of the fabric.”—W. E. GLADSTONE, *Gleanings of Past Years*, vol. 1, p. 212.

“The Constitution in its development and throughout our history has surpassed the hopes of its friends and utterly disappointed the predictions and the criticisms of its foes.”—HENRY CABOT LODGE, in *Great Debates in American History* (N.Y., 1913), vol. 1, p. 12.

#### Signing Bills on Sunday (P. 139)

<sup>4</sup>By inserting this parenthetical expression, the framers of the Constitution doubtless intended merely to recognize the right of the President, in harmony with a prevailing custom, to observe a weekly day of rest if he chose to do so, and not to establish a Sabbath by law, or in

any way make its observance mandatory. As a matter of fact, many bills *have* been signed on Sunday. But the advantage which the advocates of a union of church and state have taken of this brief parenthetical expression, shows the danger there is in giving the slightest ground or pretext for their claims in any law or legal document. At once they say: "This shows this to be a Christian nation; Christianity is the religion of the nation; and Sunday laws are proper and constitutional." This is an excellent illustration of how a little leaven is made to leaven the whole lump. With the advocates of religious legislation, this slight peg is sufficient to hang a whole religious establishment upon. Through this they would confer upon Congress inferential powers of such character and magnitude as to subvert the Government itself and enact laws directly forbidden by the Constitution.

#### Religious Test for Public Office (P. 148)

<sup>5</sup> "This clause is not introduced merely for the purpose of satisfying the scruples of many respectable persons who feel an invincible repugnance to any religious test or affirmation. It had a higher object: to cut off forever every pretense of any alliance between church and state in the national Government. The framers of the Constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human mind, and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas or resisted its infallibility."—JUSTICE JOSEPH STORY, *Commentaries on the Constitution of the United States* (1833 ed.), p. 690.

#### The First Ten Amendments (P. 149)

<sup>6</sup> The fear that the Constitution had not provided sufficient protection for civil and religious liberty was voiced by the conventions of New York, Pennsylvania, New Hampshire, Virginia, North Carolina, and Rhode Island. (See Jonathan Elliot, "Debates . . . on the Federal Constitution.") Some religious bodies and numerous individuals felt the same fear. There was a call for a distinctively drawn Bill of Rights.

In a letter to James Madison, written from Paris, December 20, 1787, Thomas Jefferson, after approving of many of the excellent points in the Constitution, said:

"I will now add what I do not like. First the omission of a bill of rights providing clearly and without the aid of sophisms for freedom

of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land, and not by the law of nations."—*The Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 5, p. 370.

In a letter addressed to Col. William Stephens Smith, which he wrote from Paris, February 2, 1788, Jefferson further said:

"I am glad to learn by letters which come down to the 20th of December that the new Constitution will undoubtedly be received by a sufficiency of the States to set it a going. Were I in America, I would advocate it warmly till nine should have adopted, and then as warmly take the other side to convince the remaining four that they ought not to come into it till the declaration of rights is annexed to it. By this means we should secure all the good of it, and procure so respectable an opposition as would induce the accepting states to offer a bill of rights." \*—*Ibid.*, p. 384.

In his *Essentials in American History* (1919), page 214, Albert Bushnell Hart, of Harvard University, says:

"The fight raged over the Constitution from end to end; in general, in particular, and in detail, it was hotly assailed and strongly defended. . . . The point most criticized was the lack of a bill of rights. The Convention had assumed that individual rights were fundamental and could not be taken away by a federation; but the State constitutions all had such bills of rights, and it was a mistake not to include one in the new instrument of government."

### Madison and Religious Liberty (Pp. 149, 157)

<sup>7</sup> In the *Annals of Congress*, volume 1, page 451, Madison's views on religious freedom are further expressed as follows in his original proposal for the "bill of rights" amendments to the Constitution:

"The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." (What is now called the *Congressional Record* was called the *Annals of Congress* in the early days of our nation's history.)

That the framers of the Constitution, with its amendments guaranteeing civil and religious liberty for all men, intended to separate and

\* Bill of Rights: The first ten amendments to the Constitution constitute what was called the American "Bill of Rights," after the famous Bill of Rights of 1689 in England.

divorce absolutely and completely all connections and alliances between civil government and religion, is very apparent from the debates of the Constitutional Convention and from the absolute silence on religion as the Constitution was first drafted.

In commenting on the constitutional guaranties of religious freedom, Philip Schaff says:

"This is much more than freedom of religious *opinions*; for this exists everywhere, even under the most despotic governments, and is beyond the reach of law, which deals only with overt actions. Freedom of exercise includes public worship, acts of discipline, and *every legitimate manifestation of religion*."—*Church and State in the United States* (1888), p. 35.

All religious laws are destructive of religious freedom and of the equality of all citizens before the civil law, and are therefore inconsistent with the Federal Constitution. So long as Congress respects the constitutional guaranties of civil and religious liberty vouchsafed to each individual, it will never pass a law calling for the recognition of the Christian religion in our public documents, nor will it recognize a religious test as a qualification for public office or public function, nor will it ever enact a compulsory Sunday observance law binding upon any inhabitant of the United States under the penal codes.

### Absolute Religious Equality (P. 157)

\* This speech of Mr. Caldwell shows in what light the Federal Constitution was regarded at the time of its adoption—by its opponents as well as by its friends—that it intended absolute equality, irrespective of religious belief or worship. This point was emphasized by the adoption of the first amendment to the Constitution. The idea that Christianity, or any other religion, was intended to be either favored or discountenanced, was entirely foreign to the intentions of the framers of our government. Such charges are the gratuitous inventions of the opponents of the absolute religious equality provided for by the Constitution—persons who desire to have *their* religious belief, Christianity, or its institutions, *forced upon others*. How different would be their tone if some other person's religion was being forced on them!

### General Note on Proposed Amendments (P. 158)

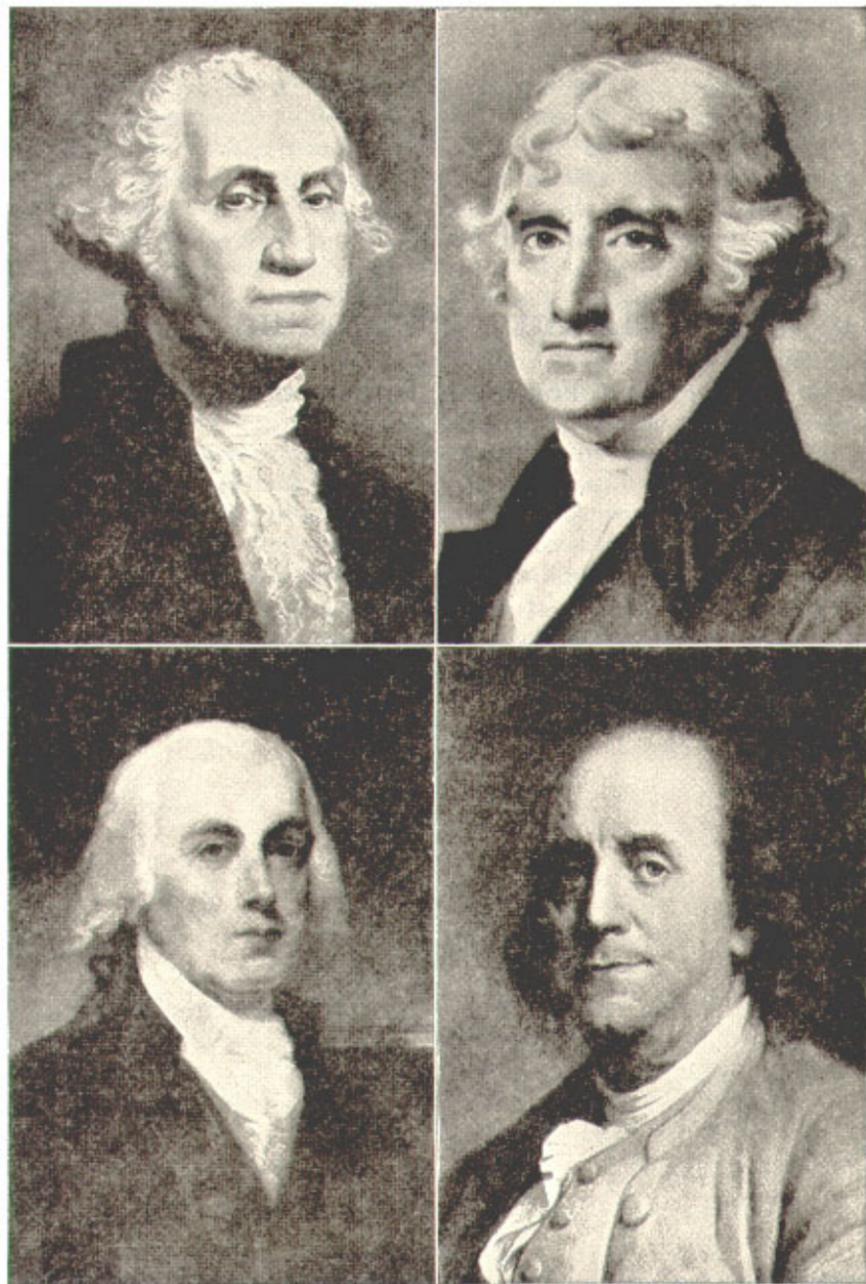
\* From these proposed amendments to the Constitution of the United States, made by the States before the adoption of the Constitution in 1789, it is evident that there was a general and widespread

desire on the part of the people that the national Government at least should have nothing to do with religion—should have no established religion; that in this, church and state should be entirely and forever separate. John Adams gave expression to this sentiment when he said, “I hope Congress will never meddle with religion further than to say their own prayers and to fast and give thanks once a year. Let every colony have its own religion.”—*The Works of John Adams*, vol. 9, p. 402. Many States had already cast aside their religious establishments. But, so far as appears, there was no proposition at this time that the national Constitution should forbid the States’ having religious establishments or making laws restricting religious freedom. This proposition came later (1875) when Hon. James G. Blaine of Maine introduced in Congress a proposed amendment looking toward the extension of the principle set forth in the First Amendment, to the States. If the principle of the separation of church and state is proper for the national Government, there can be no good reason why it should not be made to apply to the States as well. In their constitutions the States have quite generally adopted the principle; but, with few exceptions, they have all strangely clung to the assumed right to regulate Sunday observance by law, which directly contravenes the principle. In this the taproot of state-churchism still remains.

*PART IV*

Liberty Symposium

The Founding Fathers Speak



George Washington, Thomas Jefferson, James Madison, and Benjamin Franklin, Perhaps the Most Famous of the American Founding Fathers

## Liberty Defined and Explained by Its Proponents

**L**IBERTY is variously understood by its advocates. Those who love it to the degree that they are willing and even eager to die to gain and maintain it, may be radically opposed to one another in their ideas of its application to human behavior. This has already been proved by the fact that the early American fathers absolutely refused to grant to others the liberties to obtain which they themselves fled from the Old World. When France was in the midst of a death struggle for liberty, Madame Roland cried in agony of soul, "O liberty! What crimes are committed in thy name!" Liberty is supposed to be a boon to lovers of life and peace. But is it, if we may judge from the way some take advantage of it?

No doubt the best exponents and exemplifiers of true liberty are those pioneers and patriots in this field who sacrificed the most to win it and who had the most experience in enjoying and defending it after it was won. Hence we turn now to the founders and first builders of the Republic for definitions and explanations of applied freedom. They will distinguish between natural rights and tolerated privileges, will show where the will of the majority must be curbed if liberty is to be extended to all who deserve it, and will indicate the length and breadth—and the limitations—of individual liberty.

### THE OPPORTUNE TIME TO ENSURE FREEDOM

Besides, the spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless. A single zealot may commence persecutor, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be

going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.—THOMAS JEFFERSON, *Notes on Virginia*, Query XVII, *The Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 4, pp. 81, 82.

## GEORGE WASHINGTON VERSUS RELIGIOUS LAWS \*

### To the Baptists

[In response to an address of the General Committee representing the United Baptist Churches in Virginia, assembled in the city of Richmond, May 8, 9, 10, 1789, Washington said:]

If I could have entertained the slightest apprehension, that the constitution framed in the convention, where I had the honor to preside, might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it; and, if I could now conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny, and every species of religious persecution—For you doubtless remember, that I have often expressed my sentiments, that every man, conducting himself as a good citizen, and being accountable to God alone for his religious opinions, ought to be protected in worshiping the Deity

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\* The quotations from Washington used in this chapter were taken from the 1939 edition of J. C. Fitzpatrick, which was published by the authority of the Library of Congress, or from the letter books in the Manuscript Division. In Washington's day there were no carbon copies made of letters which he sent out, but every letter was copied by hand in what was known as a letter book.

according to the dictates of his own conscience.—*Writings of George Washington* (J. C. Fitzpatrick, ed.), vol. 30, p. 321 (from *George Washington Papers*, Letter Book 29, p. 84, Manuscript Division, Library of Congress).

### To the Quakers

[In writing to the Quakers at their Yearly Meeting for Pennsylvania, New Jersey, Delaware, and the western part of Maryland and Virginia, Washington assured those who had suffered the rigors of religious persecution that liberty of worship and of conscience belonged to them as a *right* which civil rulers were bound to respect. Among other things, he said:]

Government being, among other purposes, instituted to protect the persons and consciences of men from oppression, it certainly is the duty of rulers, not only to abstain from it themselves, but, according to their stations, to prevent it in others. The liberty enjoyed by the people of these States, of worshipping Almighty God agreeably to their consciences, is not only among the choicest of their *blessings*, but also of their rights. While men perform their social duties faithfully, they do all that society or the state can with propriety demand or expect; and remain responsible only to their Maker for the religion, or modes of faith, which they may prefer or profess.

Your principles and conduct are well known to me; and it is doing the people called Quakers no more than justice to say, that (except their declining to share with others the burthen of the common defence) there is no denomination among us, who are more exemplary and useful citizens.

I assure you very explicitly, that in my opinion the conscientious scruples of all men should be treated with great delicacy and tenderness; and it is my wish and desire, that the laws may always be as extensively accommodated to them, as a due regard to the protection and essential interests of the nation may justify and permit.—*Ibid.*, p. 416 (from *George Washington Papers*, Letter Book 29, p. 52).

### To the Jews

[The Jews had been liable to fines and imprisonment under the drastic Sunday laws of some of the States for their failure to observe Sunday after they had observed the seventh-day Sabbath of the Scriptures. The Hebrew congregation of Newport, Rhode Island, August 17, 1790, addressed Washington, expressing confidence that under the new government and under his administration, just inaugurated, all classes of people in the United States would enjoy equal opportunities and freedom under the law. In response to this address, Washington wrote thus:]

All possess alike liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of as if it was by the indulgence of one class of people, that another enjoyed the exercise of their inherent natural rights. For happily the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.—*George Washington Papers*, Letter Book 30, pp. 19, 20.

[And in closing his letter to these Hebrews, Washington said:]

May the children of the Stock of Abraham, who dwell in this land, continue to merit and enjoy the good will of the other inhabitants, while every one shall sit in safety under his own vine and fig-tree, and there shall be none to make him afraid.

May the Father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here, and in his own due time and way everlastingly happy.—*Ibid.*, p. 20.

### To Methodists

[In addressing the bishops of the Methodist Episcopal Church in the United States of America, May 29, 1789, Washington declared that he believed in preserving civil and religious liberty for the American people, not only in the letter but in the spirit, and he promised:]

It shall still be my endeavor to manifest by overt acts, the purity of my inclinations for promoting the happiness of mankind,

as well as the sincerity of my desires to contribute whatever may be in my power towards the preservation of the civil and religious liberties of the American People.—*Ibid.*, Letter Book 29, p. 26; see also *The Writings of George Washington* (Sparks ed.), vol. 12, pp. 153, 154.

### No Religious Tests

[Washington was strongly opposed to making religion a test for civil office. In writing a letter to the founders of the New Church in Baltimore, he took the position that no man's religious belief or unbelief deprives him of the equal protection of the laws or of holding the highest offices in the land. In this letter he said:]

We have abundant reason to rejoice that in this Land the light of truth and reason has triumphed over the power of bigotry and supersti[tion], and that every person may here worship God according to the dictates of his own heart. In this enlightened age and in this Land of equal liberty it is our boast, that a man's religious tenets will not forfeit the protection of the Laws, nor deprive him of the right of attaining and holding the highest Offices that are known in the United States.—*Writings of George Washington* (Fitzpatrick ed.), vol. 32, p. 315 (from *George Washington Papers*, Letter Book 30, p. 110).

### To the Presbyterians

[In a communication to the General Assembly of the Presbyterian Church in the United States of America, Washington admonished Christians to live up to their profession since the state had become a protector of the rights of conscience:]

While all men within our territories are protected in worshipping the Deity according to the dictates of their consciences; it is rationally to be expected from them in return, that they will all be emulous of evincing the sincerity of their professions by the innocence of their lives, and the beneficence of their actions.—*Ibid.*, vol. 30, p. 336 (from Letter Book 29, p. 28).

[Many clergymen were zealous to have the Constitution officially recognize Christ and Christianity, but Washington resolutely opposed

legal sanctions for religion, pointing out the inherent dangers—the denial of religious freedom and the inequality of faiths before the law. In a communication dated Oct. 28, 1789, the Presbytery of the Eastward, in Massachusetts and New Hampshire, expressed regret at the absence of an acknowledgment of God and Christ in the Constitution. Washington's reply tactfully hints that "the pious purposes of religion" should be accomplished "by such means as advance the temporal happiness of their fellow men," and indicates the legitimate sphere of the minister:]

The tribute of thanksgiving which you offer to "the gracious Father of lights" for his inspiration of our public-councils with wisdom and firmness to complete the national Constitution, is worthy of men, who, devoted to the pious purposes of religion, desire their accomplishment by such means as advance the temporal happiness of their fellow-men. And, here, I am persuaded, you will permit me to observe that the path of true piety is so plain as to require but little political direction. To this consideration we ought to ascribe the absence of any regulation, respecting religion, from the Magna-Charta of our country.

To the guidance of the ministers of the gospel this important object is, perhaps, more properly committed. It will be your care to instruct the ignorant, and to reclaim the devious; and, in the progress of morality and science, to which our government will give every furtherance, we may confidently expect the advancement of true religion, and the completion of our happiness.—*Ibid.*, Letter Book 29, p. 80.

### What Washington Had Hoped to See

[If there was one thing above another that Washington deprecated after the Federal Government had guaranteed religious liberty to every man, it was the religious intolerance and persecution that was still carried on under the religious establishments of the States. In those times Christians were still persecuting Christians here and there under State religious laws, and requiring the support by the clergy by taxation. Nonprofessors of religion were disqualified for public office because certain churches were controlling state affairs. Washington had hoped that this spirit of religious intolerance and bigotry would be

banished forever as the result of the policy adopted by the Federal Government, under the Constitution, of allowing all men religious freedom under a separation of church and state. To Sir Edward Newenham he wrote from Philadelphia, Pennsylvania, Oct. 20, 1792:]

Of all the animosities which have existed among mankind, those which are caused by a difference of sentiments in religion appear to be the most inveterate and distressing, and ought most to be deprecated. I was in hopes, that the enlightened and liberal policy, which has marked the present age, would at least have reconciled *Christians* of every denomination so far, that we should never again see their religious disputes carried to such a pitch as to endanger the peace of Society.—*Ibid.*, vol. 32, pp. 190, 191 (from *George Washington Papers*, Letter Book 13, p. 282).

[The thought uppermost in the mind of the Father of his Country in the framing of the fundamental law of the land during the Constitutional Convention, was that the rights and liberties of the people should be so protected and safeguarded that the new government would be prevented from degenerating into a monarchy, oligarchy, aristocracy, or any form of despotism.

On Feb. 7, 1788, while the ratification of the Constitution by the States still hung in the balance, Washington wrote to his friend and comrade in arms, Lafayette. After praising the Constitution as the palladium of human rights, he added that it would remain so only "so long as there shall remain any virtue in the body of the People." He then continued:]

I would not be understood my dear Marquis to speak of consequences which may be produced, in the revolution of ages, by corruption of morals, profligacy of manners, and *listlessness in the preservation of the natural and unalienable rights of mankind*; nor of the successful usurpations that may be established at such an unpropitious juncture, upon the ruins of liberty, however providently guarded and secured, as these are contingencies against which no human prudence can effectually provide.—*Ibid.*, vol. 29, p. 410 (from *George Washington Papers*, Letter Book 6B, p. 326).

### Washington's Appeal to Preserve the Constitution

[He regarded the liberties of America secure only so long as the spirit and principles of civil and religious liberty continued to abide in the hearts and animate the lives of Americans. He admonished the people in his Farewell Address to preserve the Constitution as their most cherished heritage, setting forth "the fundamental maxims of true liberty" for the benefit of their "collective and individual happiness," and to "resist with care the spirit of innovation upon its principles, however specious the pretexs. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown." (See pages 139, 140.)]

### To Roman Catholics

[Washington, in writing to the Roman Catholics in the United States, said:]

As mankind become more liberal, they will be more apt to allow, that all those, who conduct themselves as worthy members of the community are equally entitled to the protections of civil government. I hope ever to see America among the foremost nations in examples of justice and liberality.—*Ibid.*, vol. 31, p. 22 (from *George Washington Papers*, Letter Book 29, p. 101).

[Washington knew, as few men did, that the inherent danger which threatened the overthrow of constitutional liberties was, as he said, "the love of power and proneness to abuse it, which predominates in the human heart," ever tempting the administrators of law and justice to override the constitutional guaranties of human rights. If it had not been for the noble ideals of essential justice, ordered liberty, and the equality of all citizens before the law for which Washington stood during the formative and critical period of our republican form of government after the Revolutionary War, there never would have been a Republic of independent States, nor a Federal Constitution guaranteeing civil and religious liberty to every citizen.

As long as the ideals and principles championed by George Washington hold a dominant place in the hearts of the American people, religious liberty will remain secure.]

MADISON INCLUDED ONE'S TIME AND RELIGION  
IN "PROPERTY" RIGHTS

In its larger and juster meaning, it [property] embraces everything to which a man may attach a value<sup>1</sup> and have a right; and *which leaves to every one else the like advantage.*<sup>2</sup> . . . A man has property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. . . . In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. . . .

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government which *impartially* secures to every man, whatever is his *own*.

According to this standard of merit, the praise of affording a just security to property, should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and in the estimation of some, a more valuable property. More sparingly should this praise be allowed to a government, where a man's religious rights are violated by penalties, or fettered by tests, or taxed by a hierarchy. Conscience is the most sacred of all property; other property depending in part on positive law, the exercise of that [conscience], being a natural and inalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact. . . .

If there be a government, then, which prides itself on maintaining the inviolability of property; which provides that none shall be taken *directly* even for public use without indemnifica-

tion to the owner, and yet *directly* violates the property which individuals have in their opinions, their religion, their persons, and their faculties; nay more, which *indirectly* violates their property, in their actual possessions, in the labor that acquires their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares,<sup>3</sup> the inference will have been anticipated, that such a government is not a pattern for the United States.

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments. [Written in 1792.]—*Writings of James Madison* (G. Hunt ed., 1906), vol. 6, pp. 101-103.

### SPEECH OF PATRICK HENRY IN DEFENSE OF RELIGIOUS LIBERTY

[Some prosecutions of Baptist ministers charged with "disturbing the peace" by their religious teachings and practice, occurred in Virginia in its early history. From 1768 to 1775 Baptists were frequently arrested on this charge. Jefferson, Madison, and Henry were all radically opposed to any interference in matters of religion, and were zealous supporters of the rights of conscience. So in this case Mr. Henry came fifty miles to defend some Baptist ministers who had been arrested. In relating the case, the historian says:]

He [Mr. Henry] entered the court house while the prosecuting attorney was reading the indictment. He was a stranger to most of the spectators; and being dressed in the country manner, his entrance excited no remark. When the prosecutor had finished his brief opening, the newcomer took the indictment, and glancing at it with an expression of puzzled incredulity, began to speak in the tone of a man who has just heard something too astounding for belief:

“May it please your Worships, I think I heard read by the prosecutor, as I entered the house, the paper I now hold in my hand. If I have rightly understood, the king’s attorney has framed an indictment for the purpose of arraigning and punishing by imprisonment these three inoffensive persons before the bar of this court for a crime of great magnitude,—as disturbers of the peace.’ May it please the court, what did I hear read? Did I hear it distinctly, or was it a mistake of my own? Did I hear an expression as of crime, that these men, whom your Worships are about to try for misdemeanor, are charged with—with—with what?”

Having delivered these words in a halting, broken manner, as if his mind was staggering under the weight of a monstrous idea, he lowered his tone to its deepest bass; and assuming the profoundest solemnity of manner, answered his own question:

*“Preaching the gospel of the Son of God!”*

Then he paused. Every eye was rivited upon him, and every mind intent; for all this was executed as a Kean or a Siddons would have performed it on the stage,—eye, voice, attitude, gesture, all in accord to produce the utmost possibility of effect. Amid a silence that could be felt, he waved the indictment three times round his head, as though still amazed, still unable to comprehend the charge. Then he raised his hands and eyes to heaven, and in a tone of pathetic energy wholly indescribable, exclaimed,

“Great God!”

At this point, such was his power of delivery, the audience relieved their feelings by a burst of sighs and tears. The orator continued:

“May it please your Worships, in a day like this, when Truth is about to burst her fetters; when mankind are about to be aroused to claim their natural and inalienable rights; when the yoke of oppression that has reached the wilderness of America, and the unnatural alliance of ecclesiastical and civil power is about to be dissevered,—at *such* a period, when Liberty, Liberty of Conscience, is about to wake from her slumberings, and inquire into

the reason of such charges as I find exhibited here today in this indictment"—

Here occurred another of his appalling pauses, during which he cast piercing looks at the judges and at the three clergymen arraigned. Then resuming, he thrilled every hearer by his favorite device of repetition.

"If I am not deceived,—according to the contents of the paper I now hold in my hand,—these men are accused of *preaching the gospel of the Son of God!*"

He waved the document three times around his head, as though still lost in wonder; and then with the same electric attitude of appeal to heaven, he gasped,

"Great God!"

This was followed by another burst of feeling from the spectators; and again this master of effect plunged into the tide of his discourse:

"May it please your Worships, there are periods in the history of man when corruption and depravity have so long debased the human character, that man sinks under the weight of the oppressor's hand,—becomes his servile, his abject slave. He licks the hand that smites him. He bows in passive obedience to the mandates of the despot; and in this state of servility, he receives his fetters of perpetual bondage. But may it please your Worships, such a day has passed. From that period when our fathers left the land of their nativity for these American wilds,—from the moment they placed their feet upon the American Continent,—from that moment despotism was crushed, the fetters of darkness were broken, and Heaven decreed that man should be free,—free to worship God according to the Bible. In vain were all their offerings and bloodshed to subjugate this new world, if we, their offspring, must still be oppressed and persecuted. But, may it please your Worships, permit me to inquire once more, For what are these men about to be tried? This paper says, *for preaching the gospel of the Saviour to Adam's fallen race!*"

Again he paused. For the third time, he slowly waved the

indictment round his head; and then turning to the judges, looking them full in the face, exclaimed with the most impressive effect,

“What laws have they violated?”

The whole assembly were now painfully moved and excited. The presiding judge ended the scene by saying,

“Sheriff, discharge these men.”

It was a triumph of the dramatic art. The men were discharged; but not the less, in other counties, did zealous bigots pursue and persecute the ministers of other denominations than their own. It was not till the Revolutionary War absorbed all minds, that Baptists ceased to be imprisoned.—JAMES PARTON, *Life of Thomas Jefferson* (1874), pp. 204-206.

## JEFFERSON ON THE NATURAL RIGHTS OF MAN AND THE SPHERE OF CIVIL GOVERNMENT

WRITTEN BY THOMAS JEFFERSON TO FRANCIS W. GILMER

MONTICELLO, June 7, 1816

DEAR SIR: . . . Our legislators are not sufficiently apprised of the rightful limits of their power; that their true office is to declare and enforce only our natural rights and duties, and to take none of them from us.<sup>5</sup> No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of the society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions, and the idea is quite unfounded, that on entering into society we give up any natural right.<sup>6</sup> The trial of every law by one of these texts, would lessen much the labors of our legislators, and lighten equally our municipal codes.—*The Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 11, pp. 533, 534.

## MADISON ON FREEDOM OF RELIGIOUS OPINION

WRITTEN BY JAMES MADISON TO M. M. NOAH

MONTPELIER, May 15, 1818

SIR: I have received your letter of the 6th, with the eloquent discourse delivered at the consecration of the Jewish synagogue. Having ever regarded the freedom of religious opinions and worship as equally belonging to every sect, and the secure enjoyment of it as the best human provision for bringing all either into the same way of thinking, or into that mutual charity which is the only substitute, I observe with pleasure the view you give of the spirit in which your sect partake of the blessings offered by our government and laws.<sup>8</sup>—*Writings of James Madison* (G. Hunt ed., 1906), vol. 8, p. 412.

## RELIGIOUS POLITY OF THE UNITED STATES

WRITTEN BY THOMAS JEFFERSON TO RABBI MORDECAI M. NOAH

MONTICELLO, May 28, 1818

SIR: I thank you for the Discourse on the consecration of the Synagogue in your city, with which you have been pleased to favor me. I have read it with pleasure and instruction, having learnt from it some valuable facts in Jewish history which I did not know before. Your sect by it's sufferings has furnished a remarkable proof of the universal spirit of religious intolerance, inherent in every sect, *disclaimed by all while feeble, and practised by all when in power.*<sup>9</sup> Our laws have applied the only antidote to the vice, protecting our religious, as they do our civil rights, by putting all on an equal footing. But more remains to be done; for although we are free by the law, we are not so in practice; public opinion erects itself into an Inquisition, and exercises it's office with as much fanaticism as fans the flames of an auto da fé.—*Thomas Jefferson Papers*, vol. 213, p. 37988, in Manuscript Division, Library of Congress.

## JOHN ADAMS ON LAWS AGAINST UNBELIEF

WRITTEN BY JOHN ADAMS TO THOMAS JEFFERSON

QUINCY, January 23, 1825

MY DEAR SIR: We think ourselves possessed or at least we boast that we are so of Liberty of conscience on all subjects and of the right of free inquiry and private judgment, in all cases, and yet how far are we from these exalted privileges in fact! There exists I believe throughout the whole Christian world a law which makes it blasphemy to deny or to doubt the divine inspiration of all the books of the old and new Testaments from Genesis to Revelations. In most countries of Europe it is punished by fire at the stake, or the rack, or the wheel: in England itself it is punished by boring through the tongue with a red hot poker: in America it is not much better, even in our Massachusetts which I believe upon the whole is as temperate and moderate in religious zeal as most of the States. A law was made in the latter end of the last century, repealing the cruel punishments of the former laws but substituting fine and imprisonment upon all those blasphemies upon any book of the old Testament or new. Now what free inquiry when a writer must surely encounter the risk of fine or imprisonment for adducing any arguments for investigation into the divine authority of those books? Who would run the risk of translating Volney's *Recherches Nouvelles*? Who would run the risk of translating Dupuis? But I cannot enlarge upon this subject, though I have it much at heart. I think such laws a great embarrassment, great obstructions to the improvement of the human mind. Books that cannot bear examination certainly ought not to be established as divine inspiration by penal laws. It is true few persons appear desirous to put such laws in execution and it is also true that some few persons are hardy enough to venture to depart from them; but as long as they continue in force as laws the human mind must make an awkward and clumsy progress in its investigations. I wish they were repealed. The substance and essence

of Christianity as I understand it is eternal and unchangeable and will bear examination forever, but it has been mixed with extraneous ingredients, which I think will not bear examination and they ought to be separated.—*Thomas Jefferson Papers*, vol. 228, p. 40825, Manuscript Division, Library of Congress.

## MADISON'S VIEW ON ECCLESIASTICAL TRUSTS \*

AN ESSAY WRITTEN BY JAMES MADISON

The danger of silent accumulation and encroachments by Ecclesiastical Bodies has not sufficiently engaged attention in the U. S.

They have the noble merit of first unshackling the conscience from persecuting laws, and of establishing among religious sects a legal equality. If some of the States have not embraced this just and this truly Christian principle in its proper latitude, all of them present examples by which the most enlightened States of the Old World may be instructed; and there is one State at least, Virginia, where religious liberty is placed on its true foundation, and is defined in its full latitude. The general principle is contained in her declaration of rights, prefixed to her constitution; but it is unfolded and defined, in its precise extent, in the act of the Legislature, usually named the Religious Bill, which passed into a law in the year 1786. Here the separation between the authority of human laws, and the natural rights of man, excepted from the grant on which all political authority is founded, is traced as distinctly as words can admit, and the limits to this authority established with as much solemnity as the forms of legislation can express. The law has the further advantage of

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\* The title of this article as it appeared in *Harpers Magazine* for March, 1914, is "Aspects of Monopoly One Hundred Years Ago," a hitherto unpublished essay by James Madison, fourth President of the United States, with an introduction by Gaillard Hunt, chief of the Division of Manuscripts, Library of Congress. As the title indicates, Madison took monopolies of different sorts for his subjects, but the purpose of this work and limitation of space cause us to deal with the ecclesiastical aspect only.

having been the result of a formal appeal to the sense of the Community, and a deliberate sanction of a *vast* majority, comprising every sect of Christians in the State. This act is a true standard of Religious liberty; its principle, the great barrier against usurpations on the rights of conscience. As long as it is respected and no longer, these will be safe. Every provision for them short of this principle will be found to leave crevices at least, thro' which bigotry may introduce persecution; a monster that feeding and thriving on its own venom gradually swells to a size and strength overwhelming all laws divine and human. Ye States of America which retain in your constitutions or Codes, any aberration from the sacred principles of religious liberty by giving to Caesar what belongs to God, or joining together what God has put asunder, hasten to revise your systems, and make the example of your Country as pure and complete, in what relates to the freedom of the mind and its allegiance to its Maker, as in what belongs to the legitimate object of political and civil institutions.

Strongly guarded as is the separation between Religion and Government in the Constitution of the United States, the danger of encroachment by Ecclesiastical Bodies, may be illustrated by precedents already furnished in their short history.

The most notable attempt was that in Virginia to establish a general assessment for the support of all Christian sects. This was proposed in the year 178[4] by Patrick Henry and supported by all his eloquence aided by the remaining prejudices of the sect which before the Revolution had been established by law. The progress of the measure was arrested by urging that the respect due to the people required in so extraordinary a case an appeal to their deliberate will. The Bill was accordingly printed and published with that view. At the instance of Col. George Nicholas, Col. George Mason and others, the memorial and remonstrance<sup>10</sup> against it was drawn up and printed copies of it circulated thro' the State to be signed by the people at large. It met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics universally; of the Methodists in part;

and even of not a few of the sect formerly established by law. When the Legislature assembled, the number of copies and signatures presented displayed such an overwhelming opposition of the people, that the plan of a general assessment was crushed under it, and advantage taken of the crisis to carry thro' the Legislature the Bill above referred to, establishing religious liberty. In the course of the opposition to the Bill in the House of Delegates, which was warm and strenuous from some of the minority, an experiment was made on the reverence entertained for the name and sanctity of the Saviour, by proposing to insert the words "Jesus Christ" after the words "our Lord" in the preamble, the object of which would have been to imply a restriction of the liberty defined in the Bill, to those professing his religion only. The amendment was discussed, and rejected, the opponents of the amendment turned the feeling as well as judgment of the House against it, by successfully contending that the better proof of reverence for that holy name would be not to profane it by making it a topic of legislative discussion and particularly by making His religion the means of abridging the natural and equal rights of all men, in defiance of His own declaration that His kingdom was not of this world. This view of the subject was much enforced by the circumstance that it was espoused by some members who were distinguished by their reputed piety and Christian zeal.

But besides the danger of a direct mixture of religion and civil Government, there is an evil which ought to be guarded against in the infinite accumulation of property from the capacity of holding it in perpetuity by ecclesiastical corporations. The power of all corporations, ought to be limited in this respect. The growing wealth acquired by them never fails to be a source of abuses. A warning on this subject is emphatically given in the example of the various charitable establishments in Great Britain, the management of which has been lately scrutinized. The excessive wealth of ecclesiastical corporations and the misuse of it in many countries of Europe has long been a topic of complaint.

In some of them the church has amassed half, perhaps, the property of the nation. When the Reformation took place, an event promoted if not caused by that disordered state of things, how enormous were the treasures of religious societies and how gross the corruptions engendered by them; so enormous and so gross as to produce in the Cabinets and Councils of the Protestant States a disregard of all the pleas of the interested party drawn from the sanctions of the law, and the sacredness of property held in religious trust. The history of England during the period of the Reformation offers a sufficient illustration for the present purpose.

Are the U. S. duly awake to the tendency of the precedents they are establishing, in the multiplied incorporations of Religious Congregations with the faculty of acquiring and holding property real as well as personal? Do not many of these acts give this faculty without limit either as to time or as to amount? And must not bodies perpetual in their existence, and which may be always gaining without ever losing, speedily gain more than is useful, and in time more than is safe? Are there not already examples in the U. S. of ecclesiastical wealth equally beyond its object, and the foresight of those who laid the foundation of it? In the U. S. there is a double motive for fixing limits in this case, because wealth may increase not only from additional gifts, but from exorbitant advances in the value of the primitive one. In grants of vacant lands, and of lands in the vicinity of growing towns and cities, the increase of value is often such as, if foreseen, would essentially control the liberality conferring them. The people of the U. S. owe their independence and their liberty to the wisdom of desecrating in the minute tax of 3 pence on tea, the magnitude of the evil comprized in the precedent. Let them exert the same wisdom, in watching against every evil lurking under plausible disguises, and growing up from small beginnings. *Obsta principiis*. Is the appointment of Chaplains to the two Houses of Congress consistent with the Constitution, and with the pure principle of religious freedom?

In strictness the answer on both points must be in the negative. The Constitution of the U. S. forbids everything like an establishment of a national religion. The law appointing Chaplains establishes a religious worship for the national representatives, to be performed by ministers of religion, elected by a majority of them; and these are to be paid out of the national taxes. Does not this involve the principle of a national establishment applicable to a provision for a religious worship for the Constituent as well as of the Representative Body, approved by the majority and conducted by ministers of religion paid by the entire nation?

The establishment of the Chaplainship to Congress is a palpable violation of equal rights as well as of Constitutional principles. The tenets of the Chaplain elected shut the door of worship against the members whose creeds and consciences forbid a participation in that of the majority. To say nothing of other sects, this is the case with that of Roman Catholics and Quakers who have always had numbers in one or both of the Legislative branches. Could a Catholic clergyman ever hope to be appointed a Chaplain? \* To say that his religious principles are obnoxious or that his sect is small, is to lift the veil at once and exhibit in its naked deformity the doctrine that religious truth is to be tested by numbers, or that the major sects have a right to govern the minor.

If Religion consists in voluntary acts of individuals, singly or voluntarily associated, and if it be proper that public functionaries, as well as their constituents, should discharge their religious duties, let them, like their constituents, do so at their own expense. How small a contribution from each member of Congress would suffice for the purpose! How just would it be in its principle! How noble in its exemplary sacrifice to the genius of the Consti-

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\* Gaillard Hunt says:

"A few years after this was written, on December 11, 1832, Charles Constantine Pise, a Catholic priest, was elected Chaplain of the Senate."

tution; and the divine right of conscience! Why should the expense of a religious worship for the Legislature, be paid by the public, more than that for the executive or Judiciary branches of the Government?

Were the establishment to be tried by its fruits, are not the daily devotions conducted by these legal ecclesiastics, already degenerating into a scanty attendance, and a tiresome formality?

Rather than let this step beyond the landmarks of power have the effect of a legitimate precedent, it will be better to apply to it the aphorism, *de minimis non curat lex*: or to class it "*cum maculis quas aut incuria fudit, aut humana parum cavit natura.*"

Better also to disarm in the same way the precedent of Chaplainships for the army and navy, than erect them into a political authority in matters of Religion. The object of this establishment is seducing; the motive to it is laudable. But is it not safer to adhere to a right principle, and trust to its consequences, than confide in the reasoning, however specious, in favor of a wrong one? Look thro' the armies and navies of the world, and say whether in the appointment of their ministers of religion, the spiritual interests of the flocks or the temporal interests of the shepherds, be most in view; whether here, as elsewhere the political care of religion is not a nominal more than a real aid. If the spirit of armies be devout, the spirit out of the armies will never be less so; and a failure of religious instruction and exhortation from a voluntary source within or without, will rarely happen; and if such be not the spirit of armies, the official services of their Teachers are not likely to produce it. It is more likely to flow from the labors of a spontaneous zeal. The armies of the Puritans had their appointed Chaplains; but without these there would have been no lack of public devotion in that devout age.

The case of navies with insulated crews may be less within the scope of these reflections. But it is not entirely so. The chance of a devout officer might be of as much worth to religion as the service of an ordinary Chaplain. But we are always to keep in

mind that it is safer to trust the consequences of a right principle than reasonings in support of a bad one.

### Religious Proclamations <sup>11</sup>

Religious proclamations by the executive recommending thanksgivings and fasts are shoots from the same root with the legislative acts reviewed.

Although recommendations only, they imply a religious agency, making no part of the trust delegated to political rulers.

The objections to them are 1st. that Governments ought not to interpose in relation to those subject to their authority, but in cases where they can do it with effect. An *advisory* government is a contradiction in terms. 2. The members of a Government as such, can in no sense, be regarded as possessing an advisory trust from their constituents in their religious capacities. They cannot form an Ecclesiastical assembly, Convocation, Council, or Synod, and as such issue decrees or injunctions addressed to the faith or the consciences of the people. In their individual capacities, as distinct from their official station, they might unite in recommendations of any sort whatever; in the same manner as any other individuals might do. But then their recommendations ought to express the true character from which they emanate. 3. They seem to imply and certainly nourish the erroneous idea of a *national* religion. This idea just as it related to the Jewish nation under a theocracy, having been improperly adopted by so many nations which have embraced Christianity, is too apt to lurk in the bosoms even of Americans, who in general are aware of the distinction between religious and political Societies. The idea also of a union of all who form one nation under one Government in acts of devotion to the God of all is an imposing idea. But reason and the principles of the Christian religion require that if all the individuals composing a nation were of the same precise creed and wished to unite in a universal act of religion at the same time, the union ought to be effected through

the intervention of their religious not of their political representatives. In a nation composed of various sects, some alienated widely from others, and where no agreement could take place through the former, the interposition of the latter is doubly wrong.

4. The tendency of the practice is to narrow the recommendation to the standard of the predominant sect. The 1st proclamation of Gen. Washington, dated Jan. 1, 1795, recommending a day of thanksgiving, embraced all who believed in a Supreme Ruler of the Universe. That of Mr. Adams called for a *Christian* worship. Many private letters reproached the proclamation issued by J. M.<sup>22</sup> for using the general terms, used in that of President Washington; and some of them for not inserting terms particularly according with the faith of certain Christian sects. The practice if not strictly guarded naturally terminates in a conformity to the creed of the majority and of a single sect, if amounting to a majority.

5. The last and not the least objection is the liability of the practice to a subserviency to political views; to the scandal of religion, as well as the increase of party animosities. Candid or incautious politicians will not always disown such views. In truth it is difficult to frame such a religious proclamation generally suggested by a political state of things, without referring to them in terms having some bearing on party questions. The Proclamation of President Washington which was issued just after the suppression of the Insurrection in Pennsylvania, and at a time when the public mind was divided on several topics, was so construed by many. Of this the Secretary of State himself, E. Randolph, seems to have had an anticipation.

The original draft of that Instrument filed in the Department of State is in the handwriting of Mr. Hamilton the Secretary of the Treasury. It appears that several slight alterations only had been made at the suggestion of the Secretary of State; and in a marginal note in his hand, it is remarked that "in short, this proclamation ought to savor as much as possible of religion; and not too much of having a political object." In a subjoined note in the hand of Mr. Hamilton this remark is answered by the

counter remark that, "a proclamation by a government, which is a national act, naturally embraces objects which are political," so *naturally*, is the idea of policy associated with religion, whatever be the mode or the occasion, when a function of the latter is assumed by those in power.

During the administration of Mr. Jefferson, no religious proclamation was issued. It being understood that his successor was disinclined to such interpositions of the Executive, and by some supposed moreover that they might originate with more propriety with the Legislative body, a resolution was passed requesting him to issue a proclamation.

It was thought not proper to refuse a compliance altogether; but a form and language were employed, which were meant to deaden as much as possible any claim of political right to enjoin religious observances by resting these expressly on the voluntary compliance of individuals, and even by limiting the recommendation to such as wished a simultaneous as well as voluntary performance of a religious act on the occasion.—*Harper's Magazine* (Monthly), March, 1914, pp. 491-495.

## MADISON'S VIEWS ON FASTS, FESTIVALS, AND CHAPLAINS

WRITTEN BY JAMES MADISON TO EDWARD LIVINGSTON

MONTPELIER, July 10, 1822

DEAR SIR: . . . I observe with particular pleasure the view you have taken of the immunity of religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; and it was not with my approbation that the deviation from it took place in Congress, when they appointed chaplains, to be paid from the National Treasury. It would have been a much better proof to their constituents of their pious feeling if the members had contributed for the purpose, a pittance from their

own pockets. As the precedent is not likely to be rescinded, the best that can now be done, may be to apply to the Constitution the maxim of the law, *de minimis non curat*.

There has been another deviation from the strict principle in the executive proclamations of fasts and festivals, so far, at least, as they have spoken the language of *injunction*, or have lost sight of the equality of *all* religious sects in the eye of the Constitution. Whilst I was honored with the Executive Trust I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the Proclamations absolutely indiscriminate, and merely recommendatory; or rather mere *designations* of a day, on which all who thought proper might *unite* in consecrating it to religious purposes, according to their own faith and forms. In this sense, I presume you reserve to the government a right to *appoint* particular days for religious worship throughout the state, without any penal sanction *enforcing* the worship. I know not what may be the way of thinking on this subject in Louisiana. I should suppose the Catholic portion of the people, at least, as a small and even unpopular sect in the U. S., would rally, as they did in Virginia when religious liberty was a legislative topic, to its broadest principle. Notwithstanding the general progress made within the two last centuries in favor of this branch of liberty, and the full establishment of it in some parts of our country, there remains in others a strong bias towards the old error, that without some sort of alliance or coalition between Government and Religion neither can be duly supported. Such indeed is the tendency to such a coalition, and such its corrupting influence on both the parties, that the danger cannot be too carefully guarded against. And in a government of opinion like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject.

Every new and successful example therefore of a perfect separation between ecclesiastical and civil matters, is of importance, and I have no doubt that every new example will succeed, as every past one has done, in showing that religion and Govern-

ment will both exist in greater purity, the less they are mixed together. It was the belief of all sects at one time that the establishment of Religion by law was right and necessary; that the true religion ought to be established in exclusion of every other; and that the only question to be decided was which was the true religion. The example of Holland proved that a toleration of sects, dissenting from the established sect, was safe and even useful. The example of the Colonies, now States, which rejected religious establishments altogether, proved that all sects might be safely and advantageously put on a footing of equal and entire freedom; and a continuance of their example since the Declaration of Independence, has shown that its success in Colonies was not to be ascribed to their connection with the parent country. If a further confirmation of the truth could be wanted, it is to be found in the examples furnished by the States, which have abolished their religious establishments. I cannot speak particularly of any of the cases excepting that of Virginia where it is impossible to deny that religion prevails with more zeal and a more exemplary priesthood than it ever did when established and patronized by public authority. We are teaching the world the great truth that governments do better without kings and nobles than with them. The merit will be doubled by the other lesson that Religion flourishes in greater purity, without than with the aid of government.

My pen I perceive has rambled into reflections for which it was not taken up. I recall it to the proper object of thanking you for your very interesting pamphlet, and of tendering you my respects and good wishes.—*Writings of James Madison* (Hunt ed.), vol. 9, pp. 100-103; see also *Papers of James Madison*, vol. 70, Manuscript Division, Library of Congress.

## DISCUSSION

## Personal Right in Time and Labor (P. 177)

<sup>1</sup> The right to enjoy and use our time to our own advantage and profit is property. The right to labor for our own benefit is property. Therefore, there are property rights in our time and in our labor as much as there are in our real estate and in our personal property, such as clothes, furniture, and money. The civil government has no more right to deprive an individual of his right to the free use of his time and labor than it has to deprive him of the free use of his money or his clothes, unless it be for the commission of crime, and then only after due conviction.

<sup>2</sup> Madison was among the first to place a limitation upon the sovereign powers of the legislature, as well as to place each individual on an equality before the civil law and the bar of justice. Full liberty for each and equal opportunity for all was a doctrine which Madison helped introduce into political science. He held that every man was free to follow his own will, provided he did not infringe upon the equal freedom or right of any other man.

<sup>3</sup> In the free use of our labor and our time, without governmental interference, Madison lays down a fundamental principle in government which many legislators have overlooked in the matter of compelling individuals to observe Sunday as a religious day by resting and abstaining from the pursuits of pleasure. Sunday laws deprive one of the free use of time and of the right to labor, and thus arbitrarily take from a man one seventh of his property in time and labor for daily subsistence. To say that religion lays down such an obligation is beside the point at issue. The civil government is not under obligation to enforce religious requirements. When the civil government enforces such duties, it transcends its rightful sphere and becomes a religious persecutor. Religion is purely a matter of conscience and rests on voluntary action and freedom of choice. The night was made for man's physical recuperation from the wear and tear of toil during the day. The Sabbath was divinely ordained for spiritual rest, devotion, and ministry, and it can be kept holy only by spiritual-minded people. The Sabbath should never be enforced by the civil magistrate, nor its violation punished as an offense against God under the civil penal codes. Such a course of action is just as reprehensible to God as was the casting of the Hebrew worthies into the fiery furnace by the king of Babylon. There is no more justification for the im-

position by law of the true religion than there is for a false religion. A Sunday-observance law sweeps away the prerogatives of the free exercise of the conscience, individual liberty, property rights, and the pursuit of happiness, and is in open conflict with natural as well as divine law. God demands only freewill service and a religious devotion which springs from the heart.

### Baptists Persecuted (P. 179)

‘There are some striking similarities in the indictments of the Baptists in the eighteenth century and those of Sabbatarians now. Baptists were arrested for “disturbing the peace”; Sabbatarians have been arrested because they “perform labor . . . against the peace and dignity of the state.”

### Blackstone on Natural Law (P. 181)

<sup>5</sup> Blackstone, in his *Commentaries on the Laws of England*, states this principle as follows: “This will of his [man’s] Maker is called the law of nature. For as God, when He created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when He created man, and endued him with free will to conduct himself in all parts of life, He laid down certain immutable laws of human nature, whereby that free will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

“Considering the Creator only as a being of infinite *power*, He was able unquestionably to have prescribed whatever laws He pleased to His creature, man, however unjust or severe. But as He is also a being of infinite *wisdom*, He has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the Creator Himself in all His dispensations conforms; and which He has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should live honestly, should hurt nobody, and should render to everyone his due; to which three general precepts Justinian has reduced the whole doctrine of law.

“But if the discovery of these first principles of the law of nature depended only upon the due exertion of right reason, and could not otherwise be obtained than by a chain of metaphysical disquisitions, mankind would have wanted some inducement to have quickened

their inquiries, and the greater part of the world would have rested content in mental indolence, and ignorance, its inseparable companion. As therefore the Creator is a being, not only of infinite *power*, and *wisdom*, but also of infinite *goodness*, He has been pleased so to contrive the constitution and frame of humanity that we should want no other prompter to inquire after and pursue the rule of right but only our own self-love, that universal principle of action. For He has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, He has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, 'that man should pursue his own happiness.' This is the foundation of what we call ethics, or natural law. For the several articles into which it is branched in our systems, amount to no more than demonstrating that this or that action tends to man's real happiness, and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness, and therefore that the law of nature forbids it.

"This law of nature, being coeval with mankind, and dictated by God Himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

"But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason; whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life, by considering, what method will tend the most effectually to our own substantial happiness.—Vol. 1, pp. 39-41.

"*Those rights, then, which God and nature have established*, and are therefore called *natural rights*, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has power to abridge or destroy them, unless the owner shall himself commit some act that amounts to a

forfeiture. Neither do divine or natural *duties* (such as, for instance, the worship of God, the maintenance of children, and the like) receive any stronger sanction from being also declared to be duties by the law of the land."—*Ibid.*, p. 54.

### Natural Rights Beyond State Control (P. 181)

\*That the formation of an organized society is not incompatible with natural rights, but should be a protection to them, has been aptly expressed by Alexander H. Stephens:

"Much has been said and written about Liberty and the security of which, as indicated, should be the object of all governments—much about Liberty in a state of nature, and Liberty in organized Society—about *natural Liberty* and *civil Liberty*. . . .

"It is a great error, you were told, to suppose, as some have taught, that man upon entering into Society, gives up, or surrenders any one of his natural rights.

"In forming single Societies or States, men only enter into a compact with each other—a social compact, as it is called—(either express or implied)—for their mutual protection, in the enjoyment by each, of all their natural rights. No man by nature, has a right to hurt or wrong another. The chief object of all good governments, therefore, should be, the protection of all the natural rights of all their constituent members, whatever be its form. This consists, mainly, in providing efficient modes and means for the prevention of wrongs or aggressions on these rights. Under governments so constituted, (whatever be their form), liberty exists—civil liberty, I mean. . . . No person by nature has any right wantonly to hurt or injure either another, or himself or herself. By nature man is endowed with certain '*absolute rights*,' as Blackstone terms them . . . and the chief object of Government, therefore, should be the protection of these rights."—*Alexander H. Stephens on the Study of the Law*, pp. 6, 7. (A letter to a class of "Liberty Hall" law students, Atlanta, Ga., 1871.)

The fundamental legal principle of human rights and the limitation of legislative and judicial authority was well stated and judicially settled by the following decision of the Supreme Court of the United States in *Loan Association v. Topeka*, 20 Wallace's Reports, page 662: "It must be conceded that there are such [private] rights in every free government *beyond the control of the State*. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition

and unlimited control of *even the most democratic depository of power*, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but *it is none the less a despotism*. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

"The theory of our governments, State and National, *is opposed to the deposit of unlimited power anywhere*. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.

"There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B."

### Judge Cooley on State Bills of Rights (P. 181)

<sup>1</sup> Judge Cooley, the great constitutional lawyer, in commenting on the bill of human rights, says: "The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void. If the act proceeded upon the assumption that such other person was justly entitled to the estate, and therefore it was transferred, it would be void, because judicial in its nature; and if it proceeded without reasons, it would be equally void, as neither legislative nor judicial, but a mere arbitrary fiat. There is no difficulty in saying that any such act, which under pretense of exercising one power is usurping another, is opposed to the constitution and void. It is assuming a power which the people, if they have not granted it at all, have reserved to themselves. The maxims of Magna Charta and the common law are the interpreters of constitutional grants of power, and those acts which by those maxims the several departments of government are forbidden to do cannot be considered

within any grant or apportionment of power which the people in general terms have made to those departments.

"The Parliament of Great Britain, indeed, as possessing the sovereignty of the country, has the power to disregard fundamental principles, and pass arbitrary and unjust enactments; but it cannot do this rightfully, and it has the power to do so simply because there is no written constitution from which its authority springs or on which it depends, and by which the courts can test the validity of its declared will. The rules which confine the discretion of Parliament within the ancient landmarks are rules for the construction of the powers of the American legislatures; and however proper and prudent it may be expressly to prohibit those things which are not understood to be within the proper attributes of legislative power, such prohibition can never be regarded as essential, when the extent of the power apportioned to the legislative department is found upon examination not to be broad enough to cover the obnoxious authority. The absence of such prohibition cannot, by implication, confer power.

"Nor, where fundamental rights are declared by the constitution, is it necessary at the same time to prohibit the legislature, in express terms, from taking them away. The declaration is itself a prohibition, and is inserted in the constitution for the express purpose of operating as a restriction upon legislative power.

"Many things, indeed, which are contained in the bills of rights to be found in the American constitutions, are not, and from the very nature of the case cannot be, so certain and definite in character as to form rules for judicial decisions; and they are declared rather as guides to the legislative judgment than as marking an absolute limitation of power. The nature of the declaration will generally enable us to determine without difficulty whether it is the one thing or the other. If it is declared that all men are free, and no man can be slave to another, a definite and certain rule of action is laid down, which the courts can administer; but if it be said that the 'blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality, and virtue,' we should not be likely to commit the mistake of supposing that this declaration would authorize the courts to substitute their own view of justice for that which may have impelled the legislature to pass a particular law, or to inquire into the moderation, temperance, frugality, and virtue of its members, with a view to set aside their action, if it should appear to have been influenced by the opposite qualities. It is plain that what in the one case is a rule, in the other is an admonition addressed to the judgment

and the conscience of all persons in authority, as well as of the people themselves.”—THOMAS M. COOLEY, *Constitutional Limitations* (5th ed.), chap. 7, pp. 209-211.

### Madison on Freedom of Religious Opinion (P. 182)

\* Madison held that the fundamental principles of our government were so equitable, so liberal—so just to the Jew, to the Turk, to the dissenter, to the agnostic—that any bill of rights guaranteeing this equality would probably be defective in that it could not be worded so as to be broad enough to cover all cases liable to arise. He was afraid that any provision they might make would be given too narrow a definition—not given the full meaning intended. The result of his effort at breadth is seen in the first amendment:

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”*

While this question was under consideration, he wrote as follows to Jefferson:

“There is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England [to the proposed Federal Constitution] was that the Constitution, by prohibiting religious tests, opened a door for Jews, Turks, and infidels.”

He also regretted what experience has since demonstrated to be true, that where the people or public opinion happens to be against the enforcement of a provision guaranteeing religious freedom, the provision is likely to be entirely ignored.

“Experience,” he says, “proves the inefficacy of a bill of rights on those occasions when its control is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State.

“In Virginia, I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that State, if the legislative majority had found as they expected, a majority of the people in favor of the measure; and I am persuaded that if a majority of the people were now

of one sect, the measure would still take place, and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law [Jefferson's bill for religious freedom; see page 120] has since created.

*"Wherever the real power in a government lies, there is the danger of oppression. In our governments the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to. . . . Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party than by a powerful and interested prince."*—From a letter to Jefferson, dated New York, October 17, 1788, *Writings of James Madison* (Hunt ed.), vol. 5, pp. 271, 272.

The distinction which Madison here makes, and which he so often made, between the government—the agent of the state—and the government as the state itself, or political society, is fully justified. As he says, "This is a truth of great importance, but not yet sufficiently attended to." The power of the former, or government, as commonly understood, is defined strictly by the constitution which creates the agency; and the power of sovereignty of the latter—the state—is, according to Madison, defined by common or natural law, to which sovereignty should conform its acts. He, therefore—like Jefferson, who was a most excellent common lawyer—places the rights of man, our common-law rights, "beyond the *legitimate* reach of sovereignty *wherever vested or however viewed.*" It is true, of course, that sovereignty *can* interfere with rights, but such action is not legal. Sovereignty, or the controlling power in a state, is amenable to the laws bringing the state into existence. Hence is the common-law maxim derived, "*Sequi debet potentia justitiam non praeedere:*" "Force [and hence the controlling power of the state] ought to follow justice and not to precede it."—SIR EDWARD COKE, *Institutes*, vol. 2, p. 454. Justice marks out the way, and according to the common law, force must follow.

### Jefferson on Religious Polity (P. 182)

° This is a remarkably true observation. Even sects which have been the most pronounced advocates of religious liberty and individual freedom seem to forget their principles when the religious law does not affect them in any way.

### Madison's Memorial (P. 185)

<sup>10</sup> It was James Madison who wrote this Memorial and Remonstrance. It was he who had caused the Virginia Declaration of Rights to be amended so that it declared for free exercise of religion instead of toleration or permission to exercise religion; it was he who carried through the Virginia Legislature the bill for complete religious freedom which Jefferson had written; he introduced the preliminary draft of the first ten amendments to the Constitution of the United States in behalf of the rights of man. He and Jefferson were the outstanding champions of religious liberty in America, and they deeply regretted the fact that many religious laws were still retained and enforced by the State governments, and that the Federal Government still gave legal sanction and support to the religious customs and observances as held by the majority sects.

### Religious Proclamations (P. 190)

<sup>11</sup> James Madison and Thomas Jefferson both were opposed to the issuance of proclamations for Thanksgiving and fasts, and they conscientiously adhered to this ideal of complete separation of church and state. Some of the governors of the States have followed the example of these two great Americans in their official capacities by refusing to issue Thanksgiving proclamations or to issue calls for fasts in times of national distress, holding that these things are spiritual and not secular functions.

<sup>12</sup> The clergy of New England stirred up a bad feeling when it found that Madison shared the same views as Jefferson and refused to issue religious proclamations, and Congress finally yielded to the religious clamor of the Puritan clergy and passed a resolution requesting President Madison to issue the Thanksgiving Proclamation. Madison did not deem it wise to refuse a compliance altogether, and made it as secular as possible to deaden its religious aspect. Then the clergy criticized him because he used the same general terms in referring to the Deity as Washington used in his Thanksgiving Proclamation, instead of using terms particularly fitted to the faith of certain Christian sects.

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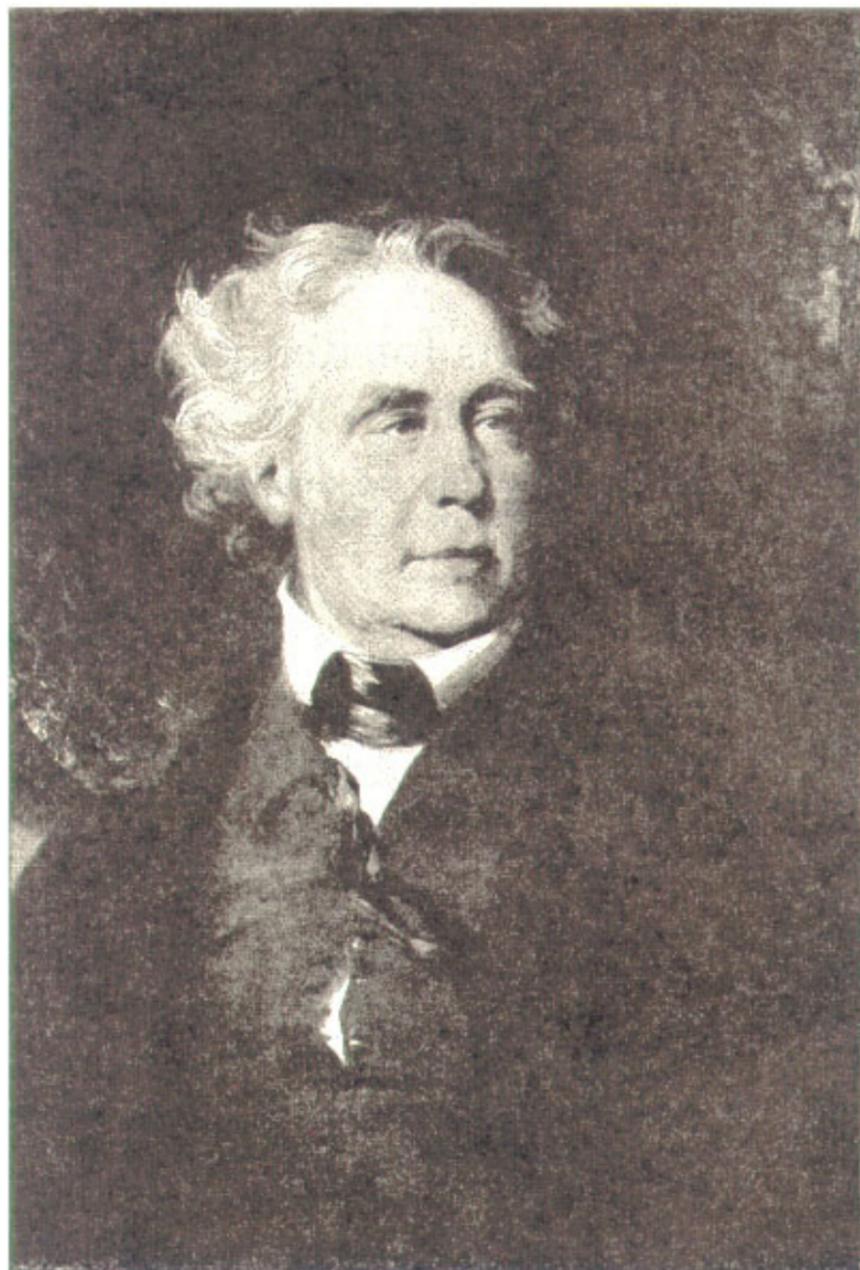
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**PART V**

**Early Efforts for Return to  
Religious Laws**

**The Agitation for the Suppression  
of Sunday Mails**



JOHN NEAGLE ARTIST

Richard M. Johnson, Able Defender of Religious Liberty  
in the Sunday Mail Controversy

## Religious Liberty Holds Its Gains

THE early growth and development of the principles of American government were marked by continued struggles between opposing interests. Men and nations, for centuries rooted in fixed viewpoints and established customs, do not change easily nor in a moment. Liberties attained had to be maintained. Blood had been the price of their getting; eternal vigilance had to be the price of their keeping.

Especially was this true of religious freedom. Honest and conscientious people could not, or would not, relinquish the idea that their so-called delinquent fellow countrymen must be forced to be religious, or at least to practice the forms of religion. Every effort was made to hold what few religious laws were left on the statute books, and to add many more. The Congress and Government officials were periodically deluged with petitions, memorials, and protests, all to the effect that "we ought to have a law" to save the country from rack and ruin because Sunday was not properly observed and people did not go to church.

We herewith give attention to these well-meant but misguided endeavors to promote religion by law, during the period of our history from 1810 to 1887.

### AN EFFORT TO STOP SUNDAY MAILS

On April 26, 1810, the following law was enacted by Congress:

#### An Act Regulating the Post-Office Establishment

"SECTION 9. *And be it further enacted,* That every postmaster shall keep an office in which one or more persons shall attend on every day on which a mail, or bag, or other packet or parcel of letters shall arrive by land or water, as well as on other days, at such hours as the

Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster at all reasonable hours, *on every day of the week*, to deliver, on demand, any letter, paper or packet, to the person entitled to or authorized to receive the same."—U. S. Statutes at Large, vol. 2, p. 595.

### Petitions Opposing Sunday Mails

On January 4, 1811, the Honorable Mr. Findley "presented a petition of the Synod of Pittsburgh, in the State of Pennsylvania, praying that the laws and regulations for the government of the Post Office Establishment . . . be so altered or amended as to prohibit mail stages and post riders from traveling, and post offices being kept open, on Sunday," which petition was referred to the Postmaster General. A similar petition from sundry inhabitants of Pennsylvania, Virginia, and Ohio was recorded in the *Annals of Congress* in the same month, and referred to the Postmaster General. (See *Annals of Congress*, 11th Congress, 3d session, Gales and Seaton ed., vol. 22, pp. 487, 826, 827, 855.)

Such petitions and memorials from the Synod and from the religious leaders of several other Christian denominations kept pouring into Congress year after year, demanding the stopping of the mails on Sunday and "the strict observance of the first day of the week, as set apart by the command of God for His more immediate service."<sup>1</sup>

During the third session of the Thirteenth Congress, in 1815, the House Committee on the Post Office and Post Roads was called upon to report on the petitions of the various Christian denominations, and Mr. Rhea, chairman of the House Committee, reported as the view of the Committee as well as that of the Postmaster General, that "they deem it inexpedient to interfere with the present arrangement of the Post Office Establishment, and, therefore, submit the following resolution: '*Resolved*, That it is inexpedient to grant the prayer of the petitioners.'"—*American State Papers*, Class VII, Post Office Department, p. 46; see also *Annals of Congress*, vol. 28, pp. 1084, 1146. Both the Senate and the House of Representatives passed resolutions "that it is inexpedient to grant the prayer of the petitioners" to prohibit the operation of mails on Sunday. (See *Annals of Congress*, 13th Congress, 3d session, vol. 28, pp. 287, 1147.)

These adverse reports of the Committees and the actions of Congress put a quietus upon the agitation to stop the Sunday mails for nearly fifteen years. Then suddenly another avalanche of petitions was let loose and flooded both houses of Congress, and on January 19,

1829, Hon. Richard M. Johnson of Kentucky, chairman of the Senate Committee on Post Offices and Post Roads, rendered a Committee report, which was passed by the Senate, setting forth in detail many fundamental principles and reasons why the United States Government could not yield to the demands of the churches to place a legal sanction upon Sunday as a day to be esteemed above the other days of the week, and gave definite reasons why the proposed "legislation upon the subject was improper, and that nine hundred and ninety-nine in a thousand were opposed to any legislative interference, inasmuch as it would have a tendency to unite religious institutions with the government." Mr. Johnson further stated that he was of the opinion "that these petitions and memorials in relation to Sunday mails, were but the entering wedge of a scheme to make this government a religious, instead of a social and political, institution."—*Register of Debates in Congress*, vol. 5, 20th Congress, 2d session, pp. 42, 43.

Mr. Chambers of Maryland disagreed with Mr. Johnson of Kentucky, and stated that "the petitioners took an entirely different ground. They said that the observance of the Sabbath was connected with the civil interests of the government."

Mr. Johnson replied that he believed "the petitioners were governed by the purest motives; but if the gentleman from Maryland would look at the proceedings of a meeting at Salem, in Massachusetts, he would find it did not matter what was the purity of the motive; that the petitioners did not consider the ground they had taken as being purely that the Sabbath was a day of rest; they assumed that it was such by a law of God. Now some denominations considered one day the most sacred, and some looked to another, and these petitions did, in fact, call upon Congress to settle what was the law of God. The Committee had framed their report upon principles of policy and expediency. It was but the first step taken, that they were to legislate upon religious grounds, and it made no sort of difference which was the day asked to be set apart, which day was to be considered sacred, whether it was the first day or the seventh, the principle was wrong."—*Ibid.*

The next year Mr. Johnson, who was then chairman of the House Committee on the Post Office and Post Roads, rendered another report on the same question. This Committee also recommended dropping the subject, with the result that the House voted to refer the report to the Committee of the Whole and allowed it to die without so much as bringing it to a final vote. (See *Journal of the House of Representatives*, 21st Congress, 1st session, pp. 368-370.)

## SENATE REPORT ON SUNDAY MAILS

COMMUNICATED TO THE SENATE, JANUARY 19, 1829

Mr. Johnson,<sup>2</sup> of Kentucky, made the following report:

The committee to whom were referred the several petitions on the subject of mails on the Sabbath, or first day of the week, report:

That some respite is required from the ordinary vocations of life, is an established principle, sanctioned by the usages of all nations, whether Christian or pagan. One day in seven has also been determined upon as the proportion of time; and, in conformity with the wishes of a great majority of the citizens of this country, the first day of the week, commonly called Sunday, has been set apart to that object. The principle has received the sanction of the national legislature, so far as to admit a suspension of all public business on that day, except in cases of absolute necessity, or of great public utility. This principle the committee would not wish to disturb. If kept within its legitimate sphere of action, no injury can result from its observance. It should, however, be kept in mind that *the proper object of government is to protect all persons in the enjoyment of their religious as well as civil rights, and not to determine for any whether they shall esteem one day above another, or esteem all days alike holy.*

We are aware that a variety of sentiment exists among the good citizens of this nation on the subject of the Sabbath day; and our Government is designed for the protection of one, as much as another. The Jews, who in this country are as free as Christians, and entitled to the same protection from the laws, derive their obligation to keep the Sabbath day from the fourth commandment of their decalogue, and, in conformity with that injunction, pay religious homage to the seventh day of the week, which we call Saturday. One denomination of Christians among us, justly celebrated for their piety, and certainly as good citizens as any other class, agree with the Jews in the moral obligation of the Sabbath, and observe the same day. There are, also, many

Christians among us who derive not their obligation to observe the Sabbath from the decalogue, but regard the Jewish Sabbath as abrogated. From the example of the Apostles of Christ, they have chosen the first day of the week, instead of that day set apart in the decalogue, for their religious devotions. These have generally regarded the observance of the day as a devotional exercise, and would not more readily enforce it upon others, than they would enforce secret prayer or devout meditations.

Urging the fact, that neither their Lord nor His disciples, though often censured by their accusers for violation of the Sabbath, ever enjoined its observance, they regard it as a subject on which every person should be fully persuaded in his own mind, and not coerce others to act upon his persuasion. Many Christians again differ from these, professing to derive their obligation to observe the Sabbath from the fourth commandment of the Jewish decalogue, and bring the example of the Apostles, who appear to have held their public meetings for worship on the first day of the week, as authority for so far changing the decalogue as to substitute that day for the seventh. The Jewish Government was a theocracy, which enforced religious observances; and though the committee would hope that no portion of the citizens of our country could willingly introduce a system of religious coercion in our civil institutions, the example of other nations should admonish us to watch carefully against its earliest indication. With these different religious views, the committee are of opinion that Congress cannot interfere. *It is not the legitimate province of the Legislature to determine what religion is true, or what is false.*<sup>3</sup>

*Our Government is a civil and not a religious institution.* Our constitution recognizes in every person the right to choose his own religion, and to enjoy it freely, without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the Government, so long as they do not invade the rights of others. The transportation of the mail on the first day of the week, it is be-

lieved, does not interfere with the rights of conscience. *The petitioners for its discontinuance appear to be actuated from a religious zeal, which may be commendable if confined to its proper sphere; but they assume a position better suited to an ecclesiastical than to a civil institution.* They appear, in many instances, to lay it down as an axiom, that the practice is a violation of the law of God. Should Congress, in their legislative capacity, adopt the sentiment, it would establish the principle that the Legislature is a proper tribunal to determine what are the laws of God. It would involve a legislative decision in a religious controversy, and on a point in which good citizens may honestly differ in opinion, without disturbing the peace of society, or endangering its liberties. If this principle is once introduced, it will be impossible to define its bounds.

*Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for the violation of what Government denominated the law of God.\** To prevent a similar train of evils in this country, the constitution has wisely withheld from our Government the power of defining the divine law. It is a right reserved to each citizen; and while he respects the equal rights of others, he cannot be held amenable to any human tribunal for his conclusions. *Extensive religious combinations to effect a political object are, in the opinion of the committee, always dangerous.*<sup>5</sup> This first effort of the kind calls for the establishment of a principle, which, in the opinion of the committee, would lay the foundation for dangerous innovations upon the spirit of the constitution, and upon the religious rights of the citizens. *If admitted, it may be justly apprehended that the future measures of the Government will be strongly marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence; and when that influence begins to operate upon the political institutions of a country, the civil power soon bends under it; and the catastrophe of other nations furnishes an awful warning of the consequence.*

Under the present regulations of the Post Office Department, the rights of conscience are not invaded. Every agent enters voluntarily, and, it is presumed, conscientiously, into the discharge of his duties, without intermeddling with the conscience of another. Post Offices are so regulated as that but a small proportion of the first day of the week is required to be occupied in official business. In the transportation of the mail on that day, no one agent is employed many hours. Religious persons enter into the business without violating their own consciences, or imposing any restraints upon others. Passengers in the mail stages are free to rest during the first day of the week, or to pursue their journeys, at their own pleasure. While the mail is transported on Saturday, the Jew and the Sabbatarian may abstain from any agency in carrying it, on conscientious scruples. While it is transported on the first day of the week, another class may abstain, from the same religious scruples. The obligation of Government is the same to both these classes; and the committee can discover no *principle on which the claims of one should be more respected than those of the other*, unless it be admitted that the consciences of the minority are less sacred than those of the majority.

It is the opinion of the committee that the subject should be regarded simply as a question of expediency, irrespective of its religious bearing. In this light it has hitherto been considered. Congress have never legislated upon the subject. It rests, as it ever has done, in the legal discretion of the Postmaster General, under the repeated refusals of Congress to discontinue the Sabbath mails. His knowledge and judgment in all the concerns of that department will not be questioned. His intense labors and assiduity have resulted in the highest improvement of every branch of his department. It is practiced only on the great leading mail routes, and such others as are necessary to maintain their connections. To prevent this, would, in the opinion of the committee, be productive of immense injury, both in its commercial, political, and in its moral bearings. The various departments

of Government require, frequently in peace, always in war, the speediest intercourse with the remotest parts of the country; and one important object of the mail establishment is, to furnish the greatest and most economical facilities for such intercourse. The delay of the mails one whole day in seven would require the employment of special expresses, at great expense, and sometimes with great uncertainty.

The commercial, manufacturing, and agricultural interests of our country are so intimately connected as to require a constant and the most expeditious correspondence betwixt all our seaports, and between them and the most interior settlements. The delay of the mails during the Sunday would give occasion to the employment of private expresses, to such an amount, that probably ten riders would be employed where one mail stage is now running on that day; thus diverting the revenue of that department into another channel, and sinking the establishment into a state of pusillanimity incompatible with the dignity of the Government of which it is a department.

Passengers in the mail stages, if the mails are not permitted to proceed on Sunday, will be expected to spend that day at a tavern upon the road, generally under circumstances not friendly to devotion, and at an expense which many are but poorly able to encounter. To obviate these difficulties, many will employ extra carriages for their conveyance, and become the bearers of correspondence, as more expeditious than the mail. The stage proprietors will themselves often furnish the travelers with those means of conveyance; so that the effect will ultimately be only to stop the mail, while the vehicle which conveys it will continue, and its passengers become the special messengers for conveying a considerable proportion of what would otherwise constitute the contents of the mail. Nor can the committee discover where the system could consistently end. If the observance of a holiday becomes incorporated in our institutions, shall we not forbid the movement of an army, prohibit an assault in time of war, and lay an injunction upon our naval officers to lie in the wind while

upon the ocean, on that day? Consistency would seem to require it. Nor is it certain that we should stop here. *If the principle is once established that religion, or religious observances, shall be interwoven with our legislative acts, we must pursue it to its ultimatum.* We shall, if consistent, provide for the erection of edifices for the worship of the Creator, and for the support of Christian ministers, if we believe such measures will promote the interests of Christianity.

It is the settled conviction of the committee that the only method of avoiding these consequences, with their attendant train of evils, is to adhere strictly to the spirit of the constitution, which regards the General Government in no other light than that of a civil institution, wholly destitute of religious authority. *What other nations call religious toleration, we call religious rights.<sup>6</sup> They are not exercised in virtue of governmental indulgence, but as rights, of which Government cannot deprive any portion of citizens, however small. Despotic power may invade those rights, but justice still confirms them.<sup>7</sup>*

Let the National Legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid for that usurpation of the divine prerogative in this country, which has been the desolating scourge to the fairest portions of the old world.

Our constitution recognizes no other power than that of persuasion for enforcing religious observances. Let the professors of Christianity recommend their religion by deeds of benevolence; by Christian meekness; by lives of temperance and holiness. Let them combine their efforts to instruct the ignorant; to relieve the widow and the orphan; to promulgate to the world the gospel of their Saviour, recommending its precepts by their habitual example: Government will find its legitimate object in protecting them. It cannot oppose them, and they will not need its aid. *Their moral influence will then do infinitely more to advance the true interests of religion, than any measures which they may call*

on Congress to enact. The petitioners do not complain of any infringement upon their own rights. They enjoy all that Christians ought to ask at the hands of any Government—protection from all molestation in the exercise of their religious sentiments.

*Resolved*, That the committee be discharged from the further consideration of the subject.—*American State Papers*, Class VII, Post Office Department, pp. 211, 212. The report and resolution were concurred in by the Senate.

## HOUSE REPORT ON SUNDAY MAILS

COMMUNICATED TO HOUSE OF REPRESENTATIVES, MARCH 4 AND 5, 1830

Mr. Johnson, of Kentucky, from the Committee on the Post-office and Post Roads, to whom had been referred memorials from inhabitants of various parts of the United States, praying for a repeal of so much of the Post Office law as authorizes the mail to be transported and opened on Sunday, and to whom had also been referred memorials from other inhabitants of various parts of the United States remonstrating against such repeal, made the following report:

That the memorialists regard the first day of the week as a day set apart by the Creator for religious exercises,<sup>8</sup> and consider the transportation of the mail and the opening of the post offices on that day the violation of a religious duty, and call for a suppression of the practice.

Others, by counter-memorials, are known to entertain a different sentiment, believing that no one day of the week is holier than another. Others, holding the universality and immutability of the Jewish decalogue, believe in the sanctity of the seventh day of the week as a day of religious devotion, and, by their memorial now before the committee, they also request that it may be set apart for religious purposes. Each has hitherto been left to the exercise of his own opinion, and it has been regarded as the proper business of Government to protect all and determine for none.<sup>9</sup> But the attempt is now made to bring about a greater uniformity,

at least in practice; and, as argument has failed, the Government has been called upon to interpose its authority to settle the controversy.<sup>10</sup>

Congress acts under a constitution of delegated and limited powers. The committee look in vain to that instrument for a delegation of power authorizing this body to inquire and determine what part of time, or whether any, has been set apart by the Almighty for religious exercises. On the contrary, among the few prohibitions which it contains, is one that prohibits a religious test, and another which declares that Congress shall pass no law respecting an establishment of religion, or prohibiting the free exercise thereof.<sup>11</sup>

The committee might here rest the argument, upon the ground that the question referred to them does not come within the cognizance of Congress; but the perseverance and zeal with which the memorialists pursue their object seems to require a further elucidation of the subject; and, as the opposers of Sunday mails disclaim all intention to unite church and state, the committee do not feel disposed to impugn their motives; and whatever may be advanced in opposition to the measure will arise from the fears entertained of its fatal tendency to the peace and happiness of the nation. The catastrophe of other nations furnished the framers of the constitution a beacon of awful warning, and they have evinced the greatest possible care in guarding against the same evil.

The law, as it now exists, makes no distinction as to the days of the week, but is imperative that the postmasters shall attend at all reasonable hours in every day to perform the duties of their offices; and the Postmaster General has given his instructions to all postmasters that, at post offices where the mail arrives on Sunday, the office is to be kept open one hour or more after the arrival and assorting the mail; but, in case that would interfere with the hours of public worship, the office is to be kept open for one hour after the usual time of dissolving the meeting. This liberal construction of the law does not satisfy the memorialists;

but the committee believe that there is no just ground of complaint, unless it be conceded that they have a controlling power over the consciences of others.<sup>12</sup>

If Congress shall, by the authority of law, sanction the measure recommended, it would constitute a legislative decision of a religious controversy in which even Christians themselves are at issue. However suited such a decision may be to an ecclesiastical council, it is incompatible with a republican Legislature, which is purely for political, and not religious, purposes.

In our individual character we all entertain opinions, and pursue a corresponding practice, upon the subject of religion. However diversified these may be, we all harmonize as citizens, while each is willing that the other shall enjoy the same liberty which he claims for himself. But, in our representative character, our individual character is lost. The individual acts for himself; the representative for his constituents. He is chosen to represent their *political*, and not their *religious* views; to guard the rights of man, not to restrict the rights of conscience.

Despots may regard their subjects as their property, and usurp the Divine prerogative of prescribing their religious faith; but the history of the world furnishes the melancholy demonstration that the disposition of one man to coerce the religious homage of another springs from an unchastened ambition rather than a sincere devotion to any religion.

The principles of our Government do not recognize in the majority any authority over the minority, except in matters which regard the conduct of man to his fellow-man.<sup>13</sup>

A Jewish monarch, by grasping the holy censer, lost both his scepter and his freedom. A destiny as little to be envied may be the lot of the American people, who hold the sovereignty of power, if they, in the person of their representatives, shall attempt to unite, in the remotest degree, church and state.

From the earliest period of time, religious teachers have attained great ascendancy over the minds of the people; and in every nation, ancient or modern, whether Pagan, Mahometan,

or Christian, have succeeded in the incorporation of their religious tenets with the political institutions of their country. The Persian idols, the Grecian oracles, the Roman auguries, and the modern priesthood of Europe, have all, in their turn, been the subject of popular adulation, and the agents of political deception. *If the measure recommended should be adopted, it would be difficult for human sagacity to foresee how rapid would be the succession, or how numerous the train of measures which might follow, involving the dearest rights of all—the rights of conscience.*

It is perhaps fortunate for our country that the proposition should have been made at this early period, while the spirit of the Revolution yet exists in full vigor. Religious zeal enlists the strongest prejudices of the human mind, and, when misdirected, excites the worst passions of our nature, under the delusive pretext of doing God service. Nothing so infuriates the heart to deeds of rapine and blood; nothing is so incessant in its toils, so persevering in its determinations, so appalling in its course, or so dangerous in its consequences. The equality of rights, secured by the constitution, may bid defiance to mere political tyrants; but the robe of sanctity too often glitters to deceive. *The constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a solitary individual than that of a whole community.* That representative who would violate this principle would lose his delegated character, and forfeit the confidence of his constituents.

If Congress shall declare the first day of the week holy, it will not convince the Jew nor the Sabbatarian. It will dissatisfy both, and, consequently, convert neither. Human power may extort vain sacrifices, but the Deity alone can command the affections of the heart.<sup>14</sup>

It must be recollected that in the earliest settlement of this country, the spirit of persecution which drove the Pilgrims from their native home was brought with them to their new habitations, and that some Christians were scourged, and others put to death,

for no other crime than dissenting from the dogmas of their rulers.

With these facts before us, it must be a subject of deep regret that a question should be brought before Congress which involves the dearest privileges of the constitution, and even by those who enjoy its choicest blessings. *We* should all recollect that Catiline, a professed patriot, was a traitor to Rome; Arnold, a professed Whig, was a traitor to America; and Judas, a professed disciple, was a traitor to his Divine Master.

With the exception of the United States, the whole human race, consisting, it is supposed, of eight hundred millions of rational beings, is in religious bondage; and, in reviewing the scenes of persecution which history everywhere presents, unless the committee could believe that the cries of the burning victim, and the flames by which he is consumed, bear to heaven a grateful incense, the conclusion is inevitable that the line cannot be too strongly drawn between church and state. If a solemn act of legislation shall, in *one* point, define the law of God, or point out to the citizen *one* religious duty, it may, with equal propriety, proceed to define *every* part of divine revelation, and enforce *every* religious obligation, even to the forms and ceremonies of worship, the endowment of the church, and the support of the clergy.

It was with a kiss that Judas betrayed his Divine Master; and we should all be admonished—no matter what our faith may be—that the rights of conscience cannot be so successfully assailed as under the pretext of holiness. The Christian religion made its way into the world in opposition to all human Governments. Banishment, tortures, and death were inflicted in vain to stop its progress. But many of its professors, as soon as clothed with political power, lost the meek spirit which their creed inculcated, and began to inflict on other religions, and on dissenting sects of their own religion, persecutions more aggravated than those which their own apostles had endured.<sup>15</sup>

The ten persecutions of pagan emperors were exceeded in

atrocities by the massacres and murders perpetrated by Christian hands; and in vain shall we examine the records of imperial tyranny for an engine of cruelty equal to the holy inquisition.<sup>16</sup> Every religious sect, however meek in its origin, commenced the work of persecution as soon as it acquired political power.

The framers of the constitution recognized the eternal principle that man's relation with his God is above human legislation, and his rights of conscience inalienable.<sup>17</sup> Reasoning was not necessary to establish this truth; we are conscious of it in our own bosoms. It is this consciousness which, in defiance of human laws, has sustained so many martyrs in tortures and in flames. They felt that their duty to God was superior to human enactments, and that man could exercise no authority over their consciences. *It is an inborn principle which nothing can eradicate.* The bigot, in the pride of his authority, may lose sight of it; but, strip him of his power, prescribe a faith to him which his conscience rejects, threaten him in turn with the dungeon and the fagot, and the spirit which God has implanted in him rises up in rebellion, and defies you.

Did the primitive Christians ask that Government should recognize and observe their religious institutions? All they asked was toleration; all they complained of was persecution. What did the Protestants of Germany, or the Huguenots of France, ask of their Catholic superiors? Toleration. What do the persecuted Catholics of Ireland ask of their oppressors? Toleration. Do not all men in this country enjoy every religious right which martyrs and saints ever asked? Whence, then, the voice of complaint? Who is it that, in the full enjoyment of every principle which human laws can secure, wishes to wrest a portion of these principles from his neighbor?<sup>18</sup>

Do the petitioners allege that they cannot conscientiously participate in the profits of the mail contracts and post offices, because the mail is carried on Sunday? If this be their motive, then it is worldly gain which stimulates to action, and not virtue or religion. Do they complain that men less conscientious in

relation to the Sabbath obtain advantages over them by receiving their letters and attending to their contents? Still their motive is worldly and selfish. But if their motive be to induce Congress to sanction, by law, their *religious opinions* and *observances*, then their efforts ought to be resisted, as in their tendency fatal both to religious and political freedom.<sup>19</sup>

Why have the petitioners confined their prayer to the mails? Why have they not requested that the government be required to suspend *all* its executive functions on that day? Why do they not require us to enact that our ships shall not sail; that our armies shall not march; that officers of justice shall not seize the suspected or guard, the convicted? They seem to forget that government is as necessary on Sunday as on any other day of the week. The Spirit of Evil does not rest on that day. It is the Government, ever active in its functions, which enables us all, even the petitioners, to worship in our churches in peace.

Our Government furnishes very few blessings like our mails. They bear from the center of our republic to its distant extremes the acts of our legislative bodies, the decisions of the Judiciary, and the orders of the Executive. Their speed is often essential to the defense of the country, the suppression of crime, and the dearest interests of the people. Were they suppressed one day of the week, their absence must be often supplied by public expresses; and, besides, while the mail bags might rest, the mail coaches would pursue their journey with the passengers. The mail bears, from one extreme of the Union to the other, letters of relatives and friends, preserving a communion of heart between those far separated, and increasing the most pure and refined pleasures of our existence; also, the letters of commercial men convey the state of the markets, prevent ruinous speculations, and promote general as well as individual interest; they bear innumerable religious letters, newspapers, magazines, and tracts, which reach almost every house throughout this wide republic. Is the conveyance of these a violation of the Sabbath?

The advance of the human race in intelligence, in virtue, and

religion itself, depends, in part, upon the speed with which a knowledge of the past is disseminated. Without an interchange between one country and another, and between different sections of the same country, every improvement in moral or political science and the arts of life, would be confined to the neighborhood where it originated. The more rapid and the more frequent this interchange, the more rapid will be the march of intellect and the progress of improvement. The mail is the chief means by which intellectual light irradiates to the extremes of the republic. Stop it one day in seven, and you retard one seventh of the advancement of our country.

So far from stopping the mail on Sunday, the committee would recommend the use of all reasonable means to give it a greater expedition and a greater extension. What would be the elevation of our country if every new conception could be made to strike every mind in the Union at the same time? It is not the distance of a Province or State from the seat of Government which endangers its separation; but it is the difficulty and unfrequency of intercourse between them. Our mails reach Missouri and Arkansas in less time than they reached Kentucky and Ohio in the infancy of their settlements; and now, when there are three millions of people extending a thousand miles west of the Allegheny, we hear less of discontent than when there were a few thousands scattered along their western base. To stop the mails one day in seven would be to thrust the whole western country, and other distant parts of this republic, one day's journey from the seat of Government.

But, were it expedient to put an end to the transmission of letters and newspapers on Sunday because it violates the law of God, have not the petitioners begun wrong in their efforts? If the arm of Government be necessary to compel men to respect and obey the laws of God, do not the State Governments possess infinitely more power in this respect? Let the petitioners turn to *them*, and see if they can induce the passage of laws to respect the observance of the Sabbath; for, if it be sinful for the mail to

carry letters on Sunday, it must be equally sinful for individuals to write, carry, receive, or read them. It would seem to require that these acts should be made penal to complete the system. Traveling on business or recreation, except to and from church; all printing, carrying, receiving, and reading of newspapers; all conversations and social intercourse, except upon religious subjects, must necessarily be punished to suppress the evil. Would it not also follow, as an inevitable consequence, that every man, woman, and child should be compelled to attend meeting? And, as only one sect, in the opinion of some, can be deemed orthodox, must it not be determined by law which *that is*, and compel all to hear those teachers, and contribute to their support?

If minor punishments would not restrain the Jew, or the Sabatarian, or the infidel, who believes Saturday to be the Sabbath, or disbelieves the whole, would not the same system require that we should resort to imprisonment, banishment, the rack, and the fagot, to force men to violate their own consciences, or compel them to listen to doctrines which they abhor? When the State Governments shall have yielded to these measures, it will be time enough for Congress to declare that the rattling of the mail coaches shall no longer break the silence of this despotism.

It is the duty of this Government to afford *all*—to Jew or Gentile, pagan or Christian, the protection and the advantages of our benignant institutions on *Sunday* as well as every day of the week. Although this Government will not convert itself into an ecclesiastical tribunal, it will practice upon the maxim laid down by the founder of Christianity—that it is lawful to do *good* on the Sabbath day.

If the Almighty has set apart the first day of the week as a time which man is bound to keep holy, and devote exclusively to His worship, would it not be more congenial to the precepts of Christians to appeal exclusively to the Great Lawgiver of the universe to aid them in making men better—in correcting their practices, by purifying their hearts? Government will protect them in their efforts. When they shall have so instructed the public mind,

and awakened the consciences of individuals as to make them believe that it is a violation of God's law to carry the mail, open post offices, or receive letters on Sunday, the evil of which they complain will cease of itself, without any exertion of the strong arm of civil power. When man undertakes to be God's avenger, he becomes a demon.<sup>20</sup> Driven by the frenzy of a religious zeal, he loses every gentle feeling, forgets the most sacred precepts of his creed, and becomes ferocious and unrelenting.

Our fathers did not wait to be oppressed when the mother country asserted and exercised an unconstitutional power over them. To have acquiesced in the tax of threepence upon a pound of tea, would have led the way to the most cruel exactions; they took a bold stand against the principle, and liberty and independence was the result. The petitioners have not requested Congress to suppress Sunday mails upon the ground of political expediency, but because they violate the sanctity of the first day of the week.

This being the fact, and the petitioners having indignantly disclaimed even the wish to unite politics and religion, may not the committee reasonably cherish the hope that they will feel reconciled to its decision in the case; especially as it is also a fact that the counter-memorials, equally respectable, oppose the interference of Congress upon the ground that it would be legislating upon a religious subject, and therefore unconstitutional?

*Resolved*, That the committee be discharged from the further consideration of the subject.<sup>21</sup>—*American State Papers*, Class VII, Post Office Department, pp. 229-231.

## APPROVAL BY THE STATES OF THE SENATE REPORT ON SUNDAY MAILS

### Indiana \*

EXECUTIVE DEPARTMENT, INDIANA, INDIANAPOLIS, FEBRUARY 15, 1830

The memorial of the General Assembly of the State of Indiana, respectfully represents:

That we view all attempts to introduce sectarian influence into the councils of the nation as a violation of both the letter and the spirit of the Constitution of the United States and of this State; . . .

That all legislative interference in matters of religion is contrary to the genius of Christianity; . . .

That we consider every connection between church and state at all times dangerous to civil and religious liberty; and further,

That we cordially agree to and approve of the able report of the Honorable R. M. Johnson, adopted by the Senate of the United States at its last session, upon the petitions for prohibiting the transportation of the mail on Sunday.

### Alabama

[A "Joint Resolution of the Senate and House of Representatives of the State of Alabama" (December 31, 1830) declared the report of the committee "entitled to the highest commendation of friends of the Constitution." Further, "The rights and opinions of every religious sect, whether they observe the Christian Sabbath or not, are equally entitled to the respect and protection of the government."]

### Illinois

[The General Assembly of Illinois communicated to Congress (February 14, 1831) its approval of the Senate report on the Sunday mail petitions.]

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\* These and similar representations recorded in the proceedings of Congress, came from all parts of the country, from State legislatures, city councils, large and respectable mass meetings held by citizens, protesting in well-words remonstrances against the enactment of Sunday observance legislation on the part of Congress. Since they are too numerous to print in this work, we refer those who desire further information on this subject to the *American State Papers*, Class VII, Post Office Department, pp. 238-241, 260-265.

## Kentucky

[Citizens of Kentucky (January 31, 1831) laid before the House of Representatives in Congress a "Remonstrance" against any commitment of Congress to regulating religion contrary to the Constitution.]

## PRINCIPLES INVOLVED IN SUNDAY LEGISLATION

[Philadelphia County signers of a Memorial to Congress (1830) reviewed at length the principles involved in religious legislation:]

Your memorialists have in vain endeavored to discover any reasonable motive for the selection of the Sabbath as peculiarly proper for legislative support. There is no small diversity of opinion among mankind regarding the propriety of keeping one day in seven holy. The Jews, and some sects of Christians, aver that the *seventh* and not the *first* day of the week, is the true Sabbath. A large number of pious persons believe that the Jewish Sabbath, with its ceremonial observances, has been abolished; and that, in its place, the first day of the week must be held equally sacred. Another class of mankind maintain that the institution is utterly abrogated, and that neither day should be observed.

Your memorialists believe that if Congress possess the power to designate what day shall be the Sabbath, and to define its appropriate duties, it would be equally within the scope of their authority to decide other disputed points. If the constitution has imposed on Congress the duty of discriminating what mode of faith shall be adopted, it must, as a consequence, give the power to compel obedience. Hence all the religious obligations of men must become the subjects of legislation to the ruin of families and the destruction of personal comfort and convenience; for if the law can enforce *one* religious duty, it can, by parity of reasoning, insist on the performance of *all*.

Your memorialists would say that, when the Congress of the United States shall prefer an arrogant and domineering clergy, heaping upon them privileges and immunities not enjoyed by other citizens, then will be formed *as powerful an ecclesiastical*

*establishment as can be found in any other nation on earth. The doctrines of the favored party will then become the creed of the country, to be enforced by fines, imprisonment, and perhaps death.*<sup>22</sup> . . .

Your memorialists would further represent that, in their present appeal to the justice and magnanimity of the constituted authorities of their country, they are actuated by no irreverent motive. Nor do they cherish other than feelings of respect for their fellow-citizens who differ from them in sentiment. They do not ask you to throw any impediment in the path of those who, in sincerity of heart, would worship the God of their fathers. Their design in now appearing before you is to preserve the liberty of conscience inviolate; and to ask that the constitution of the Government may not be infringed in this particular.—*American State Papers*, Class VII, Post Office Department, p. 239.

## THE ANTI-SABBATH CONVENTION OF 1848

### An Address to the Friends of Civil and Religious Liberty

DRAFTED BY WILLIAM LLOYD GARRISON<sup>23</sup>

*To the Friends of Civil and Religious Liberty:*

The right of every man to worship God according to the dictates of his own conscience is inherent, inalienable, self-evident. Yet it is notorious that, in all the States, excepting Louisiana,\* there are laws enforcing the religious observance of the first day of the week as the Sabbath, and punishing as criminals such as attempt to pursue their usual avocations on that day,—avocations which even the Sabbatarians recognize as innocent and laudable on all other days. It is true, some exceptions are made to the rigorous operation of these laws, in favor of the Seventh-day Baptists, Jews, and others who keep the seventh day of the week as

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\* Louisiana was the only State which inherited the basis for its legal system from the Spanish and French Civil Law, instead of English common law. It had no Sunday law until December 31, 1886.

the Sabbath; but this freedom is granted in condescension to the scruples of particular sects, as a privilege, and not recognized as a natural right. For those (and the number is large, and steadily increasing) who believe that the Sabbath was exclusively a Jewish institution,—“a shadow of good things to come,” which vanished eighteen hundred years ago before the light of the Christian dispensation, and therefore that it constitutes no part of Christianity,—there is no exemption from the penalty of the law; but, should they venture to labor even for bread on that day, or be guilty of what is called “Sabbath desecration,” they are liable either to fine or imprisonment! Cases of this kind have occurred in Massachusetts, Vermont, Pennsylvania, and Ohio, within a comparatively short period, where conscientious and upright persons have been thrust into prison for an act no more intrinsically heinous than that of gathering in a crop of hay, or selling moral or philanthropic publications.<sup>34</sup> There is, therefore, no liberty of conscience allowed to the people of this country, under the laws thereof, in regard to the observance of a Sabbath day.

In addition to these startling facts, within the last five years a religious combination has been formed in this land, styling itself “The American and Foreign Sabbath Union,” whose specific object it is to impose the Sabbatical yoke yet more heavily on the necks of the American people. In a recent appeal made for pecuniary assistance by the executive committee of the Union, it is stated that “the secretary (Rev. Dr. Edwards) has visited twenty of the United States, and traveled more than thirty thousand miles, addressing public bodies of all descriptions, and presenting reasons why, as a nation, we should keep the Sabbath,—all secular business, traveling, and amusement be confined to six days in a week,—and all people assemble on the Sabbath, and worship God.” A “permanent Sabbath document” has been prepared by the secretary; and “what has already been done will put a copy of this document into more than three hundred thousand families.” Still greater efforts are to be made by the “Union” for the furtherance of its object.

That this combination is animated by the spirit of religious bigotry and ecclesiastical tyranny—the spirit which banished the Baptists from Massachusetts, and subjected the Quakers to imprisonment and death, in the early settlement of this country—admits of little doubt. It is managed and sustained by the same spirit which has secured the enactment of the penal laws against Sabbath-breaking (all that the genius of the age will allow), and the disposition of the combination manifestly is, if they can increase their power, to obtain the passage of yet more stringent laws. . . . Its supporters do not rely solely upon reason, argument, persuasion, but also upon brute force—upon penal law; and thus in seeking to crush by violence the rights of conscience, and religious liberty and equality, their real spirit is revealed as at war with the genius of republicanism and the spirit of Christianity.

Believing that the efforts of this “Sabbath Union” ought to be baffled by at least a corresponding energy on the part of the friends of civil and religious liberty; . . .

That all penal laws respecting the religious observance of any day as the Sabbath are despotic and anti-Christian, and ought to be immediately abrogated;

That the interference of the state in matters of religious faith and outward observances, is not only unwarrantable, but a usurpation not to be tolerated; . . .

We, the undersigned, therefore, invite all who agree with us essentially in these views of the Sabbath question, to meet in convention, in the city of Boston, on Thursday and Friday, the 23d and 24th of March next, to confer together, and to decide upon such measures for the dissemination of light and knowledge, on this subject, as may be deemed expedient.

In publishing this call for an Anti-Sabbath convention, we desire to be clearly understood. We have no objection either to the first or the seventh day of the week as a day of rest from bodily toil, both for man and beast. On the contrary, such rest is not only desirable but indispensable. Neither man nor beast can long endure unmitigated labor. But we do not believe that it is in

harmony with the will of God, or the physical nature of man, that mankind should be doomed to hard and wasting toil six days out of seven to obtain a bare subsistence. Reduced to such a pitiable condition, the rest of one day in the week is indeed grateful, and must be regarded as a blessing; but it is totally inadequate wholly to repair the physical injury or the moral degradation consequent on such protracted labor. It is not in accordance with the law of life that our race should be thus worked, and only thus partially relieved from suffering and a premature death. They need more, and must have more, instead of less rest; and it is only for them to be enlightened and reclaimed—to put away those things which now cause them to grind in the prison house of toil; namely, idolatry, priestcraft, sectarianism, slavery, war, intemperance, licentiousness, monopoly, and the like—in short, to live in peace, obey the eternal law of being, strive for each other's welfare, and "glorify God in their bodies and spirits, which are His,"—and they will secure the rest, not only of one day in seven, but of a very large portion of their earthly existence. To them shall be granted the mastery over every day and every hour of time, as against want and affliction; for the earth shall be filled with abundance for all.

Nor do we deny the right of any number of persons to observe a particular day of the week as holy time, by such religious rites and ceremonies as they may deem acceptable to God. To their own master they stand or fall. In regard to all such matters, it is for every one to be fully persuaded in his own mind, and to obey the promptings of his own conscience; conceding to others the liberty he claims for himself.

The sole and distinct issue that we make is this: We maintain . . . that no holiness, in any sense, attaches to the first day of the week, more than to any other; and that the attempt to compel the observance of any day as "the Sabbath," especially by penal enactments, is unauthorized by Scripture or reason, and a shameful act of imposture and tyranny. We claim for ourselves, and for all mankind, the right to worship God according to the dictates of our

own consciences. This right, inherent and inalienable, is cloven down in the United States; and we call upon all who desire to preserve civil and religious liberty to rally for its rescue. . . .

We are aware that we shall inevitably be accused, by the chief priests, scribes, and Pharisees of the present time, as was Jesus by the same class in His age, as "not of God," because we "do not keep the Sabbath day;" but we are persuaded that to expose the popular delusion which prevails on this subject is to advance the cause of a pure Christianity, to promote true and acceptable worship, and to inculcate strict moral and religious accountability in all the concerns of life, on all days of the week alike.—*The Liberator*, Jan. 21, 1848, vol. 18, p. 11.

## RESOLUTIONS ADOPTED BY THE CONVENTION

HELD IN BOSTON, MARCH 23 AND 24, 1848<sup>m</sup>

1. *Resolved*, That they who are for subjecting to fine or imprisonment such as do not receive their interpretation of the Scriptures in regard to the observance of the first day of the week as the Sabbath, are actuated by a mistaken or malevolent spirit, which is utterly at variance with the spirit of Christ,—which, in various ages, has resorted to the dungeon, the rack, the gallows, and the stake, for the accomplishment of its purpose—and which ought to be boldly confronted and rebuked.

2. *Resolved*, That the penal enactments of the State legislature compelling the observance of the first day of the week as the Sabbath are despotic, unconstitutional, and ought to be immediately abrogated; and that the interference of the state, in matters of religious faith and ceremonies, is a usurpation which cannot be justified.

3. *Resolved*, That as conflicting views prevail in the community, which are cherished with equal sincerity, respecting the holiness of days, and as it is the right of every class of citizens to be protected in the enjoyment of their religious sentiments on this and every other subject pertaining to the worship of God, all

classes should be united in demanding a repeal of the enactments alluded to, on the ground of impartial justice and Christian charity.

4. *Resolved*, That this convention recommend to all the friends of religious liberty throughout the country the presentation of petitions to the next legislature, in every State in which such laws exist, praying for their immediate repeal, and protesting against their enactment as an unhallowed union of church and state.

5. *Resolved*, That if the legislature may rightfully determine the day on which people shall abstain from labor for religious purposes, it may also determine the place in which they shall assemble, the rites and ordinances which they shall observe, the doctrines which they shall hear, the teachers which they shall have over them, and the peculiar faith which they shall embrace; and thus entirely subvert civil and religious freedom. . . .

6. *Resolved*, That as it has been found safe, politic, and beneficial to allow people to decide for themselves in all other religious observances, there is no reason to doubt that the same good results would attend their liberation from the bondage of a Sabbatical law; for "where the Spirit of the Lord is, there is liberty."—*Ibid.*, March 31, 1848, p. 50.

### GARRISON'S SPEECH UPON THE FOREGOING RESOLUTIONS <sup>28</sup>

Of all the assumptions on the part of legislative bodies, that of interfering between a man's conscience and his God is the most insupportable, and the most inexcusable. For what purpose do we elect men to go to the General Court? Is it to be our lawgivers on religious matters? . . . This passing a law, forbidding me or you to do on a particular day, what is in itself right, on the ground that that day, in the judgment of those who make the enactment, is more holy than another; this exercise of power, I affirm, is nothing better than sheer usurpation. It is the spirit which in all ages has persecuted those who have been loyal to God and their consciences.

It is a war upon conscience, and no religious conclave or political assembly ever yet carried on that war successfully to the end. You cannot, by any enactments, bind the consciences of men, nor force men into obedience to what God requires.

Who wants to be persecuted on account of his own conscientious views? I will ask the first-day Sabbatarian—do you claim a right to entertain your views, without molestation, in regard to the holiness of time?—"Most assuredly." How do you make it out that the first day of the week is the Sabbath?—"I believe it to be so; and if it is not, to my own Master I stand or fall. Under a government which undertakes to tolerate all beliefs, I claim the right, as a first-day Sabbatarian, to keep that day as the Sabbath." Well, I do not assail that right. I claim the right also to have my own views of the day; the right to sanctify the first, second, or third, or all days, as I think proper. Now I turn to that first-day Sabbatarian, and ask him how he dares to assume infallible judgment against my belief; how he dares to dictate to me to keep the day which he regards as holy, and to say, "If you do not obey me, I will put my hands into your pocket, and take out as much as I please in the shape of a fine; or if I find nothing there, I will put you in prison; or if you resist enough to require it, I will shoot you dead"? . . . Talk of the spirit of justice animating the bosom of the man who comes like a highwayman with "Do or die!" Who made him a ruler over other men's consciences? In a government which is based on equality, we must have equal rights. No men, however sincere, are to wield forceful authority over others who dissent from them in regard to religious faith and observance. The case is so plain, that it does not need an argument; and I am confident that, in the course of a few years, there will not be a Sabbatical enactment left unrepealed in the United States, if in any part of Christendom. It belongs to the tyrannical legislation which formerly sent men to the stake, in the name of God and for His glory, because they did not agree in the theological views of those who burnt them to ashes.

In this country, one pharisaical restriction after another, im-

posed by legislation, has been erased from the statute book, in the progress of religious freedom. We now come to this Sabbatical observance, as the last, perhaps,—a very powerful one at any rate. If the Sabbath day be of God, it does not need legislation to uphold it. There is no power which can prevail against it. . . .

Why should we attempt to legislate upon a question of this kind? Observe how many differences of opinion prevail, honestly and sincerely, in the world, respecting it! Does any one doubt that the Seventh Day Baptists are sincere? Are they not honest, courageous, self-sacrificing men,—those who stand out against the law and public sentiment, for conscience' sake? The men, even though they err, who are true to their consciences, cost what it may, are, after all, those who are ever nearest to the kingdom of God. They desire only to know what is right, and they have the spirit in them to do what is right. The great mass of the first-day Sabbatarians—do they not claim to be conscientious and sincere? And the Quakers, who regard no day as in itself, or by divine appointment, more holy than another,—who will question their honesty or sincerity in this matter? Here, then, are widely conflicting sentiments; but which of these parties shall resort to the arm of violence to enforce uniformity of opinion? . . .

In this country, we tolerate all religions, but must not tolerate all views with regard to a holy day! Why not? If we tolerate the greater, why not the less? We had better begin at the beginning. Let us tolerate none but the true religion, and no other worship than that of a triune God. Let us have no Jews, no idolators, no Catholics! . . . Therefore, be it enacted by the Legislature, that only the Protestant religion, in its evangelical form, be allowed on the American soil!

But we do not do this. It is not a crime, in the eye of the law, for a man to make as many idols as he chooses, and to worship them. It is not a crime, in the eye of the law, to reject the doctrine of the Trinity. Time has been, when it was a capital offense to deny the . . . dogma of transubstantiation as held by the church of Rome, and the denial carried the heretic to the stake. We tolerate

everything, excepting the opinions of men with regard to the first day of the week! Having very successfully gone thus far, I think we may take the next step, and finish the whole category of religious edicts enforced by penal law. . . .

What a tremendous outcry was raised in England when Daniel O'Connell, in behalf of plundered Ireland, demanded the passage of the Catholic Emancipation act by the British Parliament! The Protestant clergy and the Protestant press cried out against it. It will never do, they said; the cause of religion will suffer. Where now is the Catholic test?—Gone; its ashes are not to be found; but has any injury followed from its repeal? So with regard to the unrighteous restrictions imposed upon the Jews; they were justified on the ground of Christian vigilance and security. But, during the present session of Parliament, the Jews have been admitted to equal rights with all others; and the Jew in England can now take his position anywhere in the government, as well as the Christian. Does any one suppose Christianity will suffer by this?

Christianity, as taught by its Founder, does not need any governmental safeguards; its reliance for safety and prosperity is not on the rack or the stake, the dungeon or the gibbet, unjust proscription or brutal supremacy. No—it is the only thing under heaven that is not afraid; it is the only thing that repudiates all such instruments as unholy and sinful. . . .

Let the first day of the week stand on its own basis, as the second or third day stands, and I am satisfied that it will be much more rationally observed than it is now. Getting rid of our superstition concerning it, we shall use the day in a far more sensible and useful manner than is now done.—*Ibid.*, April 21, 1848, p. 63.

## NATIONAL REFORM ASSOCIATION MEMORIAL TO CONGRESS<sup>27</sup>

ALLEGHENY, PENNSYLVANIA, JANUARY 27, 1864

*To the Honorable the Senate and House of Representatives, in  
Congress assembled:*

We, citizens of the United States, respectfully ask your honorable bodies to adopt measures for amending the Constitution of the United States, so as to read, in substance, as follows:

“We, the people of the United States, [humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, His revealed will as the supreme law of the land, in order to constitute a Christian government,] and in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and [secure the inalienable rights and the blessings of life, liberty, and the pursuit of happiness to ourselves, our posterity, and all the people,] do ordain and establish this Constitution for the United States of America.”<sup>28</sup>—Introductory sketch in *Proceedings of the National Convention to Secure the Religious Amendment of the Constitution of the United States Held in Pittsburgh*, Feb. 4, 5, 1874, p. 7.

### PROPOSED CONSTITUTIONAL AMENDMENT BY HON. JAMES G. BLAINE

No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State, for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised, or lands so devoted be divided between religious sects or denominations.<sup>29</sup>—*Congressional Record*, 44th Congress, 1st session, Dec. 14, 1875, p. 205.

## DISCUSSION

## The True Reason for Sunday Laws (P. 208)

<sup>1</sup> These petitions, representing certain Christian churches, disclosed the real motive back of their request for Sunday-observance laws, namely, a religious motive. Not infrequently a clandestine purpose is assigned, namely, a solicitude for the public health. Chief Justice Ruffin, of the Supreme Court of North Carolina, in the case of the *State v. Williams*, 26 N. C. 315 said: "The truth is, that it offends us, not so much because it disturbs us in practicing for ourselves the religious duties, or enjoying the salutary repose or recreation, of that day, as that it is in itself a breach of God's law, and a violation of the party's own religious duty." When the camouflage is removed from Sunday rest laws, they stand exposed as the relics and remnants of religious legislation under the old regime of a union of church and state. It is preposterous to conceive that the people are so bereft of common sense and ordinary intelligence as not to know enough to rest when they are tired, without being forced to do so by law.

## Senator Richard M. Johnson (P. 210)

<sup>2</sup> Senator Richard M. Johnson, later Vice-President of the United States, was an American patriot and statesman of the old school of Jefferson and Madison, whose ideals he sought to uphold in the American system of government. His public life is briefly summed up by Lanman, in his *Dictionary of the United States Congress* (1869 ed.):

"He was born in Kentucky in 1780, and died at Frankfort, November 19, 1850. In 1807 he was chosen a representative in Congress from Kentucky, which post he held until 1813. In 1813 he raised a volunteer regiment of cavalry of one thousand men to fight the British and Indians on the Lakes, and during the campaign that followed, served with great credit, under General Harrison, as a colonel of that regiment. He greatly distinguished himself at the Battle of the Thames, and the chief Tecumseh is said to have been killed by his hand. In 1814, he was appointed Indian commissioner by President Madison. He was again a representative in Congress from 1813 to 1819. In 1819 he went from the House into the United States Senate to fill an unexpired term, was re-elected, and served as Senator until 1829. He was re-elected to the House, and served there until 1837, when he became Vice-President, and as such presided over the Senate. At the

time of his death he was a member of the Kentucky Legislature.”—Pages 211, 212.

As evidence of the high esteem in which he was held by the Congress of the United States, we insert the following resolution of the first session of the fourteenth Congress:

“Resolution Requesting the President of the United States to Present a Sword to Colonel Richard M. Johnson.

“*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present to Colonel Richard M. Johnson a sword, as a testimony of the high sense entertained by Congress of the daring and distinguished valor displayed by himself and the regiment of volunteers under his command, in charging, and essentially contributing to vanquish, the combined British and Indian forces under Major General Proctor, on the Thames, in Upper Canada, on the fifth day of October, one thousand eight hundred and thirteen.*

“Approved, April 4, 1818.”—*Annals of Congress*, 14th Congress, 1st session, Appendix, p. 2601.

### Proper Function of Civil Government (P. 211)

<sup>3</sup>This is one of the finest statements ever made concerning the proper object and function of civil government, and if every American statesman and jurist would adhere to this fundamental principle of civil government, there never would be a Sunday-observance law enacted by Congress, nor enforced by the civil magistrate, and religious liberty would be assured to every citizen.

### Violating the Law of God (P. 212)

<sup>4</sup>“This somber feeling has prompted men to believe that to spare the heretic is to bring down the wrath of God upon the whole community; and now in Boston many people stoutly maintained that God had let loose the savages, with firebrand and tomahawk, to punish the people of New England for ceasing to persecute ‘false worshipers, and especially idolatrous Quakers.’”—JOHN FISKE, *The Beginnings of New England*, pp. 220, 221.

The National Reform Association and the Lord’s Day Alliance have been striking examples of the revival of the old Puritan spirit. The Reverend M. A. Gault, official of the National Reform Association and an ardent advocate of Sunday legislation, said:

"It is not to have the government set up some corrupt church establishment, and then lay its hand on everything that does not conform to it. This is what caused the persecutions in the Old World. Our remedy for all these malefic influences is to have the Government simply set up the *moral law*, and recognize *God's authority* behind it, and *lay its hand on any religion that does not conform to it*. . . . Besides, this is the *only way* human and divine authority can exercise their separate offices in place. The only way they can be harmonized and kept from conflicting, is to say that *God knows best, and make human authority subordinate to the divine*."—*The Christian Statesman*, Jan. 13, 1887, p. 3.

This doctrine of the civil government's assuming the prerogative of punishing offenses against God and the true religion, led to the bloodiest religious persecutions in the past, and was justified by the established churches in the name of religion. In *The Christian Nation*, an official spokesman for the National Reform movement, on September 28, 1887, made the following statement:

"Let those who will, remember the Sabbath to keep it holy from motives of love and obedience; the remnant must be made to do so through fear of law. We have no option."—Page 1.

### Religious Combinations for Political Ends (P. 212)

"From kings, indeed," says John Fiske, "we have no more to fear: . . . but the gravest dangers are those which present themselves in new forms, against which people's minds have not yet been fortified with traditional sentiments and phrases."—*The Beginnings of New England*, p. 32.

### Toleration Is Not Religious Liberty (P. 215)

"This same point, on the inadvisability of employing the term "toleration" in law, was tersely expressed by Lord Stanhope in the British House of Lords in 1827, on a Bill for the Repeal of the Test and Corporation Acts, in the following words: "The time was, when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will be spurned as an insult.'"—PHILIP SCHAFF, *Church and State in the United States*, p. 14. Dr. Schaff, in stressing the same principle, says: "Toleration is an important step from state-churchism to free-churchism. But it is only a step. There is a very great difference between toleration and liberty. Toleration is a concession, which may be withdrawn; it implies a preference for the

ruling form of faith and worship, and a practical disapproval of all other forms. . . . In our country we ask no toleration for religion and its free exercise, but we claim it as an inalienable right."—*Ibid.* Judge Cooley, also, in *Constitutional Limitations*, declares that the American State constitutions "have not established religious toleration merely, but religious equality; in that particular, being far in advance not only of the mother country, but also of much of the colonial legislation which, though more liberal than that of other civilized countries, nevertheless exhibited features of discrimination based upon religious beliefs or professions."—Fifth edition, chap. 13, par. 1, pp. 577, 578.

### Infringement of Natural Rights (P. 215)

<sup>7</sup> In the Virginia "Act for Establishing Religious Freedom," Thomas Jefferson said: "We are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right." (See pp. 120-122.)

### Religious Basis of Sunday Laws (P. 216)

<sup>8</sup> "Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries. Every Sunday law sprung from a religious sentiment. Under the pagan conception, the day was to be 'venerated' as a religious duty owed to the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was claimed for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from the religious standpoint. There can be no 'worldly business,' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on nonreligious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never

been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."—A. H. LEWIS, *A Critical History of Sunday Legislation*, pp. viii, ix, preface.

### John Stuart Mill on Sunday Laws (P. 216)

\*The English philosopher, John Stuart Mill, says: "Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation."—*On Liberty*, chap. 4, p. 133.

In dealing with the religious laws forbidding Sunday recreation and pastimes, Mr. Mill says: "The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong; a motive of legislation which can never be too earnestly protested against. *'Deorum injuriæ Diis curæ.'* It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested."—*Ibid.*, chap. 4, pp. 134, 135.

### Society and the Individual (P. 217)

<sup>10</sup>"Apart from the peculiar tenets of individual thinkers, there is also in the world at large an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation: and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as

rulers or as fellow citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power; and as the power is not declining, but growing, unless a strong barrier of moral conviction can be raised against the mischief, we must expect, in the present circumstances of the world, to see it increase."—*Ibid.*, chap. 1, p. 20.

### Jefferson on Constitutional Limitations (P. 217)

<sup>11</sup> Thomas Jefferson, in his second inaugural address, March 4, 1805, in speaking of the constitutional limitations of Congress to legislate on matters pertaining to religion, said: "In matters of religion, I have considered that its free exercise is placed by the constitution *independent of the powers of the general government*. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies."—*Works of Thomas Jefferson* (Ford ed., 1904-05), vol. 10, p. 131.

### Coercion of Minorities (P. 218)

<sup>12</sup> "Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power or coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. *The power itself is illegitimate*. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and *only one person* were of the contrary opinion, mankind would be no more justified in silencing that *one person*, than he, if he had the power, would be justified in silencing mankind."—JOHN STUART MILL, *On Liberty*, chap. 2, pp. 23, 24.

<sup>13</sup> "Liberty has not infrequently been defined as consisting in the rule of the majority, or it has been said, Where the people rule there is liberty. The rule of the majority, of itself, indicates the power of a certain body; but power is not liberty. Suppose the majority bid you drink hemlock, is there liberty for you? Or suppose the majority give away liberty and establish despotism. . . . We might say with greater

truth, *that where the minority is protected*, although the majority rule, there, probably, liberty exists. But in this latter case it is the *protection*, or, in other words, *rights beyond the reach of the majority* which constitute liberty, not the power of the majority. There can be no doubt that the majority ruled in the French massacres of the Protestants; was there liberty in France on that account? All despotism, without a standing army, must be supported or acquiesced in by the majority. It could not stand otherwise.”—FRANCIS LIEBER, *On Civil Liberty and Self-Government* (3d ed., rev., Lippincott, 1875), p. 31.

### Laws Against Irreligion (P. 219)

“George Bancroft, the American historian, said: “Positive enactments against irreligion, like positive enactments against fanaticism, provoke the evil which they were designed to prevent.”—*History of the United States* (London, 7 vols.), vol. 1, p. 36.

### Early Christians Persecute (P. 220)

“The Edict of Milan [313 A.D.], the great charter of toleration, had confirmed to each individual of the Roman world the privilege of choosing and professing his own religion. But this inestimable privilege was soon violated; with the knowledge of truth, the emperor imbibed the maxims of persecution; and the sects which dissented from the Catholic Church were afflicted and oppressed by the triumph of Christianity. Constantine easily believed that the heretics, who presumed to dispute his opinions, or to oppose his commands, were guilty of the most absurd and criminal obstinacy. . . . Not a moment was lost in excluding the ministers and teachers of the separated congregations from any share of the rewards and immunities which the emperor had so liberally bestowed on the orthodox clergy. But as the sectaries might still exist under the cloud of royal disgrace, the conquest of the East was immediately followed by an edict which announced their total destruction. After a preamble filled with passion and reproach, Constantine absolutely prohibits the assemblies of the heretics, and confiscates their public property to the use either of the revenue or of the Catholic Church. . . . The design of extirpating the name, or at least of restraining the progress, of these odious heretics, was prosecuted with rigor and effect. Some of the penal regulations were copied from the edicts of Diocletian; and this method of conversion was applauded by the same bishops who had

felt the hand of oppression, and had pleaded for the rights of humanity."—EDWARD GIBBON, *Decline and Fall of the Roman Empire*, chap. 21, par. 1.

### Persecutor Cannot Be Right (P. 221)

<sup>16</sup> "There are many," says Thomas Clarke, "who do not seem to be sensible that all violence in religion is irreligious, and that whoever is wrong, the persecutor cannot be right."—*History of Intolerance* (Waterford, 1819), vol. 1, p. 3.

### Philip Schaff on Separation of Church and State (P. 221)

<sup>17</sup> "The United States furnishes the first example in history of a government deliberately depriving itself of all legislative control over religion, which was justly regarded by all older governments as the chief support of public morality, order, peace, and prosperity. But it was an act of wisdom and justice rather than self-denial. Congress was shut up to this course by the previous history of the American colonies and the actual condition of things at the time of the formation of the national government. The Constitution did not create a nation, nor its religion and institutions. It found them already existing, and was framed for the purpose of protecting them under a republican form of government, in a rule of the people, by the people, and for the people. . . .

"The framers of the Constitution, therefore, had no right and no intention to interfere with the religion of the citizens of any State, or to discriminate between denominations; their only just and wise course was to leave the subject of religion with the several States, to put all churches on an equal footing before the national law, and to secure to them equal protection. Liberty of all is the best guarantee of the liberty of each.

"North America was predestined from the very beginning for the largest religious and civil freedom, however imperfectly it was understood by the first settlers. It offered a hospitable home to emigrants of all nations and creeds. The great statesmen of the Philadelphia Convention recognized this providential destiny, and adapted the Constitution to it. They could not do otherwise. To assume the control of religion in any shape, except by way of protection, would have been an act of usurpation, and been stoutly resisted by all the States.

"Thus Congress was led by Providence to establish a new system, which differed from that of Europe and the colonies, and set an ex-

ample to the several States for imitation.”—PHILIP SCHAFF, *Church and State in the United States* (New York, 1888), pp. 23, 24.

### The Bigot's Creed (P. 221)

<sup>18</sup> “The doctrine which, from the very first origin of religious dissensions, has been held by all bigots of all sects, when condensed into a few words, and stripped of rhetorical disguise, is simply this: I am in the right, and you are in the wrong. When you are the stronger, you ought to tolerate me; for it is your duty to tolerate truth. But when I am the stronger, I shall persecute you; for it is my duty to persecute error.”—LORD MACAULAY, essay on “Sir James Mackintosh,” in *Critical and Historical Essays* (London, 1865), vol. 1, pp. 333, 334.

### Cotton on Persecution (P. 222)

<sup>19</sup> “Cotton, in his elaborate controversy with Roger Williams, frankly asserted that persecution is not wrong in itself; it is wicked for falsehood to persecute truth, but it is the sacred duty of truth to persecute falsehood.”—JOHN FISKE, *The Beginnings of New England* (Boston, 1890), p. 178.

### Persecution Destroys the Best (P. 225)

<sup>20</sup> “Now among the victims of religious persecution must necessarily be found an unusual proportion of men and women more independent than the average in their thinking, and more bold than the average in uttering their thoughts. The Inquisition was a diabolical winnowing machine for removing from society the most flexible minds and the stoutest hearts; and among every people in which it was established for a length of time it wrought serious damage to the national character. It ruined the fair promise of Spain, and inflicted incalculable detriment upon the fortunes of France. No nation could afford to deprive itself of such a valuable element in its political life as was furnished in the thirteenth century by the intelligent and sturdy Cathari of southern Gaul.”—*Ibid.*, pp. 41, 42.

### Anti-Sunday-Mail Agitation Dropped (P. 225)

<sup>21</sup> Benjamin Perley Poore, an old official of the United States Senate, in his *Reminiscences*, volume 1, page 101, records the following incident in connection with the foregoing report, showing the great extreme to which the Sunday law advocates went in attempting to stop

the Sunday mails: "When Admiral Reeside was carrying the mails between New York and Washington, there arose a formidable organization in opposition to the Sunday mail service. The members of several religious denominations were prominent in their demonstrations, and in Philadelphia, chains, secured by padlocks, were stretched across the streets on Sundays to prevent the passage of the mail coaches. The subject was taken up by politicians, and finally came before the House of Representatives, where it was referred to the Committee on Post-roads, of which Richard M. Johnson of Kentucky was then the chairman. The Rev. Obadiah B. Brown, who had meanwhile been promoted in the Post Office Department, wrote a report on the subject for Colonel Johnson, which gave the 'killer of Tecumseh' an extended reputation, and was the first step toward his election as Vice-President, a few years later." The Senate had passed a similar report in 1829. Now two adverse reports from both Houses of Congress largely restrained the Sunday-law advocates in Congress. Though agitation continued in 1831, no further concerted attempt was made to commit Congress to Sunday observance legislation until 1888, when the first bill for a Federal Sunday law was introduced into Congress at the instigation of the National Reform Association. Since 1888 many Sunday observance bills have been introduced into Congress at the call of religious organizations; but Congress has consistently and persistently refused to enact these religious measures into law.

### Gibbon's Warning on Persecution (P. 228)

<sup>22</sup> The historian Gibbon utters an important warning upon this point. He says: "It is incumbent on the authors of persecution previously to reflect, whether they are determined to support it in the last extreme. They excite the flame which they strive to extinguish; and it soon becomes necessary to chastise the contumacy, as well as the crime, of the offender; the fine, which he is unable or unwilling to discharge, exposes his person to the severity of the law; and his contempt of lighter penalties suggests the use and propriety of *capital punishment*."—*Decline and Fall of the Roman Empire*, chap. 37, par. 23.

### Garrison and Religious Liberty (P. 228)

<sup>23</sup> William Lloyd Garrison was editor of *The Liberator*, and in this magazine he opposed compulsory Sunday observance laws as vigorously as he did compulsory labor or slavery. Compulsory rest and compul-

sory labor, in his judgment, were equally obnoxious and violative of human rights and human freedom. In an editorial in *The Liberator*, Mr. Garrison said: "Certain we are that all attempts to coerce an observance of the Sabbath by legislation have been, must be, and ought to be, nugatory."—*The Liberator*, July 23, 1836, vol. 6, p. 118; vol. 2, p. 108. He was "decidedly of the opinion that every attempt which is made to enforce its observance, as a peculiarly 'holy day' by pains and penalties, whether civil or ecclesiastical, is *positive tyranny*, which ought to be resisted by all the Lord's freemen, all who are rejoicing in the glorious liberty of the sons of God."—*William Lloyd Garrison; The Story of His Life Told by His Children* (1885-1889), vol. 2, pp. 111, 112. This "address" to the friends of civil and religious liberty, calling upon them to attend a national convention in Boston, March 23 and 24, 1848, was drafted by Garrison and signed by William Lloyd Garrison, Theodore Parker, Parker Pillsbury, James and Lucretia Mott, C. C. Burleigh, and many others.

Wendell Phillips, a Demosthenes among American orators, and co-worker with Garrison against slavery, fully endorsed Garrison's views opposing Sunday-observance legislation. In a letter of February 11, 1848, he says: "His [Garrison's] new Sabbath call," referring to this "Address," "is finely drawn up, I think. I did not sign it, though agreeing with its principles." The antislavery orators and workers were being prosecuted under the existing State Sunday laws for preaching and delivering lectures on Sunday favoring the abolition of slavery. A number were thrown into prison, and C. C. Burleigh, one of their ablest orators, was arrested for Sunday work in distributing antislavery literature in connection with his antislavery preaching on Sunday. An attempt was made to imprison Garrison on a similar charge under the Sunday blue laws. These great reformers and orators proved to be formidable foes, not only against the slavery laws but also against the Sunday laws.

### Pennsylvania Jailed Sunday Breakers (P. 229)

\* Charles C. Burleigh, during February, 1847, was twice put in jail in West Chester, Pennsylvania (the second time for six days), for selling antislavery books on Sunday at the conclusion of his lectures. (See *The Liberator*, vol. 17, pp. 54, 59; *Pennsylvania Freeman*, March 25, 1847.) A farmer of the Seventh Day Baptist faith was convicted for working on Sunday under the Pennsylvania Sunday law. (See *The Liberator*, vol. 18, p. 119.)

### The Anti-Sabbath Convention (P. 232)

<sup>25</sup> William Lloyd Garrison and a score of his associates issued the call for this convention "to the friends of civil and religious liberty." A religious organization known as the "American and Foreign Sabbath Union" was very active at this time, urging the enactment as well as the enforcement of Sunday-observance laws. The antislavery leaders were caught in the dragnet and imprisoned for their activities on Sundays. These resolutions adopted at this convention constitute some of the finest, most logical, and most emphatic indictments ever drafted against the despotic, unchristian, unjust, and unconstitutional character of all compulsory Sunday-observance legislation.

### Garrison's Speech (P. 233)

<sup>26</sup> This vigorous protest against Sunday laws by William Lloyd Garrison is worthy of preservation for the benefit of all who in the future have to deal with Sunday legislation. His arguments are unanswerable, but his prediction undoubtedly will never come true that in a "few years, there will not be a Sabbatical enactment left unrepealed in the United States, if in any part of Christendom." Judging the future by the past, we have no assurance that an ideal government will ever prevail in the United States or elsewhere. It is true that the Federal Government of the United States does not have a general Sunday observance law; but nearly all the States in the Union have Sunday laws, and several of the States still retain religious tests in their constitutions for all who are to qualify for public office. There are many religious and semireligious organizations in the United States which are actively working for the retention of the drastic Sunday blue laws in the States, and they have also succeeded in getting Senators and Congressmen to introduce numerous compulsory Sunday-observance bills into Congress. But so far, Congress has refused to succumb to the religious onslaught.

### Origin of the National Reform Association (P. 236)

<sup>27</sup> Representatives from eleven Protestant denominations met in convention at Xenia, Ohio, February 3, 1863. This was the origin of what was later named "The National Reform Association," whose purposes are outlined as follows in its constitution:

## "CONSTITUTION OF THE NATIONAL REFORM ASSOCIATION

"Believing that Almighty God is the source of all power and authority in civil government, that the Lord Jesus Christ is the Ruler of nations, and that the revealed will of God is of supreme authority in civil affairs;

"Remembering that this country was settled by Christian men, with Christian ends in view, and that they gave a distinctly Christian character to the institutions which they established;

"Perceiving the subtle and persevering attempts which are made to prohibit the reading of the Bible in our Public Schools, to overthrow our Sabbath laws, to corrupt the Family, to abolish the Oath, Prayer in our National and State Legislatures, Days of Fasting and Thanksgiving, and other Christian features of our institutions, and so to divorce the American Government from all connection with the Christian religion;

"Viewing with grave apprehension the corruption of our politics, the legal sanction of the Liquor Traffic, and the disregard of moral and religious character in those who are exalted to high places in the nation;

"Believing that a written Constitution ought to contain explicit evidence of the Christian character and purpose of the nation which frames it, and perceiving that the silence of the Constitution of the United States in this respect is used as an argument against all that is Christian in the usage and administration of our Government;

"We, citizens of the United States, do associate ourselves under the following ARTICLES, and pledge ourselves to God and to one another to labor, through wise and lawful means, for the ends herein set forth:

## "Article I.

"This Society shall be called the 'NATIONAL REFORM ASSOCIATION.'

## "Article II.

"The object of this Society shall be to maintain existing Christian features in the American Government; to promote needed reforms in the action of the government touching the Sabbath, the institution of the family, the religious element in education, the oath, and public morality as affected by the liquor traffic and other kindred evils; and to secure such an amendment to the Constitution of the United States as will declare the nation's allegiance to Jesus Christ and its acceptance of the moral laws of the Christian religion, and so indicate that this is a Christian nation, and place all the Christian laws, institutions,

and usages of our government on an undeniably legal basis in the fundamental law of the land.”—DAVID McALLISTER, *The National Reform Movement . . . a Manual of Christian Civil Government* (5th ed.), pp. 15, 16.

### National Reform Association Memorial (P. 237)

\* This memorial to Congress was adopted at the organizing convention of this association, held in Allegheny, Pennsylvania, January 27, 1864, and a resolution was passed that this memorial be circulated throughout the United States for signatures, and that a committee be appointed to visit Washington, and urge the proposed amendment on the attention of President Lincoln, to endeavor to get a special message to Congress on the subject, and to lay the memorial before Congress. All this was done, but both President Lincoln and Congress frowned upon the proposition. But year after year this association continued to hold its conventions and to petition Congress to adopt its proposed amendment to the Constitution of the United States.

### The Answer of Congress to One National Reform Petition

February 18, 1874, Congress made a definite reply to the petition of the National Reform Association to have the name of God and the Christian religion incorporated in the Constitution, a petition which was signed by E. G. Goulet and other members of the National Reform Association. We give the exact report as printed by Congress as follows:

*“The Committee on the Judiciary, to whom was referred the petition of E. G. Goulet and others, asking Congress for ‘an acknowledgment of Almighty God and the Christian religion’ in the Constitution of the United States, having considered the matter referred to them, respectfully pray leave to report:*

“That, upon examination even of the meager debates by the fathers of the Republic in the convention which framed the Constitution, they find that the subject of this memorial was most fully and carefully considered, and then, in that convention, decided, after grave deliberation, to which the subject was entitled, that, as this country, the foundation of whose government they were then laying, was to be the home of the oppressed of all nations of the earth, whether Christian or pagan, and in full realization of the dangers which the union between church and state had imposed upon so many nations of the Old World, with great unanimity that it was inexpedient to put anything

into the Constitution or frame of government which might be construed to be a reference to any religious creed or doctrine.

"And they further find that this decision was accepted by our Christian fathers with such great unanimity that in the amendments which were afterward proposed, in order to make the Constitution more acceptable to the nation, none has ever been proposed to the States by which this wise determination of the fathers has been attempted to be changed. Wherefore, your committee report that it is inexpedient to legislate upon the subject of the above memorial, and ask that they be discharged from the further consideration thereof, and that this report, together with the petition, be laid upon the table."—*Reports of the Committees of the House of Representatives*, vol. 1, 43d Congress, 1st Session, Report No. 143.

Every government in the past has suffered its greatest handicaps because of its legal recognition of religion. Religious organizations and religious zealots are quick to take advantage of such legal sanctions and recognitions of religion to turn the functions of government to the furtherance of ecclesiastical power.

### Spirit of Intolerance Animates National Reform Movement

If the National Reformers succeed in obtaining legal sanction for their religious ideals, it is evident that all dissenters would have to suffer, as is indicated from the following utterances of leading National Reformers:

"We want State and Religion—and we are going to have it. It shall be that so far as the affairs of the State require Religion, it shall be revealed religion, the religion of Jesus Christ."—Jonathan Edwards, in National Reform Convention, New York City, Feb. 26, 27, 1873, *Minutes*, p. 60.

"Constitutional laws punish for false money, weights, and measure, and of course Congress establishes a standard for money, weights, and measures. So Congress must establish a standard of religion, or admit anything called religion."—C. A. Blanchard, Pittsburgh, 1874, *Proceedings of the National Convention to Secure the Religious Amendment of the Constitution of the United States*, p. 71.

"To be perfectly plain, I believe that the existence of a Christian Constitution would disfranchise every logically consistent infidel."—W. J. COLEMAN, in *The Christian Statesman*, Nov. 1, 1883, p. 4.

"Give all men to understand that this is a Christian nation, and that, believing that without Christianity we perish, we must maintain

by all right means, our Christian character. Inscribe this character on our Constitution. . . . Enforce upon all who come among us the laws of Christian morality."—*The Christian Statesman*, Oct. 2, 1884, p. 2.

"We might add in all justice, if the opponents of the Bible do not like our government and its Christian features, let them go to some wild, desolate land, and in the name of the devil, and for the sake of the devil, subdue it, and set up a government of their own on infidel and atheistic ideas; and then if they can stand it, stay there till they die."—E. B. GRAHAM, in *The Christian Statesman*, May 21, 1885, p. 5.

"Those who oppose this work now will discover, when the religious amendment is made to the Constitution, that if they do not see fit to fall in with the majority, they must abide the consequences, or seek some more congenial clime."—DR. DAVID McALLISTER, in National Reform Convention at Lakeside, Ohio, August, 1887.

"You look for trouble in this land in the future, if these principles are applied. I think it will come to you if you maintain your present opposition. The foolhardy fellow who persists in standing on a railroad track may well anticipate trouble when he hears the rumble of the coming train."—W. T. McCONNELL, in "open letter" to editors of the *American Sentinel*, in *Christian Nation*, Dec. 14, 1887, p. 344.

### A Legal Basis for Religion

The general superintendent of the National Reform Association and editor of *The Christian Statesman*, while he attacks the secularists, goes too far when he includes the basic guaranties of human rights set forth in the First Amendment to the Federal Constitution. He overlooks the fact that many good Christians are of the settled conviction that religious practices and beliefs are not within the province of government though they in no way deny the place of religion in the life of the individual.

"How to take a most dangerous weapon out of the hands of secularists: Amend the highest written law of the land, our Federal Constitution, so that it shall plainly proclaim the will of the Lord of nations as the rule of our national life and the standard of our national conduct in dealing with all our problems—internal and external, national and international. As that Constitution now stands, the secularist is perpetually quoting it on his side, loudly proclaiming that there is in it nothing that warrants the Christian usages, and as loudly and persistently demanding that all these and their like shall go out of the latter that it may be brought into perfect harmony with the

former. Our answer should be—Never! But we will instead change the written document that it may be in perfect harmony with the unwritten and so furnish an undeniably legal basis for all we have that is Christian in our national life and character and also for more of its kind that is still needed.”—*The Christian Statesman*, August, 1921, p. 25.

Thus the National Reform Association avows its opposition to the constitutional guaranties of freedom of conscience, and regards such provision a “dangerous weapon.”

### Dr. Philip Schaff on the Name of God in the Constitution

“The absence of the names of God and Christ, in a purely political and legal document, no more proves denial or irreverence than the absence of those names in a mathematical treatise, or the statutes of a bank or railroad corporation. The title ‘Holiness’ does not make the pope of Rome any holier than he is, and it makes the contradiction only more glaring in such characters as Alexander VI. The book of Esther and the Song of Solomon are undoubtedly productions of devout worshipers of Jehovah; and yet the name of God does not occur once in them.

“We may go further and say that the Constitution not only contains nothing which is irreligious or unchristian, but is Christian in substance, though not in form. It is pervaded by the spirit of justice and humanity, which are Christian. The First Amendment could not have originated in any pagan or Mohammedan country, but presupposes Christian civilization and culture. Christianity alone has taught men to respect the sacredness of the human personality as made in the image of God and redeemed by Christ, and to protect its rights and privileges, including the freedom of worship, against the encroachments of the temporal power and the absolutism of the state. . . .

“And, finally, the framers of the Constitution were, without exception, believers in God and in future rewards and punishments, from the presiding officer, General Washington, who was a communicant member of the Episcopal Church, down to the least orthodox, Dr. Benjamin Franklin, who was affected by the spirit of English deism and French infidelity, but retained a certain reverence for the religion of his Puritan ancestors. All recognized the hand of Divine Providence in leading them safely through the war of independence. Dr. Franklin, in an eloquent and highly creditable speech, proposed the employment of a chaplain in the Convention, who should invoke the

wisdom and blessing of God upon the responsible work of framing laws for a new nation."—*Church and State in the United States* (New York, 1888), pp. 40, 41.

### Blaine's Proposed Amendment (P. 237)

<sup>29</sup> December 14, 1875, Hon. James G. Blaine proposed an amendment to the Constitution (page 217). It was not acted upon, however, until August 4, 1876, when it was passed in the House with the almost unanimous vote of "Yeas, 180," to "Nays, 7." The Judiciary Committee had added the words, "This article shall not vest, enlarge, or diminish legislative power in Congress." In the Senate, it was further amended, but failed to secure the necessary two-thirds vote, the vote standing, "Yeas, 28," to "Nays, 16" on August 14. Both the great political parties that year inserted in their platforms declarations on the government and religion, the Democratic party declaring: "We do here reaffirm our faith in . . . the total separation of church and state, for the sake alike of civil and religious freedom."

This was a proposition to prohibit the States from doing what the Constitution, by its first amendment, forbids the national Government from doing. Instead of "Congress shall make no law," etc., this said, "No State shall make any law respecting an establishment of religion," etc. The idea was to make the application of the principle of separation of church and state here complete. The adoption of this amendment would have rendered unconstitutional every State Sunday law in the United States. While the original States composing the Union, in doing away with their religious establishments as such, followed the principle adopted by the national Government, nearly all, if not all, still retained that which was the real germ and taproot of those establishments—their Sunday laws. This amendment would have done away with these and all other forms of state patronage and support to religion. The amendment should have been adopted. Since then the tide has set in the other way, as witnessed in the great revival of Sunday legislation throughout the States, hundreds of thousands of dollars contributed by the government to schools under sectarian control, and Congress besieged with petitions and bills for Sunday legislation and a religious amendment to the Constitution.

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### **Bank of Wisdom**

**For the first time in human history the language of civilization is being changed from writing that can be read with the necked eye, to an electronic format that can only be read with special electronic equipment. It is the intent of the Bank of Wisdom to convert to electronic format as much old Scholarly, Historic and Freethought material as possible. We believe there are certain kinds of necessary historic, religious and philosophical information that may be left out of the data banks of the future, factual information that challenges or disproves current ideas and beliefs that the established powers of our society rest upon. Such suppressed information will be necessary for future generations to use to build an upward evolution for their society. The Bank of Wisdom intends to preserve that needed knowledge.**

Emmett F. Fields  
Bank of Wisdom

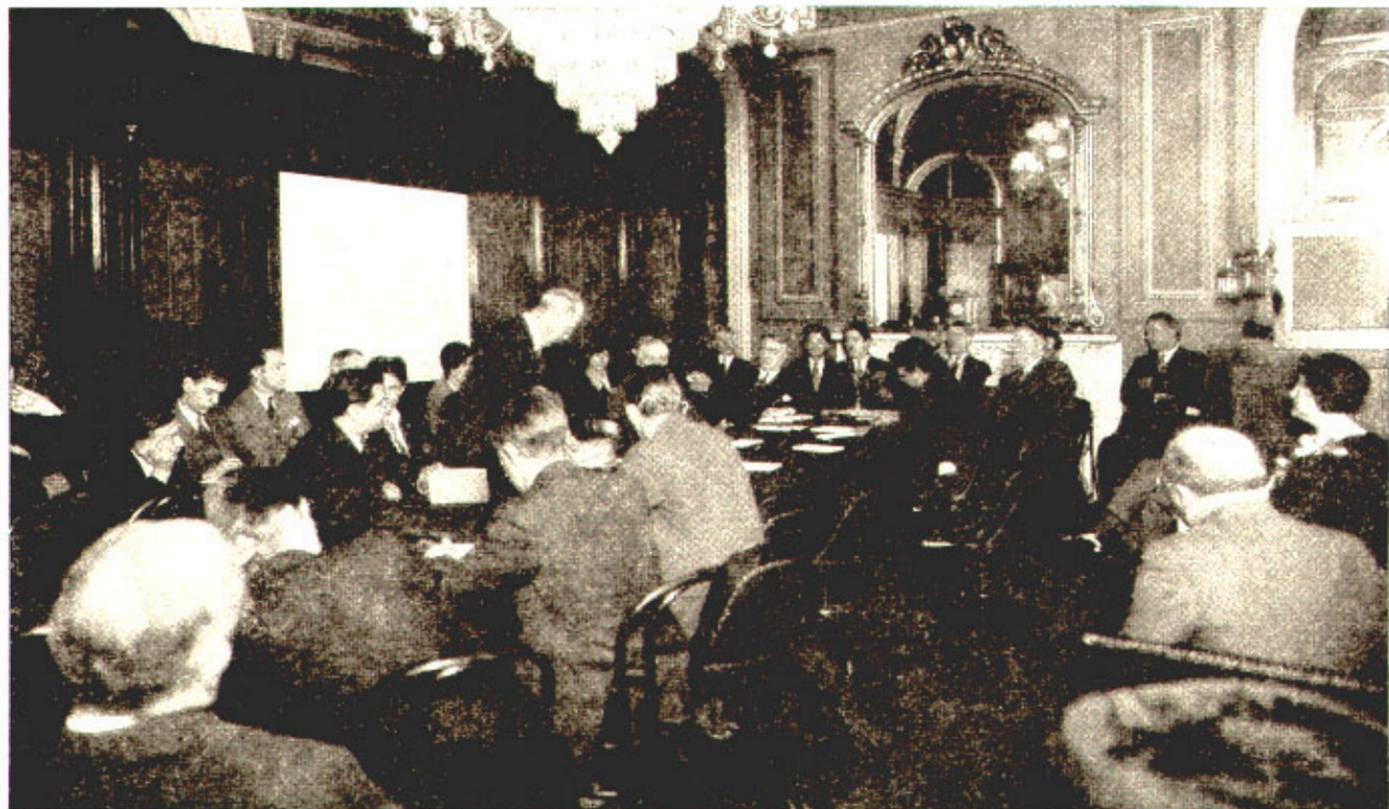
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PART VI

Increasing Pressure for National  
Religious Legislation

Federal Sunday Bills Through the Years



NETHER PHOTO

Public Hearing Before the United States Senate District Committee, January 13, 1931, on the Barbers' Sunday Closing Bill Introduced by Senator Copeland

## The Flame of Religion-by-Law Flares Again

**W**HILE the middle decades of the nineteenth century passed with no agitation for religious legislation in the National Congress, and with only here and there some Sunday-law enforcements in the individual States, the century was not to pass without renewed efforts to enforce matters of worship. As Thomas Jefferson had forecast, America had been "going downhill" (see page 169), away from the high standards of liberty set by the fathers. The "shackles" not knocked off by the States were becoming "heavier and heavier," and we were due a "convulsion."

It will be noted that religious legislation had come to center in laws enforcing Sunday observance, almost to the exclusion of all other forms of righteousness by coercion. This fact cannot be emphasized too strongly as we move on into the consideration of twentieth-century religious legislation.

By the time of the late eighties, a new generation of religious zealots had arisen who were ignorant of, or refused to abide by, the ideals of religious liberty hammered out by Washington, Jefferson, and Madison, and they proceeded to introduce into Congress Sunday-rest bills and other religious legislation.

In the beginning of the campaign the attempt was made to have Congress enforce Sunday in all places under the exclusive control of the Federal Government, or, failing that, at least in the District of Columbia. When these attempts were unsuccessful, the drive was aimed at entering a wedge by establishing a precedent in a different type of legislation. The first laws passed were Sunday-closing provisos attached to appropriation bills. We shall now consider Federal religious legislation, both proposed and enacted, and we may profit by the comments on this campaign for religion-by-law in the Discussion at the close of Part VI.<sup>1</sup>

## FEDERAL RELIGIOUS LAWS \*

## Sunday Closing of the Chicago Exposition

## First Federal Sunday Legislation in the United States

CONDITION TO SECTION IN APPROPRIATION ACT APPROVED AUGUST 5, 1892

And the sums herein appropriated for the World's Columbian Exposition shall be in full of the liability of the United States on account thereof [for the fiscal year eighteen hundred and ninety-three]: *Provided*, That the Government Exhibits at the World's Columbian Exposition shall not be opened to the public on Sundays. . . .

All appropriations herein made . . . are made upon the condition that the said Exposition shall not be opened to the public on the first day of the week, commonly called Sunday. *U. S. Statutes at Large*, vol. 27, part 1, pp. 363, 388. (H. R. 7520, 52d Cong., 1st ses.)

CONDITION TO APPROPRIATION OF \$2,500,000, APPROVED AUGUST 5, 1892 †

SEC. 4. All appropriations herein made for, or pertaining to, the World's Columbian Exposition are made upon the condition that the said Exposition shall not be opened to the public on the first day of the week, commonly called Sunday.<sup>5</sup>—*U. S. Statutes at Large*, vol. 27, part 1, p. 390. (H. R. 9710, 52d Cong., 1st ses.)

## Sunday Closing of the St. Louis Exposition

CONDITION TO BILL APPROPRIATING \$5,000,000, APPROVED MARCH 3, 1901

There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of five million dollars, to aid in carrying forward such exposition. . . . *Provided*, . . . That as a condition precedent to the payment of this appropriation the directors shall contract to close the gates to visitors on Sundays

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\* For Federal laws in the District of Columbia, see page 388.

† H. R. 7250 was a general appropriation bill carrying the much debated exposition section. On the day before its approval, H. R. 9710 was introduced and rushed through so that both bills were signed the same day.

during the whole duration of the fair.<sup>6</sup>—*U. S. Statutes at Large*, vol. 31, part 1, pp. 1444, 1445. (H. R. 9829, 56th Cong., 2d ses.)

### Sunday Closing of the Jamestown Exposition

SECTION IN GENERAL APPROPRIATION BILL, APPROVED JUNE 30, 1906

In aid of the said Jamestown Tercentennial Exposition the sum of two hundred and fifty thousand dollars is hereby appropriated. . . . *Provided*, That as a condition precedent to the payment of this appropriation in aid of said exposition, the Jamestown Exposition Company shall agree to close the grounds of said exposition to visitors on Sunday during the period of said exposition.<sup>7</sup>—*U. S. Statutes at Large*, vol. 34, part 1, p. 766. (H. R. 19844, 59th Cong., 1st ses.)

### "In God We Trust" on Coins

APPROVED MAY 18, 1908

*Be it enacted*, . . . That the motto "In God we trust," heretofore inscribed on certain denominations of the gold and silver coins of the United States of America, shall hereafter be inscribed upon all such gold and silver coins of said denominations as heretofore.—*U. S. Statutes at Large*, vol. 35, part 1, p. 164. (H. R. 17296, 60th Cong., 1st ses.)

### Sunday Closing of Post Offices

POST OFFICE APPROPRIATION ACT, APPROVED AUGUST 24, 1912

*Be it enacted*, . . . That the following sums be, and they are hereby, appropriated for the service of the Post Office Department, . . . as follows:

In all, thirty-seven million eight hundred and seventy-eight thousand dollars: *Provided*, That hereafter post offices of the first and second classes shall not be open on Sundays for the purpose of delivering mail to the general public, but this provision shall not prevent the prompt delivery of special delivery mail.—*U. S. Statutes at Large*, vol. 37, part 1, pp. 539, 543. (H. R. 21279, 62d Cong., 2d ses.)

## EARLY IMPORTANT FEDERAL RELIGIOUS BILLS

**The Blair Sunday-Rest Bill of 1888**

S. 2983, 50TH CONG., 1ST SES., INTRODUCED BY SENATOR H. W. BLAIR, MAY 21, 1888

BILL TO SECURE TO THE PEOPLE THE ENJOYMENT OF THE FIRST DAY OF THE WEEK, COMMONLY KNOWN AS THE LORD'S DAY, AS A DAY OF REST, AND TO PROMOTE ITS OBSERVANCE AS A DAY OF RELIGIOUS WORSHIP<sup>2</sup>

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That no person, or corporation, or the agent, servant, or employee of any person or corporation shall perform or authorize to be performed any secular work, labor, or business to the disturbance of others, and works of necessity, and mercy, and humanity excepted; nor shall any person engage in any play, game, or amusement, or recreation to the disturbance of others on the first day of the week, commonly known as the Lord's day or during any part thereof, in any . . . place subject to the exclusive jurisdiction of the United States.*

SECTION 2. That no mails or mail matter shall hereafter be transported in time of peace over any land postal route, nor shall any mail matter be collected, handled, or delivered during any part of the first day of the week: *Provided*, That whenever any letter shall relate to a work of necessity or mercy, or shall concern the health, life, or decease of any person, and the fact shall be plainly stated upon the face of the envelope containing the same, the Postmaster-General shall provide for the transportation of such letter or letters in packages separate. . . .

SECTION 3. That the prosecution of commerce between the States and with the Indian tribes, the same not being work of necessity, mercy, or humanity, by the transportation of persons or property by land or water in such way as to interfere with or disturb the people in the enjoyment of the first day of the

week, . . . or its observance as a day of religious worship, is hereby prohibited. . . .

SECTION 4. That all military and naval drills, musters, and parades, not in time of active service or immediate preparation therefor, of soldiers, sailors, marines, or cadets of the United States on the first day of the week, except assemblies for the due and orderly observance of religious worship, are hereby prohibited. . . .

SECTION 5. That it shall be unlawful to pay or to receive payment or wages in any manner for service rendered, or for labor performed or for the transportation of persons or of property in violation of the provisions of this act. . . .

SECTION 6. That labor or service performed and rendered on the first day of the week in consequence of accident, disaster, or unavoidable delays . . . shall not be deemed violations of this act, but the same shall be construed so far as possible to secure to the whole people rest from toil during the first day of the week, their mental and moral culture, and the religious observance of the Sabbath day. <sup>3</sup>—*Senate Miscellaneous Document No. 43, 50th Congress, 2d session*, pp. 1, 2.

### District Sunday-Rest Bill

H. R. 3854, 51ST CONG., 1ST SESSION, INTRODUCED BY HON. W. C. P. BRECKINRIDGE,  
JANUARY 6, 1890

#### A BILL TO PREVENT PERSONS FROM BEING FORCED TO LABOR ON SUNDAY <sup>4</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful for any person or corporation, or employee of any person or corporation in the District of Columbia, to perform any secular labor or business, or to cause the same to be performed by any person in their employment on Sunday, except works of necessity or mercy; nor shall it be lawful for any person or corporation to receive pay for labor or services performed or rendered in violation of this act.

Any person or corporation, or employee of any person or corporation in the District of Columbia, who shall violate the provisions of this act, shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars for every such offense: *Provided, however,* That the provisions of this act shall not be construed to apply to any person or persons who conscientiously believe in and observe any other day of the week than Sunday as a day of rest.

## PERSISTENT ATTEMPTS AT RELIGIOUS LEGISLATION IN OUR TIME

### The Record of Fifty-eight Years (1888-1945)

Nothing demonstrates more clearly the departure from the American and Christian principle upon which the government of the United States was founded—that of religious liberty, or the total separation of church and state—than the demand for national religious legislation, as shown by the large number of religious bills introduced into Congress since 1888. And, as the following list shows, this movement for the uniting of church and state in this government is being carried forward largely through a demand for Sunday legislation. Of the 142 religious measures following, ninety-three relate to Sunday observance, seventy-one of which are for a Sunday law for the District of Columbia; eleven relate to one day rest in seven for the District of Columbia.

### RELIGIOUS MEASURES IN CONGRESS SINCE 1888

#### FIFTIETH CONGRESS

\* S. 2983. "To secure to the people the enjoyment of the first day of the week, commonly known as the Lord's day, as a day of rest, and to promote its observance as a day of worship" [in any . . . place subject to the exclusive jurisdiction of the United States]. Introduced by Senator Blair of New Hampshire, May 21, 1888; referred to Com-

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\* Note.—S. stands for Senate; H. R. for House of Representatives; S. Res. for Senate Resolution; H. J. Res. for House Joint Resolution; the numbers following these indicate the number of the bill; matter following number of bill gives title or description of bill; the name, date, committee, etc., following this indicate who introduced it, when introduced, committee to which referred, fate of measure, and volume and page in *Congressional Record* where reference to bill may be found. C. R. 19:4455 means *Congressional Record*, Volume XIX, p. 4455.

mittee on Education and Labor; hearing on bill December 13, 1888; report of hearing Miscellaneous Document No. 43; not reported out of committee. C. R. 19:4455.

S. Res. 86. "Proposing an amendment to the Constitution of the United States respecting establishments of religion and free public schools." Blair of New Hampshire, May 25, 1888; ordered to lie on table; later, Dec. 22, 1888, referred to Committee on Education and Labor; hearing on measure February 15 and February 22, 1889; not reported. C. R. 19:4615.

## FIFTY-FIRST CONGRESS

S. 946. "To secure to the people the privileges of rest and of religious worship, free from disturbance by others, on the first day of week" [in any . . . place subject to the exclusive jurisdiction of the United States]. Blair of New Hampshire, December 9, 1889; to Committee on Education and Labor; not reported. C. R. 21:124.

S. Res. 17. "Proposing an amendment to the Constitution of the United States respecting establishments of religion and free public schools." Blair of New Hampshire, December 9, 1889; to Committee on Education and Labor; not reported. C. R. 21:124.

H. R. 3854. "To prevent persons from being forced to labor on Sunday" in the District of Columbia. W. C. P. Breckinridge of Kentucky, January 6, 1890; to Committee on District of Columbia; hearing on bill before subcommittee, February 18, 1890; not reported. C. R. 21:403. (See *Washington Post*, Feb. 19, 1890, p. 7.)

## FIFTY-SECOND CONGRESS

H. R. 194. "To prohibit the opening of any exhibition or exposition on Sunday where appropriations of the United States are expended." Morse of Massachusetts, January 5, 1892; to Committee on Judiciary; not reported. C. R. 23:130.

H. R. 540. "To prevent persons from being forced to labor on Sunday [in the District of Columbia]." Breckinridge of Kentucky, January 7, 1892; to Committee on District of Columbia; not reported. C. R. 23:203.

S. 2168. "To prohibit the opening of any exhibition or exposition on Sunday where appropriations of the United States are expended." Colquitt of Georgia, February 11, 1892; to Committee on Education and Labor; not reported. C. R. 23:1047.

S. 2994. "To prevent the sale or delivery of ice within the District of Columbia on the Sabbath day, commonly known as Sunday." Mc-

Millan of Michigan, April 25, 1892; to Committee on District of Columbia; reported with amendments; not acted on. C. R. 23:3607, 4480.

H. R. 8367. "Prohibiting the delivery and sale of ice within the District of Columbia on the Sabbath day, commonly known as Sunday." Hemphill of South Carolina, April 25, 1892; to Committee on District of Columbia; reported back with amendments; passed House; not acted on in Senate. C. R. 23:3639, 4480.

**H. R. 7520.** Sundry Civil bill, containing an appropriation to Chicago World's Fair, conditioned on Sunday closing. **Approved August 5, 1892.** (See *U. S. Stat.*, vol. 27, part 1, pp. 363, 388.)

H. R. 1075. "To further protect the first day of the week as a day provide for celebrating the four hundredth anniversary of the discovery of America" (with proviso for closing Columbian Exposition on Sundays). Reilly of Pennsylvania, August 4, 1892; to Committee of the Whole House; passed House and Senate; **approved August 5, 1892.** C. R. 23:7040, 7064-7, 7086, 7102. (See *U. S. Stat.*, vol. 27, part 1, pp. 389, 390.)

#### FIFTY-THIRD CONGRESS

S. 56. "Proposing an amendment to the Constitution of the United States" [God in the Constitution]. Senator Frye of Maine, January 25, 1894; to Committee on Judiciary; not reported. C. R. 26:1374.

S. 1628. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." Gallinger of New Hampshire, February 15, 1894; to Committee on Education and Labor; not reported. C. R. 26:2211.

H. R. 6215. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." Morse of Massachusetts, March 10, 1894; to Committee on District of Columbia; not reported. C. R. 26:2827.

H. R. 6592. "For Sunday rest" [in District of Columbia]. Johnson of North Dakota, April 5, 1894; to Committee on Education and Labor; not reported. C. R. 26:3490.

S. 1890. "For Sunday rest" [in any territory, district, or place subject to the exclusive jurisdiction of the United States]. Kyle of South Dakota, April 12, 1894; to Committee on Education and Labor; not reported. C. R. 26:3688.

#### FIFTY-FOURTH CONGRESS

H. R. 167. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia."

Morse of Massachusetts, December 6, 1895; to Committee on District of Columbia; not reported. C. R. 28:48.

S. Res. 28. (Text and title not given in C. R.) acknowledging God in the Constitution of the United States. Frye of Maine, December 16, 1895; to Committee on Judiciary. C. R. 28:168.

H. Res. 28. "Proposing an amendment to the preamble of the Constitution of the United States acknowledging Almighty God as the source of all power and authority in civil government, the Lord Jesus Christ the Ruler of Nations, and His revealed will as authority in civil affairs." Morse of Massachusetts, December 16, 1895; to Committee on Judiciary. C. R. 28:184.

S. 1441. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." McMillan of Michigan, January 9, 1896; to Committee on District of Columbia; not reported. C. R. 28:526.

H. R. 6893. "To protect the first day of the week as a day of rest and worship in the District of Columbia." Wellington of Maryland, March 5, 1896; to Committee on District of Columbia; not reported. C. R. 28:2516.

S. 2485. "To further protect the first day of the week as a day of rest in the District of Columbia." McMillan of Michigan, March 11, 1896; to Committee on District of Columbia; not reported. C. R. 28:2678.

H. Res. 157. (Text and title not given in C. R.) to amend the preamble to the Constitution of the United States so it will acknowledge God. Willis of Delaware, March 30, 1896; to Committee on Judiciary. C. R. 28:3374.

S. 3136. "For Sunday rest" (in District of Columbia). Kyle of South Dakota, May 13, 1896; to Committee on Education and Labor; not reported. C. R. 28:5154.

S. 3235. "To regulate labor and business on Sunday in the District of Columbia." Kyle of South Dakota, May 28, 1896; to Committee on District of Columbia; not reported. C. R. 28:5827.

H. R. 9679. "To further protect the first day of the week as a day of rest in the District of Columbia." Washington of Tennessee, December 16, 1896; to Committee on the District of Columbia; not reported. C. R. 29:229.

## FIFTY-FIFTH CONGRESS

S. 920. "To further protect the first day of the week as a day of rest in the District of Columbia." McMillan of Michigan, March 19,

1897; to Committee on District of Columbia; not reported. C. R. 30:68.

H. R. 1075. "To further protect the first day of the week as a day of rest in the District of Columbia." Harmer of Pennsylvania, March 19, 1897; to Committee on District of Columbia; not reported. C. R. 30:91.

#### FIFTY-SIXTH CONGRESS

**H. R. 9829.** "To provide for celebrating the 100th anniversary of the purchase of the Louisiana Territory . . . in . . . St. Louis." Lane of Iowa, March 21, 1900; to Special Committee on Centennial of the Louisiana Purchase; amended and favorably reported; passed House February 18, 1901, without Sunday-closing condition; referred to Senate Committee on Industrial Expositions; reported favorably (Senate Report 2382); passed Senate February 23, 1901, with Senator Teller's amendment: "That as a condition precedent to the payment of this appropriation the directors shall contract to close the gates to visitors on Sundays during the whole duration of the fair"; went to conference, House nonconcurring in Sunday-closing amendment (H. R. Report 2976); went to second conference, House receding from nonconcurrence, and both houses agreeing, March 1, 1901, to bill as passed by Senate. **Approved March 3, 1901.** C. R. 34:2872-4. (See *U. S. Stat.*, vol. 31, part 1, pp. 1440-1445.)

H. R. 10592. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen of Maine, April 10, 1900; to Committee on District of Columbia; not reported. C. R. 33:3995.

#### FIFTY-SEVENTH CONGRESS

S. 5334. "Requiring places of business in the District of Columbia to be closed on Sunday." McMillan of Michigan, April 19, 1902; to Committee on District of Columbia; not reported. C. R. 35:4422.

H. R. 13970. "Requiring places of business in the District of Columbia to be closed on Sunday." Jenkins of Wisconsin, April 24, 1902; to Committee on District of Columbia; not reported. C. R. 35:4655.

H. R. 14110. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen of Maine, April 30, 1902; to Committee on District of Columbia; not reported. C. R. 35:4905.

S. 5563. "To further protect the first day of the week as a day of rest in the District of Columbia." Dillingham of Vermont, May 1, 1902; to Committee on District of Columbia; not reported. C. R. 35:4909.

## FIFTY-EIGHTH CONGRESS

H. R. 4859. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen of Maine, November 24, 1903; to Committee on District of Columbia; not reported. C. R. 37:472.

H. R. 11819. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Wadsworth of New York, February 4, 1904; to Committee on District of Columbia; reported favorably; amended and passed House; referred to Senate Committee on District of Columbia; not reported. C. R. 38:1646, 4077, 4375, 4414.

## FIFTY-NINTH CONGRESS

H. R. 3022. "To prevent Sunday banking in post offices in the handling of money orders and registered letters." Sibley of Pennsylvania, December 5, 1905; to Committee on Post Offices and Post Roads; not reported. C. R. 40:112.

S. 1653. "To prevent Sunday banking in post offices in the handling of money orders and registered letters." Penrose of Pennsylvania, December 14, 1905; to Committee on Post Offices and Post Roads; reported adversely and indefinitely postponed. C. R. 40:385, 2747.

H. R. 10510. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen of Maine, January 5, 1906; to Committee on District of Columbia; not reported. C. R. 40:747.

H. R. 12610. "To authorize the United States Government to participate in the Jamestown Tercentennial Exposition." Maynard of Virginia, January 20, 1906; to Committee on Industrial Arts and Expositions; reported with amendments, with proviso, "that as a condition precedent to the appropriations herein provided for, the Jamestown Exposition Company shall contract to close exhibits and places of amusement to visitors on Sundays"; did not come to vote. C. R. 40:1336, 5486, 5637.

H. R. 16483. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Wadsworth of New York, March 9, 1906; passed House June 11, 1906, but not reported by Senate Committee. C. R. 40:3655, 8268-71, 8307.

H. R. 16556. "To prohibit labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heffin of Alabama, March 12, 1906; to Committee on District of Columbia; not reported. C. R. 40:3711.

S. 5825. "To authorize the United States Government to partici-

pate in the Jamestown Tercentennial Exposition," with proviso, "That as a condition precedent to the payment of the appropriations herein provided for, the Jamestown Exposition Company shall contract to close exhibits and places of amusements to visitors on Sundays." Daniel of Virginia, April 23, 1906; to select Committee on Industrial Expositions; reported with amendment, but not brought to vote. C. R. 40:5682, 7589.

**H. R. 19844.** United States Sundry Civil bill, appropriating two hundred fifty thousand dollars to the Jamestown Tercentennial Exposition. June 29, 1906, House and Senate agreed to bill with following proviso: "That, as a condition precedent to the payment of this appropriation in aid of said exposition, the Jamestown Exposition Company shall agree to close the grounds of said exposition to visitors on Sunday during the period of said exposition." **Approved June 30, 1906.** C. R. 40:9673-4. (See *U. S. Stat.*, vol. 34, part 1, pp. 764-768.)

**S. Res. 215.** "That the Postmaster General be directed to inform the Senate by what authority post offices are required to be kept open on Sunday, together with the regulation of Sunday opening, as to the extent of the business that may be transacted, and also what the provisions are for clerical help, and whether postal clerks and carriers are required to work more than six days per week." Burkett of Nebraska, January 9, 1907; considered and agreed to. C. R. 41:804.

#### SIXTIETH CONGRESS

**H. R. 327.** "To restore the inscription 'In God we trust' upon the coins of the United States of America." O. M. James of Kentucky, December 2, 1907; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:18.

**H. R. 353.** "Requiring the motto 'In God we trust' to be inscribed on all forms of moneys hereafter issued by the United States." Sheppard of Texas, December 2, 1907; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:19.

**H. R. 4897.** "To further protect the first day of the week as a day of rest in the District of Columbia." Allen of Maine, December 5, 1907; to Committee on District of Columbia; not reported. C. R. 42:186.

**H. R. 4929.** "Prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heflin of Alabama, December 5, 1907; to Committee on District of Columbia; not reported. C. R. 42:186.

**S. 1519.** "To prevent Sunday banking in post offices in the han-

dling of money orders and registered letters." Penrose of Pennsylvania, December 9, 1907; to Committee on Post Offices and Post Roads; not reported. C. R. 42:209.

H. R. 11295. "Authorizing the continuance of the inscription of a motto ["In God we trust"] on the gold and silver coins of the United States." Moore of Pennsylvania, December 21, 1907; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:467.

H. R. 13471. "Prohibiting work in the District of Columbia on the first day of the week, commonly called Sunday." Lamar of Missouri, January 13, 1908; to Committee on District of Columbia; not reported. C. R. 42:666.

H. R. 13648. "Requiring the motto 'In God we trust' to be inscribed on all coins of money hereafter issued by the United States, as formerly." Beale of Pennsylvania, January 14, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:706.

S. 3940. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Johnston of Alabama, January 14, 1908; to Committee on District of Columbia; hearing on bill before Senate subcommittee, April 15, 1908; amended and reintroduced by Mr. Johnston, May 1, 1908, as S. 3940, with Calendar No. 605 [report No. 596] attached; reported favorably; passed Senate May 15, 1908; introduced in House May 16, 1908; hearing on bill before House District Committee, February 15, 1909; not reported by House Committee. C. R. 42:676, 5514, 6434.

H. R. 14400. "Requiring the motto 'In God we trust' to be restored to certain coins." Ashbrook of Ohio, January 20, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:899.

H. R. 15239. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Langley of Kentucky, January 27, 1908; to Committee on District of Columbia; not reported. C. R. 42:1166.

H. R. 15439. "Providing for the restoration of the motto 'In God we trust' on certain denominations of the gold and silver coins of the United States." Wood of New Jersey, January 28, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:1257.

H. R. 16079. "Providing for the restoration of the motto 'In God we trust' on certain denominations of the gold and silver coins of the United States." McKinney of Illinois, February 3, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:1505.

H. R. 17144. "Providing for the restoration of the motto 'In God we trust' on certain denominations of the gold and silver coins of the

United States." Foster of Illinois, February 14, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:2051.

H. R. 17296. "Providing for the restoration of the motto 'In God we trust' on certain denominations of the gold and silver coins of the United States." McKinley of Illinois, February 17, 1908; to Committee on Coinage, Weights, and Measures; reported favorably; passed House March 16; referred to Senate Committee on Finance March 17; reported favorably; passed Senate May 13. **Approved May 18, 1908.** C. R. 42:2106, 3384, 6189. (See *U. S. Stat.*, vol. 35, part 1, p. 164.)

H. R. 19965. "For the proper observance of Sunday as a day of rest" [in the District of Columbia]. Hay of Virginia, March 27, 1908; to Committee on District of Columbia; not reported. C. R. 42:4058.

S. 6535. "For the proper observance of Sunday as a day of rest in the District of Columbia" (first section did not mention Sunday, or first day of week, and so prohibited labor on all days). Johnson of Alabama, April 7, 1908; to Committee on District of Columbia; hearing on this and the original S. bill No. 3940 before it was remodeled, before Senate subcommittee February 15, 1909; not reported. C. R. 42:4458.

S. 6853. "To amend an act entitled 'An act to license billiard and pool tables in the District of Columbia, and for other purposes'" requiring that "all such places shall be closed during the entire twenty-four hours of each and every Sunday." Gallinger of New Hampshire, April 28, 1908; to Committee on District of Columbia; not reported. C. R. 42:5324.

S. Res. 125. "Proposing an amendment to the Constitution acknowledging the Deity" (by beginning the preamble "In the name of God"). Richardson of New Jersey, February 4, 1909; to Committee on Judiciary; not reported. C. R. 43:1827.

#### SIXTY-FIRST CONGRESS

H. J. Res. 17. "Proposing an amendment to the Constitution of the United States, so that it shall contain a recognition of God and shall begin with the words 'In the name of God.'" Sheppard of Texas, March 18, 1909; to Committee on Judiciary; hearing granted National Reformers before subcommittee, April 11, 1910; not reported. C. R. 44:105.

S. 404. "For the proper observance of Sunday as a day of rest in the District of Columbia." Johnston of Alabama, March 22, 1909; to Committee on District of Columbia; not reported. C. R. 44:135.

H. R. 13876. "Requiring certain places of business in the District

of Columbia to be closed on Sunday." Livingston of Georgia, December 10, 1909; to Committee on District of Columbia; not reported. C. R. 45:90.

H. R. 14619. "Prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heflin of Alabama, December 14, 1909; to Committee on District of Columbia; adversely reported on by District Commissioners to House District Committee (see *Washington Star* and *Washington Times*, February 17, 1910, and *Washington Post*, February 18, 1910); not reported. C. R. 45:140.

S. 404. Calendar No. 75, report No. 81. "For the proper observance of Sunday as a day of rest in the District of Columbia." Johnston of Alabama, January 17, 1910; to Committee on District of Columbia; reported favorably by Senate Committee; amended and passed Senate January 27, 1910; introduced in House January 28, 1910; hearing before House Committee on District of Columbia March 8 and 16, 1910; not reported. C. R. 45:669, 1072-1073, 1207.

H. R. 21475. "Declaring it lawful to play harmless athletics and sports in the District of Columbia on the first day of the week, commonly called Sunday." Coudrey of Missouri, February 21, 1910; to Committee on District of Columbia; not reported. C. R. 45:2193.

H. R. 26462. "Providing a weekly day of rest for certain post-office clerks and carriers." Bennet of New York, June 1, 1910; to Committee on Post Offices and Post Roads; not reported. C. R. 45:7244.

## SIXTY-SECOND CONGRESS

S. 237. "A Bill for the Proper Observance of Sunday as a Day of Rest in the District of Columbia." Johnston of Alabama, April 6, 1911; to Committee on District of Columbia; favorably reported by committee, but failed of passage in Senate. C. R. 47:105.

H. J. Res. 93. "For adopting the decalogue and Jesus' rule as standard measure for laws and regulations of the government of the United States." Pepper of Iowa, May 9, 1911; to Committee on Rules; not reported. C. R. 47:1175.

H. R. 9433. "A Bill for the Observance of Sunday in Post Offices." Mann of Illinois, May 16, 1911; not passed. C. R. 47:1259.

H. R. 14690. "Prohibiting labor on buildings, etc., in the District of Columbia on the Sabbath Day." Heflin of Alabama, December 6, 1911; not reported. C. R. 48:59.

**H. R. 21279**, amended by Mr. Mann to provide "That hereafter post offices [of the first and second classes] shall not be opened on Sundays for the purpose of delivering mail to the public." Passed; **approved**

August 24, 1912, and became effective in post offices September 1, 1912. C. R. 48:4883. (See *U. S. Stat.*, vol. 37, part 1, p. 543.)

H. R. 25682. "To punish violations of the Lord's Day in the District of Columbia, and for other purposes." Howard of Georgia, July 10, 1912; to Committee on District of Columbia; not reported. C. R. 48:8881.

## SIXTY-THIRD CONGRESS

S. 752. "For the proper observance of Sunday as a day of rest in the District of Columbia." Johnston of Alabama, April 12, 1913; to Committee on District of Columbia; not reported. C. R. 50:161.

H. R. 7826. "To provide for the closing of barber shops in the District of Columbia on Sunday." Keating of Colorado, August 27, 1913; to Committee on District of Columbia; not reported. C. R. 50:3827.

H. R. 9674. "Prohibiting labor on buildings, etc., in the District of Columbia on the Sabbath Day." Heflin of Alabama, December 2, 1913; to Committee on District of Columbia; not passed. C. R. 51:92.

S. 5124. "To grant all employees in the District of Columbia one day of rest in each seven days of employment." Martine of New Jersey (for Hughes), April 1, 1914; not passed. C. R. 51:6097.

S. 7047. "To provide for the closing of barber shops in the District of Columbia on Sunday." Works of California, December 22, 1914; not passed. C. R. 52:490.

## SIXTY-FOURTH CONGRESS

H. R. 111. "To grant all employees in the District of Columbia one day of rest in each seven days of employment." Buchanan of Illinois, December 6, 1915; not reported. C. R. 53:16.

H. R. 652. "To provide for the closing of barbershops in the District of Columbia on Sunday." Keating of Colorado, December 6, 1915; not passed. C. R. 53:28.

S. 645. "To provide for the closing of barbershops in the District of Columbia on Sunday." Works of California, December 7, 1915; not passed. C. R. 53:84.

S. 5677. "For the proper observance of Sunday as a day of rest in the District of Columbia." Jones of Washington, April 20, 1916; not passed. C. R. 53:6476.

## SIXTY-FIFTH CONGRESS

H. R. 128. "To provide for the closing of barbershops in the

District of Columbia on Sunday." Keating of Colorado, April 2, 1917; not passed. C. R. 55:124.

S. 2260. "To protect the Lord's Day, commonly called Sunday, from desecration and to secure its observance as a day of rest in the District of Columbia." Smith of Maryland, May 11, 1917; not passed. C. R. 55:2085.

S. 3162. "For the proper observance of Sunday as a day of rest in the District of Columbia." Jones of Washington, December 11, 1917; not passed. C. R. 56:114.

## SIXTY-SIXTH CONGRESS

S. 635. "For the proper observance of Sunday as a day of rest in the District of Columbia." Jones of Washington, May 23, 1919; not passed. C. R. 58:151.

H. R. 12504. "To protect the Lord's Day, commonly called Sunday, and to secure its observance as a day of rest in the District of Columbia." Temple of Pennsylvania, February 13, 1920; not passed. C. R. 59:2880.

## SIXTY-SEVENTH CONGRESS

H. R. 4388. "To promote the public health by providing for one day of rest in seven for employees in certain employments." Zihlman of Maryland, April 19, 1921; to Committee on District of Columbia; not passed. C. R. 61:461.

S. 1948. "To regulate the conducting of business in the District of Columbia on Sunday." Myers of Montana, June 2, 1921; not passed. C. R. 61:2003.

H. R. 9753. "To secure Sunday as a day of rest in the District of Columbia." Fitzgerald of Ohio, January 5, 1922; not passed. C. R. 62:860.

## SIXTY-EIGHTH CONGRESS

S. 3218. "To secure Sunday as a day of rest in the District of Columbia and for other purposes." Jones of Washington, May 2, 1924; not passed. C. R. 65:7666.

H. R. 12448. "To secure Sunday as a day of rest in the District of Columbia, and for other purposes." Lankford of Georgia, February 28, 1925; not passed. C. R. 66:7666.

## SIXTY-NINTH CONGRESS

H. R. 7179. "To secure Sunday as a day of rest in the District of Columbia, and for other purposes." Lankford of Georgia, January 8, 1926; not passed. C. R. 67:1732.

H. R. 7822. "To provide for the closing of barbershops in the District of Columbia on Sunday." Keller of Minnesota, January 16, 1926; not passed. C. R. 67:2268.

H. R. 10123. "To prohibit . . . amusements on Sunday in the District of Columbia." Edwards of Georgia, March 8, 1926; not passed. C. R. 67:5256.

H. R. 10311. "To secure Sunday as a day of rest in the District of Columbia, and for other purposes." Lankford of Georgia, March 13, 1926; not passed. C. R. 67:5587.

S. 4167. "To enforce conformity to State laws on Sunday observance at Government military reservations." Harris of Georgia, May 4, 1926; not passed. C. R. 67:8655.

S. 4821. "To provide for the closing of barbershops in the District of Columbia on Sunday." Copeland of New York, December 14, 1926; not passed. C. R. 68:419.

## SEVENTIETH CONGRESS

H. R. 78. "To secure Sunday as a day of rest in the District of Columbia, and for other purposes." Lankford of Georgia, December 5, 1927; not passed. C. R. 69:20.

S. 2212. "To provide for the closing of barbershops in the District of Columbia on Sunday." Copeland of New York, November 21, 1929; to Committee on District of Columbia; not passed. C. R. 71:5862.

H. R. 8767. "To prohibit the showing on Sunday of films transported in interstate commerce, and to prohibit on Sunday shows, performances, and exhibitions by theatrical troupes traveling in interstate commerce and for other purposes." Lankford of Georgia, January 17, 1930; to Committee on Interstate and Foreign Commerce; not passed. C. R. 72:1843.

H. R. 16153. "To provide for the closing of barbershops on Sunday in the District of Columbia." Stalker of New York, January 14, 1931; to Committee on District of Columbia; not passed. C. R. 74:2193.

S. 6077. "Providing for the closing of barbershops on Sunday in the District of Columbia." Copeland of New York, February 6, 1931; to Committee on District of Columbia; not passed. C. R. 74:4121.

## SEVENTY-SECOND CONGRESS

S. 1202. "Providing for the closing of barbershops on Sunday in the District of Columbia." Copeland of New York, December 9, 1931; to Committee on District of Columbia; not passed. C. R. 75:205.

H. R. 8092. "Providing for the closing of barbershops on Sunday in the District of Columbia." Amended to "one day in seven." May 20, 1932. Stalker of New York, January 20, 1932; to Committee on District of Columbia; not passed. C. R. 75:2379.

H. R. 8759. "To prohibit commercial advertising by means of radio on Sunday." Anlie of Wisconsin, February 2, 1932; to Committee on Merchant Marine, Radio, and Fisheries; not passed. C. R. 75:3294.

S. 4023. "Providing for the closing of barbershops one day in every seven in the District of Columbia." Copeland of New York, March 10, 1932; to Committee on District of Columbia; not passed. C. R. 75:5628.

## SEVENTY-FIFTH CONGRESS

H. R. 3291. "To regulate barbers in the District of Columbia, and for other purposes." (Contained Sunday-closing clause.) Quinn of Pennsylvania, January 19, 1937; to Committee on District of Columbia; not passed. C. R. 81:313.

S. 1270. "To regulate barbers in the District of Columbia, and for other purposes." (Contained Sunday-closing clause.) Copeland of New York, February 1, 1937; to Committee on District of Columbia; not passed. C. R. 81:610.

H. J. Res. 226. "To close bowling alleys on Sunday in the District of Columbia." Short of Missouri, February 16, 1937; to Committee on District of Columbia; not passed. C. R. 81:1264.

H. R. 7085. "To regulate barbers in the District of Columbia, and for other purposes." Quinn of Pennsylvania, May 17, 1937; passed both Houses of Congress and became a law. **Approved June 7, 1938.** When H. R. 3291 failed of passage, H. R. 7085, which provides only for one day of rest in seven without specifying a particular day, was introduced and passed. C. R. 81:4716, 4742. (See *U. S. Stat.*, vol. 52, part 1, p. 623, chap. 322, sec. 14.)

H. J. Res. 519. "To declare certain papers, pamphlets, books, pictures, and writings nonmailable, to provide a penalty for mailing same, and for other purposes." ("Writings of any kind . . . intended to cause racial or religious hatred or bigotry or intolerance.") Dickstein of New York, November 25, 1937; to Committee on Post Office and Post Roads; not reported. C. R. 82:379.

## SEVENTY-SIXTH CONGRESS

H. R. 3517. "To promote the general welfare through the appropriation of funds to assist the States and Territories in providing more effective programs of public education." (Not to prohibit any State

making any of these funds available, if it wishes, to children attending nonpublic schools.) Larrabee of Indiana, January 31, 1939; to Committee on Education; not reported. C. R. 84:980.

H. J. Res. 228 [Reintroduced as H. J. Res. 65 in 77th Congress]. "To declare certain papers, pamphlets, books, pictures, and writings nonmailable, to provide a penalty for mailing same, and for other purposes." Dickstein of New York, March 24, 1939; to Committee on Post Offices and Post Roads; not reported. C. R. 84:3280.

H. R. 5732. "Designating Good Friday in each year a legal holiday." ("To be dedicated to prayer for social and religious tolerance.") Sutphin of New Jersey, April 12, 1939; to Committee on Judiciary; not reported. C. R. 84:4177.

#### SEVENTY-SEVENTH CONGRESS

H. J. Res. 65 [Same as H. J. Res. 228 in 76th Congress]. "To declare certain papers, pamphlets, books, pictures, and writings nonmailable, to provide a penalty for mailing same, and for other purposes." ("Writings of any kind designed or adapted or intended to cause racial or religious hatred or bigotry or intolerance, or to, directly or indirectly, incite to racial or religious hatred or bigotry or intolerance.") Dickstein of New York, January 16, 1941; to Committee on Post Offices and Post Roads; not reported. C. R. 87:183.

S. 983. "To amend the act to regulate barbers in the District of Columbia, and for other purposes," [giving barbers a right of referendum to choose the day all barbershops shall be closed in the District of Columbia]. Reynolds of North Carolina, February 26, 1941; to Committee on District of Columbia; not reported. C. R. 87:1405.

H. R. 3852. "To amend the act to regulate barbers in the District of Columbia, and for other purposes," [containing a clause giving barbers a right of referendum to choose the day all barbershops shall be closed in the District of Columbia]. Mr. Schulte of Indiana, March 6, 1941; to Committee on District of Columbia; not reported. C. R. 87:1945.

H. R. 5444. "To amend the act to regulate barbers in the District of Columbia, and for other purposes," [containing clause giving barbers right to choose day all barber shops shall close in the District of Columbia]. Schulte of Indiana, July 30, 1941; to Committee on District of Columbia. Amended to include exemption for those who observe another day than the barbers may choose. Passed House. Amended in Senate and passed; returned to House and placed on con-

sent calendar. Objection raised. Returned to Senate. Not passed. C. R. 87:6488.

## SEVENTY-EIGHTH CONGRESS

H. R. 2328 [Reintroduced under same number with 2d section in 79th Congress]. "To declare certain papers, pamphlets, books, pictures, and writings nonmailable, to provide a penalty for mailing same, and for other purposes." ("Writings of any kind, containing any defamatory and false statements which tend to expose persons designated, identified, or characterized therein by race or religion, any of whom reside in the United States, to hatred, contempt, ridicule, or obloquy, or tend to cause such persons to be shunned or avoided, or to be injured in their business or occupation.") Lynch of New York, March 29, 1943; to Committee on the Post Office and Post Roads; not reported. C. R. 89:2670.

S. 1700 [Reintroduced Jan. 6, 1945 as S. 16, 79th Congress]. "To amend the District of Columbia Barber Act." (Barbers to vote on a day for all to close shops. Exemption from majority choice for one making "a showing made to the Board that the designated closing day conflicts with the tenets of his religion: *And provided further*, That his establishments shall be closed on the Sabbath of his particular religion.") McCarran of Nevada, February 7, 1944; to Committee on District of Columbia; not reported. C. R. 1276.

S. J. Res. 139. "Designating period from Thanksgiving Day to Christmas of each year for Nation-wide Bible reading." (Ending clause: "in order that 'in God we trust' as an expression of our national life may hold new and vital meaning for all our citizens.") Byrd of Virginia and Capper of Kansas, June 22, 1944; to Committee on Judiciary; reported with amendment (S. Rept. 1231); passed Senate, preamble rejected. C. R. 90:6460, 8482, 9431.

H. J. Res. 301 [see also H. J. Res. 302]. "Designating the period from Thanksgiving Day to Christmas of each year for Nation-wide Bible reading." (Same as H. J. Res. 139, with omission of: "in order that 'in God we trust' as an expression of our national life may hold new and vital meaning for all our citizens.") Voorhis of California. June 23, 1944; to Committee on Judiciary; not reported. C. R. 90:6680.

H. J. Res. 302 [same as H. J. Res. 301 of same date]. McLean of New Jersey, June 23, 1944; to Committee on Judiciary; not reported. C. R. 90:6680.

## SEVENTY-NINTH CONGRESS

S. 16. "To amend the District of Columbia Barber Act." (Compulsory closing on Sabbath of choice.) McCarran of Nevada, January 6, 1945; to Committee on District of Columbia; not reported. C. R. 91:77.

H. R. 2328 [See 78th Congress, same Bill No.]. "To amend title 18, Criminal Code, to declare certain papers, pamphlets, books, pictures, and writings nonmailable." ("Writings of any kind, containing any defamatory and false statements which tend to expose persons designated, identified, or characterized therein by race or religion, any of whom reside in the United States, to hatred, contempt, ridicule, or obloquy or tend to cause such persons to be shunned or avoided or to be injured in their business or occupation.") Lynch of New York, February 23, 1945; to Committee on Post Offices and Post Roads; not reported. C. R. 91:1401.

S. 717. "To authorize the appropriation of funds to assist the States in more adequately financing education." (Includes provision for aid for nonpublic schools.) Mead of New York and Aiken of Vermont, March 8, 1945; to Committee on Education and Labor; not reported. C. R. 91:1887.

S. J. Res. 46. "To provide for the use of the words 'Observe Sunday' in the cancellation of United States mail." Capper of Kansas, March 12, 1945; to Committee on Post Offices and Post Roads; not reported. C. R. 91:1998.

H. J. Res. 120. "Designating period from Thanksgiving Day to Christmas of each year for Nation-wide Bible reading" "in order that 'in God we trust' as an expression of our national life may hold new and vital meaning for all our citizens." Voorhis of California, March 13, 1945; to Committee on the Judiciary; not reported. C. R. 91:2165.

## EIGHTIETH CONGRESS

H. R. 156. "To authorize the appropriation of funds in order to assist in reducing the inequalities of educational opportunities in elementary and secondary schools." (Includes provision for aid for nonpublic schools.) Welch of California, January 3, 1947; to Committee on Education and Labor; not reported. C. R.

H. R. 263. "To declare certain papers, pamphlets, books, pictures, and writings nonmailable." ("All papers, pamphlets, magazines, periodicals, books, pictures, and writings of any kind, containing any defamatory and false statements which tend to expose persons designated, identified, or characterized therein by race or religion, any of whom

reside in the United States, to hatred, contempt, ridicule, or obloquy or tend to cause such persons to be shunned or avoided or to be injured in their business or occupation.") Lynch of New York, January 3, 1947; to Committee on Post Office and Civil Service; not reported. C. R.

H. J. Res. 58. "Urging that representatives of religious organizations serve as advisers to the American delegation of the United Nations and to the American delegations at all peace conferences." Patterson of California, January 8, 1947; to Committee on Foreign Affairs; not reported. C. R.

S. 199. "To authorize the appropriation of funds to assist the States in more nearly equalizing educational opportunities among and within the States." (Includes provision for aid for nonpublic schools.) Aiken from Vermont, January 15, 1947; to Committee on Labor and Public Welfare; not reported. C. R.

S. J. Res. 36. "To provide for use of the words 'Observe Sunday' in the cancellation of the United States mail." Capper of Kansas, January 20 (legislation day January 15), 1947; to Committee on Civil Service; not reported. C. R.

S. 472. "To authorize the appropriation of funds to assist the States and Territories in financing a minimum foundation education, . . . and for other purposes." (Including provision for aid for nonpublic schools.) Taft of Ohio, January 31, 1947; to Committee on Labor and Public Welfare; not reported. C. R.

H. R. 1981. "Declaring Good Friday in each year a legal holiday." Sasser of Maryland, February 17, 1947; to Committee on Judiciary; not reported. C. R.

## A MEMORIAL TO CONGRESS

INTRODUCED IN BOTH HOUSES OF CONGRESS JANUARY 29, 1908

*To the Honorable Senate and House of Representatives in Congress Assembled:*

Your memorialists respectfully represent that the body of Christian believers with which they are connected, the Seventh-day Adventists, and whose views they represent, has a growing membership residing in every State and Territory in the Union; that

nearly all these members are native-born American citizens; and that it is supporting missionaries and has a following in every continent of the world. It is a Protestant body, which was established in this country about sixty years ago.

We recognize the authority and dignity of the American Congress, as being the highest lawmaking power in the land, to whose guidance and fostering care have been committed the manifold interests of this great country and our justification for presenting this memorial to your honorable body is that we are not seeking to direct your attention to any private or class concerns, but to principles which are fundamental to the stability and prosperity of the whole nation. We therefore earnestly ask your consideration of the representation which we herewith submit.

### Church and State Divinely Ordained

We believe in civil government as having been divinely ordained for the preservation of the peace of society and for the protection of all citizens in the enjoyment of those inalienable rights which are the highest gift to man from the Creator. We regard properly constituted civil authority as supreme in the sphere in which it is legitimately exercised, and we conceive its proper concern to be "the happiness and protection of men in the present state of existence, the security of the life, liberty, and property of the citizens, and to restrain the vicious and encourage the virtuous by wholesome laws, equally extending to every individual." As law-abiding citizens we seek to maintain that respect for authority which is the most effective bulwark of just government, and which is especially necessary for the maintenance of republican institutions upon an enduring basis.

We heartily profess the Christian faith, and have no higher ambition than that we may consistently exemplify its principles in our relations to our fellow men and to the common Father of us all. We cheerfully devote our time, our energies, and our means to the evangelization of the world, proclaiming those primitive principles and doctrines of the gospel which were inter-

preted anew to mankind by the Saviour of the world, and which were the fundamental truths maintained by the church in apostolic times. We regard the Holy Scriptures as the sufficient and infallible rule of faith and practice, and consequently discard as binding and essential all teachings and rituals which rest merely upon tradition and custom.

### The Two Spheres Distinct

While we feel constrained to yield to the claims of civil government and religion, as both being of divine origin, we believe their spheres to be quite distinct the one from the other, and that the stability of the Republic and the highest welfare of all citizens demand the complete separation of church and state. The legitimate purposes of government "of the people, by the people, and for the people," are clearly defined in the preamble of the national Constitution to be to "establish justice, ensure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty" to all. All these aims are of a temporal nature and grow out of the relations of man to man. The founders of the nation, recognizing that "the duty which we owe our Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the Universal Judge," wisely excluded religion from the concerns of civil government, not because of their indifference to its value, but because, being primarily a matter of the heart and conscience, it did not come within the jurisdiction of human laws or civil compacts. The recognition of the freedom of the mind of man and the policy of leaving the conscience untrammelled by legislative enactments have been abundantly justified by a record of national development and prosperity which is unparalleled in history. This is the testimony of our own experience to the wisdom embodied in the principle enunciated by the Divine Teacher of Christianity: "Render unto Caesar the things that are Caesar's, and to God the things that are God's."

### What God Put Asunder Man Should Not Unite

We therefore view with alarm the first indication of a departure from this sound principle. In the history of other nations of the world, where church and state have been united to a greater or less degree, or where the struggle to separate them is now in progress, we have a warning, oftentimes written in blood, against the violation of this doctrine which lies at the foundation of civil and religious liberty. We affirm that it is inconsistent with sound reasoning to profess firm adherence to this principle of the separation of church and state, and at the same time endeavor to secure an alliance between religion and the state, since the church is simply religion in its organized and concrete expression; and, furthermore, that the same authority which can distinguish between the different religions demanding recognition, and give preference to one to the exclusion of the others, can with equal right and equal facility distinguish between the different denominations or factions of the same religion, and dispense to one advantages which it denies to the others. These considerations ought to make it doubly clear that what God has put asunder, man ought not to attempt to join together.

#### A Lesson From History

A more specific reference to an important period of history may illustrate and enforce the affirmations herein set forth. Under a complete union of a heathen religion and the state, with extreme pains and penalties for dissenters, the first disciples, directed by the Divine commission, proclaimed the doctrines of Christianity throughout the Roman Empire. For nearly three centuries the warfare of suppression and extinction was waged by this haughty power, glorying in the superiority of its own religion, against nonresistant but unyielding adherents to the right to worship according to the dictates of their own consciences. Then came a reversal of the unsuccessful policy, and what former emperors had vainly sought to destroy, Constantine, as a matter

of governmental expediency embraced, and Christianity became the favored religion.

Then began that period of "indescribable hypocrisy" in religion, and of sycophancy and abuse of power in the state. "The apparent identification of the state and the church by the adoption of Christianity as the religion of the empire, altogether confounded the limits of ecclesiastical and temporal jurisdiction. The dominant party, when it could obtain the support of the civil power for the execution of its intolerant edicts, was blind to the dangerous and unchristian principle which it tended to establish. . . . Christianity, which had so nobly asserted its independence of thought and faith in the face of heathen emperors, threw down that independence at the foot of the throne, in order that it might forcibly extirpate the remains of paganism, and compel an absolute uniformity of Christian faith."—*Milman*.

"To the reign of Constantine the Great must be referred the commencement of those dark and dismal times which oppressed Europe for a thousand years. . . . An ambitious man had attained to imperial power by personating the interests of a rapidly growing party. The unavoidable consequences were a union between church and state, a diverting of the dangerous classes from civil to ecclesiastical paths, and the decay and materialization of religion."—*Draper*. Succeeding decades bore testimony to the fact that "the state which seeks to advance Christianity by the worldly means at its command, may be the occasion of more injury to this holy cause than the earthly power which opposes it with whatever virulence."—*Neander*. It was but a series of logical steps from the union of church and state under Constantine to the Dark Ages and the Inquisition, some of these steps being the settlement of theological controversies by the civil power, the preference of one sect over another, and the prohibition of unauthorized forms of belief and practice; and the adoption of the unchristian principle that "it was right to compel men to believe what the majority of society had now accepted as the truth, and, if they refused; it was right to punish them."

### A Union of Church and State Injurious

All this terrible record, the horror of which is not lessened nor effaced by the lapse of time, is but the inevitable fruit of the acceptance of the unchristian and un-American doctrine, so inimical to the interests of both the church and the state, that an alliance between religion and civil government is advantageous to either. If the pages of history emphasize one lesson above another, it is the sentiment uttered on a memorable occasion by a former President of this Republic: "Keep the state and the church forever separate."

### Religious Legislation in Colonial Times

The American colonists, who had lived in the mother country under a union of the state and a religion which they did not profess, established on these shores colonial governments under which there was the closest union between the state and the religion which they did profess. The freedom of conscience which had been denied to them in the old country, they denied to others in the new country; <sup>8</sup> and uniformity of faith, church attendance, and the support of the clergy were enforced by laws which arouse righteous indignation in the minds of liberty-loving men of this century.

The pages of early American history are stained with the shameful record of the persecution which must always attend the attempt to compel the conscience by enforcing religious observances. The Baptists were banished, the Quakers were whipped, good men were fined or exposed to public contempt in the stocks, and cruel and barbarous punishments were inflicted upon those whose only crime was that they did not conform to the religion professed by the majority and enforced by the colonial laws. And all these outrages were committed in the name of justice, as penalties for the violation of civil laws. "This was the justification they pleaded, and it was the best they could make. Miserable excuse! But just so it is: Wherever there is such a union of church and state, heresy and heretical practices are apt to be-

come violations of the civil code, and are punished no longer as errors in religion, but as infractions of the laws of the land.”—*Baird*. Thus did the American colonies pattern after the governments of the Old World, and thus was religious persecution transplanted to the New World.

### A New Order of Things

We respectfully urge upon the attention of your honorable body the change which was made when the National Government was established. The men of those times learned the meaning and value of liberty, not only of the body, but also of the mind, and “vindicating the right of individuality even in religion, and in religion above all[,] the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained of God in Judea.”—*Bancroft*. Warned by the disastrous results of religious establishments in both the Old and the New World, these wise builders of state excluded religion from the sphere of the National Government in the express prohibition, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Thus they founded a nation, the first in all history, upon the Christian idea of civil government—the separation of church and state. And the century and more of liberty and prosperity which has crowned their efforts, and the widespread influence for good which the example of this nation has exerted upon the world at large in leading the way toward freedom from the bondage of religious despotisms and ecclesiastical tyrannies, has demonstrated the wisdom of their course. The “new order of things” to which testimony is borne on the reverse side of the Great Seal of the United States, introduced an era of both civil and religious liberty which has been marked by blessings many and great, both to the nation and to religion.

### A Movement to Reverse the Order

We are moved to present this memorial, however, because of the persistent and organized efforts which are being made to secure

from Congress such legislation as will commit the National Government to a violation of this great principle, and to the enforcement of a religious institution. Already there have been introduced during the present session of Congress five bills of this nature:

S. 1519. "A bill to prevent Sunday banking in post-offices in the handling of money orders and registered letters."

H. R. 4897. "A bill to further protect the first day of the week as a day of rest in the District of Columbia."

H. R. 4929. "A bill prohibiting labor on buildings, etc., in the District of Columbia on the Sabbath day."

H. R. 13471. "A bill prohibiting work in the District of Columbia on the first day of the week, commonly called 'Sunday.'"

S. 3940. "A bill requiring certain places of business in the District of Columbia to be closed on Sunday." \*

While a merely cursory reading of the titles of these bills may not indicate clearly their full significance, we affirm that an examination of their provisions will reveal the fact that they involve the vital principle of the relation of government to religion. Their passage would mark the first step on the part of the National Government in the path of religious legislation—a path which leads inevitably to religious persecution. If Government may by law settle one religious controversy and enforce one religious institution, it may logically settle all religious controversies and enforce all religious institutions, which would be the complete union of church and state and an established religion. We seek to avoid the consequences by denying the principle. We are assured that the only certain way to avoid taking the last step in this dangerous experiment upon our liberties is to refuse to take the first step.

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\* Before this Congress closed, four more Sunday measures were introduced, as well as a proposed religious amendment to the Constitution (S. R. 125) to preface the preamble to the Constitution with the words, "In the name of God," besides nine bills for the restoration of the motto, "In God we trust," on the coins. See pages 253-255.

### All Compulsion in Religion Irreligious

We hold it to be the duty of civil government to protect every citizen in his right to believe or not to believe, to worship or not to worship, so long as in the exercise of this right he does not interfere with the rights of others; but "to pretend to a dominion over the conscience is to usurp the prerogative of God." However desirable it may seem to some who profess the Christian faith to use the power of government to compel at least an outward respect for Christian institutions and practices, yet it is contrary to the very genius of Christianity to enforce its doctrines or to forge shackles of any sort for the mind. The Holy Author of our religion recognized this great principle in these words: "If any man hear My words, and believe not, I judge him not." The triumphs of the Gospel are to be won by spiritual rather than by temporal power; and compulsion may be properly employed only to make men civil.

Therefore, in the interest of the nation, whose prosperity we seek; in the interest of pure religion, for whose advancement we labor; in the interest of all classes of citizens, whose rights are involved; in the interest of a world-wide liberty of conscience, which will be affected by the example of this nation; in the interest even of those who are urging this legislation, who are thereby forging fetters for themselves as well as for others, we earnestly petition the Honorable Senate and House of Representatives in Congress assembled, not to enact any religious legislation of any kind whatsoever, and particularly not to pass the bills to which reference has been made in this memorial. And for these objects your memorialists, as in duty bound, will ever pray.<sup>9</sup>

THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS,

A. G. DANIELLS, *President.*

W. A. SPICER, *Secretary.*

—*Congressional Record*, Jan. 29, 1908, vol. 12, part 2,  
pp. 1264, 1265.

## MEMORIAL AGAINST SUNDAY LEGISLATION

PRESENTED IN CONGRESS MARCH 3, 1908

*To the Honorable Senate and House of Representatives in Congress Assembled:*

The Seventh Day Baptists of the United States, for and in behalf of whom this memorial is laid before you, beg leave to call attention to their record as advocates and defenders of constitutional, civil, and religious liberty ever since their organization in Newport, R. I., in 1671 A. D. That record includes colonial governments, the Continental Congress, where they were represented by Hon. Samuel Ward, the services of German Seventh Day Baptists of Ephrata, Pa., and other points of interest. Having such a history and inheritance, we respectfully and confidently ask and petition that you will not enact any of the following bills, now in the hands of the Committees on the District of Columbia, namely:

S. 1519. "A bill to prevent Sunday banking in post-offices in the handling of money orders and registered letters."

H. R. 4897. "A bill to further protect the first day of the week as a day of rest in the District of Columbia."

H. R. 4929. "A bill prohibiting labor on buildings, etc., in the District of Columbia on the Sabbath Day."

H. R. 13471. "A bill prohibiting work in the District of Columbia on the first day of the week, commonly called "Sunday."

S. 3940. "A bill requiring certain places of business in the District of Columbia to be closed on Sunday."

We base this memorial on the following grounds:

First. The Constitution of the United States declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." That Sunday legislation is forbidden under this act is shown by the records of Congress from 1808 to 1830. The question came to the front under an act of April 30, 1810, establishing the Postal Department

and requiring the opening of post offices and the transmission of mail on every day in the week. Remonstrances and petitions followed the enactment of this law. Postmaster General Gideon Granger, January 30, 1811, reported that he had sent the following instructions to postmasters:

“At post offices where the mail arrives on Sunday the office is to be kept open for the delivery of letters, etc., for one hour after arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose.”

He also reported that an officer had been prosecuted in Pennsylvania for refusing to deliver a letter on Sunday not called for within the time prescribed, and said he doubted whether mail could be legally refused to any citizen at any reasonable hour on any day of the week. (*American State Papers* [Class VII, Post Office Department], vol. 15, p. 45.)

Reports, discussions, and petitions concerning Sunday mails crowd the annals of Congress from 1811 to 1830. Mr. Rhea, chairman of the Committee on Post Offices, reported adversely concerning efforts to secure a change in the law requiring Sunday opening on January 3, 1812; June 15, 1812, and January 20, 1815. Postmaster General Granger made adverse report January 16, 1815, saying:

“The usage of transporting the mails on the Sabbath is coeval with the Constitution of the United States.”

January 27, 1815, Mr. Daggett made an adverse report, that was considered by the House in Committee of the Whole February 10, 1815, and after various efforts at amendment, was passed, as follows:

“*Resolved*, That at this time it is inexpedient to interfere and pass any laws on the subject-matter of the several petitions praying the prohibition of the transportation and opening of the mail on the Sabbath.”

March 3, 1825, an act was passed “To reduce into one the sev-

eral acts establishing the Post-Office Department," section 11 of which reads as follows:

*"And be it further enacted,* That every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive, by land or water, as well as on other days, at such hours as the Postmaster General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, on every day of the week, to deliver, on demand, any letter, paper, or packet, to the person entitled to, or authorized to receive, the same."

This renewed the discussion throughout the country, and Congress was flooded with petitions and counterpetitions, which were referred to the Committee on Post Offices and Post Roads, of which Richard M. Johnson was chairman. He made an elaborate report to the Senate January 19, 1829, and to the House March 4 and 5, 1830. These reports were exhaustive and able documents. They centered around the question of Congressional legislation on religious subjects, all phases of which were considered with marked ability and candor. When he presented the report before the Senate, Mr. Johnson said:

"Now, some denominations considered one day the most sacred and some looked to another, and these petitions for the repeal of the law of 1825 did, in fact, call upon Congress to settle what was the law of God. The committee had framed their report upon principles of policy and expediency. It was but the first step taken that they were to legislate upon religious grounds, and it made no sort of difference which was the day asked to be set apart, which day was to be considered sacred, whether it was the first or the seventh, the principle was wrong. It was upon this ground that the committee went in making their report."—(*Register of Debates on Congress*, vol. 5, pp. 42, 43.)

Representative passages from Senator Johnson's report are as follows:

"Extensive religious combinations, to effect a political object, are, in the opinion of the committee, always dangerous. This first

effort of the kind calls for the establishment of a principle which, in the opinion of the committee, would lay the foundation for dangerous innovations upon the spirit of the Constitution and upon the religious rights of the citizens. . . .

“Congress has never legislated upon the subject. It rests, as it ever has done, in the legal discretion of the Postmaster-General, under the repeated refusals of Congress to discontinue the Sabbath mails. . . .

“While the mail is transported on Saturday, the Jew and the Sabbatarian may abstain from any agency in carrying it from conscientious scruples. While it is transported on the first day of the week, any other class may abstain, from the same religious scruples. The obligation of the Government is the same to both these classes; and the committee can discern no principle on which the claims of one should be respected more than those of the other, unless it should be admitted that the consciences of the minority are less sacred than those of the majority.” (S. Docs. 2d sess., 20th Cong., Doc. 46; also *Register of Debates*, vol. 5, Appendix, p. 24.)

The adoption of Mr. Johnson's report settled the question of Sunday legislation by Congress for many years. Its revival calls forth this memorial asking that Congress will not reverse its decision made in 1830.

Second. In addition to the fact that after a discussion lasting twenty years, Congress determined to abide by its constitutional restrictions touching Sunday laws, we offer another objection to the bills now before it. Leaving out the historic fact that Sunday laws have always been avowedly religious, we call attention to the religious elements and principles contained in the bills now before you. They create crime by assuming that secular labor and ordinary worldly affairs become criminal at twelve o'clock on Saturday night and cease to be criminal twenty-four hours later; they assume that the specific twenty-four hours known as the “First day” of the week may not be devoted to ordinary affairs, because of the sinfulness and immorality resulting from such use of those specific hours. The fact that religious leaders are the main pro-

motors of Sunday legislation shows that religious convictions are at the basis of Sunday laws and that religious ends are sought through their enforcement. The terms used, although somewhat modified in modern times, denote that the proposed laws spring from religious conceptions. There can be no distinction between "secular" and "sacred," "worldly" and "unworldly," except on religious grounds. There is no reason, either in logic or in the nature of our civil institutions, why the first day of the week should be legislated into a day of idleness any more than the fourth day. Through all history cessation from "worldly pursuits" on either the seventh or the first day of the week has been considered a form of religious duty.

Action and transactions intrinsically right which promote prosperity, good order, and righteousness, cannot be changed into crimes at a given moment—by the clock—and purged from criminality "by act of Parliament" twenty-four hours later.

If there be need of protecting employed persons from abuse or overwork, that need will be met in full by some law like the following:

*"Be it enacted,* That every employed person shall be entitled to one day of rest each week. The claiming of this right shall not prejudice, injure, nor interfere with any engagement, position, employment, or remuneration as between employed persons and those by whom they are employed."

In view of the foregoing and of many similar reasons, your memorialists respectfully urge Congress not to enact any of the Sunday-law bills now before your honorable body.

In behalf of the Seventh Day Baptists of the United States, by the American Sabbath Tract Society, Plainfield, New Jersey.<sup>10</sup>

STEPHEN BABCOCK, A. M., *President,*

*48 Livingston Ave., Yonkers, New York.*

ABRAM HERBERT LEWIS, D.D., LL.D., *Cor. Sec.,*

*633 West Seventh St., Plainfield, New Jersey.*

*February, 1908.*

—*Congressional Record*, March 3, 1908, vol. 42, part 3, p. 2793.

## DISCUSSION

## The Question of Precedent (P. 259)

<sup>1</sup> The fact that nearly all the States in the Union have Sunday laws is urged by some as good and sufficient reason for national Sunday legislation. The argument is invalid for two reasons: first, because the States are not the proper guides nor models for the national Government to follow in the matter of religious legislation; and second, because Sunday laws, being religious, are out of place in civil government. The national Government was established upon the principle of separation of church and state. Some States composing it still retained an established religion; but its founders did not take this fact as ground for creating a national religious establishment. They did the very reverse. Seeing the evils of religion by law, they prohibited such a thing by express provisions in the national Constitution, the supreme law of the land. The *national Constitution*, therefore, not *State laws*, is the correct guide for *national legislation*.

For over one hundred and fifty years the national Government has refused to adopt a church-and-state policy through the enactment of a compulsory Sunday law. For it to begin to follow the States now in this matter would mean a reversal of its noble record.

## Revival of Sunday-law Agitation (P. 262)

<sup>2</sup> For nearly sixty years the question of Sunday legislation received no attention in Congress, the famous and unanswerable Sunday Mail Reports of 1829 and 1830, prepared by Colonel Richard M. Johnson, having put the matter at rest for this time. But with the introduction of the Federal Sunday-rest bill by Senator Blair of New Hampshire, in 1888, the question was again revived, and for a number of years this and other similar measures before Congress were discussed and widely agitated throughout the country.

A notable hearing was held on this bill before the Senate Committee on Education and Labor, of which Mr. Blair was chairman. Its unconstitutionality was noted, and the history of Sunday legislation was brought to bear upon the issue. Petitions for and against the measure were widely circulated. The measure got no farther than committee.

Early in the first session of the Fifty-first Congress, December 9, 1889, Senator Blair reintroduced his Sunday bill, but it was largely stripped of its religious terminology, and contained an exemption

added to the last section (6), in favor of observers of another day. The title to the bill was changed to read:

"A bill to secure to the people the privilege of rest and of religious worship, free from disturbance by others, on the first day of the week."

The exemption in section 6 read as follows:

"Nor shall the provisions of this act be construed to prohibit or to sanction labor on Sunday by individuals who conscientiously believe in and observe any other day than Sunday as the Sabbath or a day of religious worship, provided such labor be not done to the disturbance of others."

The measure again failed to carry, the exemption itself testifying to the fact that the proposed legislation entered the realm of conscience and the field of religious controversy. The bill died with the Fifty-first Congress.

### Obviously a Religious Law (P. 263)

<sup>3</sup>As in its title, so in this last expression was a "give away" of the measure and the whole movement demanding its enactment. The act was to be so "construed" as to secure to the people "the *religious observance* of the *Sabbath* day." When the bill was reintroduced, this expression was omitted, and in its place the "sop" exempting "conscientious" observers of another day was inserted.

### A Bill Misnamed (P. 263)

<sup>4</sup>Following closely the reintroduction of the Blair Sunday-rest bill and the Blair educational amendment into Congress (December 9, 1889), a bill for a Sunday law for the District of Columbia was introduced into the House. Its title, "A Bill to Prevent Persons From Being Forced to Labor on Sunday," was misleading, for no one in the District was being "forced" to labor on Sunday, nor is there anything in the bill dealing with any such offense. Instead of being a bill to prevent persons from being forced to labor on Sunday, it was, in reality, a bill to force people to rest on Sunday. As with the Blair Sunday bill, not only the compulsory observance of a religious rest day, but the exemption in favor of conscientious observers of another day, showed it to be religious, and therefore unconstitutional; it entered the sacred precincts of conscience, "the sanctuary of the soul"; and as pointed out in the Sunday Mail Reports of 1829 and 1830, if enacted, would, in a manner, "constitute a legislative decision of a religious controversy, in which even Christians themselves are at issue." (See pages 210-225.)

At the hearing given on the measure on February 18, 1890, the chief speakers favoring it, as at the hearing on the Blair bills, were ministers, Rev. George Elliott, Rev. J. H. Elliott, and Rev. W. F. Crafts; a representative of a local assembly of the Knights of Labor, Mr. H. J. Schulteis, and Mrs. M. E. Catlin, of the W. C. T. U., also favored it. Opposing it were J. O. Corliss, A. T. Jones, and W. H. McKee, representatives of the Seventh-day Adventists, and Mr. Millard F. Hobbs, Master Workman of the District Knights of Labor. (See the *Washington Post*, Feb. 19, 1890, p. 7.)

Speaking upon the title of the bill, Mr. Corliss said:

"No one in the District of Columbia, or in any other part of the United States, is being forced to labor on Sunday. If he were, he has redress already, without the enactment of this bill into law, and that by the Constitution of the United States. Article XIII of amendments to that instrument, declares that 'neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.'"—"Arguments on the Breckinridge Sunday Bill . . . Before [a Subcommittee of the] House Committee on District of Columbia, at Washington, D.C., February 18, 1890" (The Sentinel Library, No. 29), pp. 7, 8.

To show that not only was the title disingenuous, but the legislation itself was unnecessary, Mr. Jones read from a book (*The Sabbath for Man*) by Doctor Crafts, who was present to urge the adoption of the bill. Said Mr. Jones: "I read now from the same book, page 428:

"Among other printed questions to which I have collected numerous answers, was this one: 'Do you know of any instance where a Christian's refusal to do Sunday work or Sunday trading has resulted in his financial ruin?' Of the two hundred answers from persons representing all trades and professions, *not one is affirmative*.'"—*Ibid.*, pp. 27, 28.

Mr. Jones reasoned:

"Then . . . where is there any danger of anybody's being forced to labor on Sunday? Ah, gentlemen, this effort is not in behalf of the laboring men. . . . This evidence also, coming from the source whence it does come, demonstrates that the title of the bill does not define its real object, but is only a pretense to cover that which is the real purpose—to secure and enforce by law the religious observance of the day." "Why, then, do not these men . . . ministers of the gospel of Christ,—why do they not endeavor to cultivate in men that faith in Christ which will empower them to do right from the love of it, instead

of coming up here to this capitol, and asking you gentlemen of the National Legislature to help men to do what they think right by taking away the opportunity to do what they think wrong? Virtue can't be legislated into men."—*Ibid.*, pp. 28-30, 27.

It was at this time that Mrs. Catlin, the District representative of the Sabbath Observance department of the Woman's Christian Temperance Union, explaining why an exemption clause had been inserted in the bill in favor of conscientious observers of another day, said: "We have given them an exemption clause, and that, we think, will take the wind out of their sails."—*Ibid.*, p. 37. But those who were opposing it were not looking simply to their own interests, but saw in it an evil principle dangerous to the rights and liberties of all. Upon principle, therefore, though exempted from its provisions themselves, they fought it. The exemption meant simply toleration, and was a concession which might easily be withdrawn. The spirit of the bill as a whole was that of intolerance. In the end, its enactment meant persecution.

Speaking for the Knights of Labor, Mr. Millard F. Hobbs said:

"I occupy, at the present time, the position of chief officer of the Knights of Labor in the District of Columbia. . . . There are parties in that body who believe in the bill as it is; others believe in a certain portion of it, and others are wholly opposed to it; and the Knights of Labor, as a whole, have thought best not to have anything to do with it. Every Knight of Labor is in favor of a day of rest—some of them believe they ought to have two days of rest. I believe they are all in favor of the rest feature of the bill, but, on account of what is called the religious feature of the bill, they are opposed to it. . . . [Many] believe that if they want rest on Sunday—or any other day—they can get it through their labor organizations, and that it is best not to try to get it through Congress by a sort of a Church movement."—*Id.*, pp. 23, 24.

The bill was not reported; there seems to be no record of its going farther than the subcommittee.

### Sunday and the World's Fair of 1893 (P. 260)

\*No sooner had the holding of the Chicago World's Columbian Exposition of 1893 been determined upon, and Congress asked for an appropriation to it, than it was seen by the friends of Sunday legislation that here was an opportunity to further their cause by Congressional legislation. As a step toward the accomplishment of this, various amendments to the Appropriations Bill were proposed in the House, to make no appropriation unless the exposition were closed on Sunday. Then an amendment passed the House providing that the

exhibits supported by the national Government be closed on Sunday. (See *Congressional Record*, May 26, 1892, vol. 23, p. 4716.)

A notable incident immediately followed this. Evidently, as the quickest way to suggest to the House the utter impropriety of the action it had just taken, Mr. Bowers of California offered an amendment and made accompanying remarks as follows:

*“Resolved, That the Government exhibits at the World’s Fair shall not be opened to the public on the Sabbath day, which is Saturday.*

“MR. BOWERS: This is a religious question, and Saturday is the only Sabbath day. It was the Sabbath day when Christ was on earth, and it is the Sabbath day now. [Cries of, “Vote!” “Vote!”]

“The question being taken,

“The CHAIRMAN said, The noes seem to have it.

“MR. BOWERS: I call for a division.

“The question being again taken, the amendment of Mr. Bowers was rejected, there being ayes, 11; noes, 149.”—*Ibid.*, p. 4716.

In the Senate, when an amendment to the Sundry Civil bill appropriating \$5,000,000 for the Columbian Exposition was being debated, Senator Quay of Pennsylvania moved to insert a Sunday-closing provision covering not only the Government exhibits but the whole exposition, in language and manner worthy of note. The following is from the *Congressional Record* of July 9, 1892, vol. 23, p. 5941:

“MR. QUAY: On page 122, line 13, after the word, ‘act,’ I move to insert:

*“And that provision has been made by the proper authority for the closing of the exposition on the Sabbath day.”*

The reasons for the amendment I will send to the desk to be read. The Secretary will have the kindness to read from the Book of Law I send to the desk the part enclosed in brackets.

“THE VICE-PRESIDENT: The part indicated will be read.

“The Secretary read as follows:

*“Remember the Sabbath day, to keep it holy. Six days shalt thou labour, and do all thy work: But the seventh-day is the Sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: For in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the sabbath day, and hallowed it.”*

During the discussion that followed, as recorded in the *Congressional Record* of July 11, vol. 23, pp. 5993-6004—a discussion that

deserves to rank along with the great religious councils of the fourth century—Senator Manderson of Nebraska said:

“The language of this amendment is that the exposition shall be closed ‘on the Sabbath day.’ I submit that if the Senator from Pennsylvania desires that the exposition shall be closed upon Sunday this language will not necessarily meet that idea. The Sabbath day is not Sunday. . . . The words ‘Sabbath day’ simply mean that it is a rest day, and it may be Saturday or Sunday, and it would be subject to the discretion of those who will manage this Exposition, whether they should close the Exposition on the last day of the week in conformity with that observance which is made by the Israelites and the Seventh-Day Baptists, or should close it on the first day of the week, generally known as the Christian Sabbath. It certainly seems to me that this amendment should be adopted by the Senator from Pennsylvania, and if he proposes to close this Exposition, that it should be closed on the first day of the week, commonly called Sunday. . . .

“Therefore I offer an amendment to the amendment, which I hope may be accepted by the Senator from Pennsylvania, to strike out the words ‘Exposition on the Sabbath day,’ and insert ‘mechanical portion of the Exposition on the first day of the week, commonly called Sunday.’”—Page 5994.

Mr. Quay agreed to this specific designation of Sunday, but not to the “mechanical portion” phrase. Three days of debate followed over the Sunday-closing amendment, in which arguments ranged all the way from the right of Federal interference in a State affair to the danger of prescribing religious or moral duties; and from the danger of disobeying God to the inadvisability of offending forty million people in the churches. Finally, on the 14th, a Sunday-closing proviso by Mr. Gray of Delaware was substituted. After further amendment by the House and joint revision, the bill was passed. The Gray amendment closing the whole fair on Sunday was incorporated into the body of the act, replacing the government exhibit closing clause, while the \$5,000,000 amendment to which it had been originally attached was dropped. This appropriation, whittled down to five million souvenir half dollars, was passed as a separate act, with the same Sunday-closing proviso. Both bills were signed by President Harrison August 5.

Thus it is seen how, while the fourth commandment of the Decalogue was adduced as the basis of the legislation, the promoters of the legislation were not willing that it should name the day specified in the commandment, but, by definite and express amendment, must needs change the day which God had named as His Sabbath.

### Recognized as Religious Legislation

This legislation on the part of Congress touching the closing of the World's Fair on Sunday was recognized as religious. Reporting to the *New York Independent*, of (July 28, 1892, p. 6), the chaplain of the Senate said:

"During this debate you might have imagined yourself in a general council or assembly or synod or conference, so pronounced was one Senator after another."

Senator Hawley said:

"Everybody knows what the foundation is. It is founded in religious belief."—*Congressional Record*, July 11, 1892, vol. 23, p. 6000.

And Senator Peffer said of it:

"Today we are engaged in a theological discussion concerning the observance of the first day of the week."—*Ibid.*

### Secured Under Religious Pressure

This legislation was not secured without religious pressure and the use of boycotting measures on the part of the church people. To some of the petitions asking for the legislation was attached the following resolution:

"*Resolved*, That we do hereby pledge ourselves and each other that we will from this time henceforth refuse to vote for or support for any office or position of trust any member of Congress, either Senator or Representative, who shall vote for any further aid of any kind to the World's Fair except on conditions named in these resolutions."—*Congressional Record*, May 24, 1892, vol. 23, p. 4643.

And these petitions and threats of loss of votes were not without effect in Congress. In the discussion in the Senate, Senator Hiscock of New York said:

"If I had charge of this amendment in the interest of the Columbian Exposition I would write the provision for the closure in any form that the religious sentiment of the country demands."—*Ibid.*, July 12, 1892, vol. 23, p. 6047.

Senator Hawley, of Connecticut, challenged members to reject the demands of the advocates of Sunday laws if they dared.

"If gentlemen repudiate this [that the United States is a Christian nation], if they desire to reject it, if they deny that this is in the true sense of the word a religious nation, I should like to see the disclaimer put in white and black and proposed by the Congress of the United States. Write it. How would you write it? How would you deny that from the foundation of the country through every fiber of their being

this people has been a religious people? Word it, if you dare; advocate it, if you dare. How many who voted for it would ever come back here again? None, I hope."—*Ibid.*, p. 6051.

It was the same way in the House. A dispatch from Washington to the *Chicago Daily Post* of April 9, 1892, gave the following from an interview with a member of the House Committee on the World's Fair:

"The reason we shall vote for it is, I will confess to you, a fear that unless we do so the church folks will get together and knife us at the polls next; and—well, you know we all want to come back and we can't afford to take any risks."

Certain church groups and young people's societies threw their influence against attending "a Sabbath-disregarding exposition," and their leaders in one case spoke of the possible effect on the gate receipts produced by the absence of their million and a half members and all others whom they could influence. (See *The Golden Rule*, May 18-June 29, 1893.) This sort of threat came to a head after the fair opened on May 1, when the directors were attempting to find legal grounds for opening at least the park on Sundays, and were considering returning the government appropriation in order to open the whole exposition.

Not only did some people advocate boycotting the fair, but certain church groups insisted that the troops should be called out to enforce the unconstitutional law which they had obtained from Congress, and forcibly close the fair on Sunday. At a mass meeting held in one great church just before the proposed Sunday opening of the fair, the following telegram was ordered sent to President Cleveland:

"The — Church of —, distrusting both directory and commissioners, appeals to you to suppress Chicago nullification with Jacksonian firmness and to guard the gates next Sabbath with troops if necessary."—*Chicago Herald*, May 19, 1893, p. 4.

Another organization sent the following telegram to Hon. Richard D. Olney, Attorney General of the United States:

"The presence of the United States troops at Fort Sheridan holds Chicago anarchists in check. Cannot the administration notify the directory that those troops will be promptly used, if necessary, to maintain inviolate the national authority and keep the fair closed on the Lord's day?"—*Ibid.*, May 16.

"Well did the editor of a Western journal write:

"The Book which says, 'Remember the Sabbath day,' also says, 'Thou shalt not kill,' yet so furious is the zeal of the closers to keep the gates shut to show the world 'that we are a Christian nation,' that

they even appeal to the President to enforce closing, if need be, by military force! Who could doubt our Christianity after visiting Chicago some fine Monday morning and finding the outer walls of the fairgrounds piled high with bloody corpses of men deliberately shot down like dogs, that, forsooth, we might show to the heathen world there assembled, 'that we are a Christian nation'?"—Webster City *Graphic-Herald*, quoted in the *Des Moines Leader*, June 1, 1893.

It seems, from the newspaper accounts, to have been a rather sorry spectacle on both sides of the controversy. The fair management accepted religious, and therefore unconstitutional, legislation in order to get Government money, and then changed front at the prospect of crowds at the gates clamoring to pay Sunday admission fees. On the other hand, pressure groups professing to represent the Christian population of the nation engaged in browbeating Congress in order to get a piece of legislation recognizing religion, and then advocated boycotts, injunctions, and in some cases resort to arms, to enforce a religious observance.

The outcome of injunction and counter-injunction was that after the first month the fair was opened on Sundays, with the exception of mechanical devices, Government exhibits, and many State and private exhibits. Naturally the Sunday attendance declined, and naturally the management repented, but could not close by that time because of a counter-injunction. The number of those who stayed away on week days for conscience' sake is problematical, to say the least, but the Sunday crusaders claimed a moral victory if not an actual one. Since the management had tried to close on Sunday, those who would "never go to the fair *on any day* so long as the gates are open on Sunday" could now "conscientiously and consistently attend it on a week day" and forget the open gates and the wide-open midway every Sunday. (See *The Golden Rule*, May 25, 1893, p. 694, Sept. 21, p. 1038.)

It is not a little significant that the first Sunday law in America carried with it the death penalty (see pages 19, 20); and it is not less significant that in the very first direct Sunday legislation ever secured from Congress its promoters asked to have it enforced at the point of the bayonet, and began to talk about "boycotting," "fighting," and the "calling out of troops."

#### Closing of the St. Louis Exposition (P. 260)

\* February 18, 1901, this bill passed the House without any Sunday-closing provision. In the Senate a Sunday-closing amendment was

inserted, and the bill passed the Senate as amended, February 23, 1901. At first the House refused to accept the bill with this provision in it; but finally, on March 1, after two conferences had been held, it withdrew its objection, and the bill was agreed to as passed by the Senate.

That this amendment was secured as the result of clerical lobbying and religious pressure, in spite of much objection to it in Congress, there is abundant evidence. In its official organ, *The Sabbath*, for May, 1902, the American Sabbath Union said:

"The latter part of February, 1900 [1901 is doubtless intended], Dr. Wilbur F. Crafts, of the Reform Bureau, Washington, D.C., sent a telegram to the general secretary [of the American Sabbath Union, Dr. I. W. Hathaway], calling him to Washington to aid in securing an amendment to the bill appropriating \$5,000,000 to the Louisiana Purchase Exposition.

"February 22 [18] this bill passed the House of Representatives without any Sunday condition. When it came to the Senate, Senator Teller consented to move the following amendment:

"As a condition precedent to the payment of this appropriation, the directors shall contract to close the gates to visitors on Sundays during the whole duration of the fair."

"We were assured by several Senators that it was useless, and that such an amendment would not pass, but after several days of unceasing effort on the part of Doctors Crafts and Hathaway, this bill, with this amendment, was passed by the Senate.

"After nearly another week, during which every effort was made by those who introduced the bill in the House to get rid of this amendment, it was adopted as amended by both the House and the Senate, and received the signature of the President."

### Sunday at Jamestown in 1907 (P. 261)

<sup>1</sup>For this exposition, celebrating the three hundredth anniversary of the first permanent English settlement in the United States, held at Jamestown, Virginia, in 1907, Congress appropriated, altogether, over one million dollars. As with previous expositions, through the strenuous efforts of Sunday-rest organizations and Sunday-law agitators, the opposition met in the House was overcome, and a Sunday-closing rider was finally secured to a portion of this. Thus, in a four-page leaflet, entitled "The American Sabbath Union," issued about this time, appeared the following:

"The International Federation of Sunday Rest Associations of the

United States and Canada, has been the main agency by which the following clause was inserted in the bill making the appropriation: 'The grounds of the exposition shall be closed on Sundays.' This is another grand victory for the Sabbath cause. The American Sabbath Union, as one of the constituent organizations of this International Federation, labored diligently and continuously for months, in connection with other associations, to achieve this great triumph."

### President Taft on Colonial Bigotry (P. 286)

<sup>8</sup> President Taft gave expression to this fact in an address delivered at Norwich, Connecticut, July 5, 1909, at a celebration of the 250th anniversary of this historic New England town. He said:

"We speak with great satisfaction of the fact that our ancestors—and I claim New England ancestry—came to this country in order to establish freedom of religion. Well, if you are going to be exact, they came to this country to establish freedom of their religion, and not the freedom of anybody else's religion.

"The truth is, in those days such a thing as freedom of religion was not understood. Erasmus, the great Dutch professor, one of the most eloquent scholars of his day, did understand it and did advocate it, but among the denominations it was not certainly fairly understood.

"We look with considerable horror and with a great deal of condemnation upon those particular denominations that punished our ancestors because our ancestors wished to have a different kind of religion, but when our ancestors got here in this country and ruled, they intended to have their own religion and no other; but we have passed beyond that, and out of the friction, out of the denominational prejudices of the past, we have developed a freedom of religion that came naturally and logically as we went on to free institutions. It came from those very men who built up your community and made its character.

"The Reverend James Fitch could not look upon any other religion in this community with any degree of patience, but his descendants, firm in the faith as he was, now see that the best way to promote Christianity and the worship of God and religion is to let every man worship God as he chooses."—*Washington Post*, July 6, 1909.

Two days later, July 7, 1909, at Cliff Haven, New York, addressing the students of the Catholic summer school of America, Mr. Taft again said:

"We are reaching a point where we are more tolerant. Religious tolerance is a modern institution. We of Puritanical ancestry believe we were the inventors of religious tolerance and religious liberty. As

a matter of fact, we wanted religious liberty for ourselves and wanted everybody else to worship exactly as we did."—*Washington Times*, July 7, 1909.

### "A Reasonable Petition" (P. 289)

\* Under the above heading, the *Washington Post* of February 11, 1908, commented editorially upon this memorial as follows:

"In the interest of religious liberty, in respect for an alert conscience, Congress ought to grant the petition of the Christian sect known as the Seventh-day Adventists, asking that those of that faith may be legally authorized to keep Saturday as their Sabbath day in the District of Columbia. Nobody but the most churlish bigot can object. The Christian religion is much a matter of faith, and it is the belief of the Adventists that Saturday is the true Sabbath.

"While this paper is a Christian in walk and talk, it is not a sectarian; but we are free to say that there is much in the creed, if it be a creed, of the Adventist that appeals to the mind and the heart. . . .

"It is commanded that we keep the Sabbath day. There is a difference of opinion as to which day of the week is the Sabbath. Nearly all Christians accept Sunday as the Sabbath; but great numbers of our citizens, notably the Jews, believe that Saturday is the proper day, and among them the Adventists.

"It is an act of despotism, a flat defiance of the first amendment to the Federal Constitution, and a truckling to fanaticism, to prescribe any particular day that the citizen shall keep as the Sabbath. It is the legitimate offspring of the demoniac zealot that sets up the torture chamber to vindicate the Lamb of God and hasten His reign on earth of peace and good will to men. . . .

"As for the Adventists—no other sect can show a better citizenship. They are industrious, frugal, and peaceable. If all other men were no more prone to evil than they, the grand jury would have little to do, and courts, civil as well as criminal, could take a vacation of at least six days in the week and have little to do the seventh.

"Their petition is reasonable, and we do not see how anyone can object to it."

The *Post* falls into a very natural error in supposing that the Adventists petitioned to be "legally authorized to keep Saturday as the Sabbath day." That would be a serious violation of the very principle for which they contend. They do not ask any legislature for a right freely given them of Heaven. Their spokesmen were simply contending that there should be no religious legislation whatever, and that all

others as well as themselves, should be protected in the exercise of their religious rights. See closing paragraph of memorial, page 289.

The New York *Times*, February 3, 1908, referred to the memorial thus:

"A document of interesting literary, religious, and political significance. . . . It is rich in its citations of historical precedent, clear and strong in its argument against the union of church and state, and apt in its quotations of authorities from Neander to Bancroft. . . . The Seventh-day Adventists remember the Sabbath and keep it holy on Saturday. . . . Their present position is interesting, and their memorial is a noteworthy document."

### Seventh Day Baptists and the Revolution (P. 294)

<sup>30</sup> The following note, containing items of interest relating to the connection Seventh Day Baptists had with national affairs in colonial and Revolutionary times, accompanied the memorial, and was likewise published with it in the *Congressional Record*, of March 3, 1908, vol. 42, pp. 2892, 2893:

"Some of the facts referred to in the opening of the foregoing memorial are these: Through the Honorable Samuel Ward and others, Seventh Day Baptists took a prominent part in the struggle by which the nation was brought into existence. Being then governor of the colony of Rhode Island, Mr. Ward was the first of the colonial governors who refused to enforce the stamp act of 1765. His published letters—Westerly, R. I., December 31, 1773; and Newport, R. I., May 17, 1774—had much influence in the formation of the Continental Congress that met at Philadelphia, September 5, 1774. Mr. Ward and Stephen Hopkins were the first two delegates to that Congress elected by any colony. They were chosen June 15, 1774. Mr. Ward was a member of subsequent Congresses until his untimely death, March 26, 1776, because of which his name did not appear among the signers of the Declaration of Independence. He was one of the most prominent and efficient men in the Congress. John Hancock called him to be presiding officer of Congress, sitting in 'Committee of the Whole,' May 26, 1775, in which committee all the important work of Congress was formulated. Mr. Ward occupied that place almost continually during the sessions of 1775 and 1776. In his official capacity, June 15, 1775, he reported the appointment of Colonel George Washington of Virginia to be Commander in Chief of the Continental forces. His published correspondence with Washington and

others are important documents touching the work of the Continental Congress. . . .

### In Pennsylvania

“The German Seventh Day Baptists of Pennsylvania were also prominent supporters of the colonial government through their representative at Ephrata, Pennsylvania. After the battle of Brandywine, September 11, 1777, the public buildings of the Seventh Day Baptists and their private homes were thrown open as hospitals, in which not less than five hundred sick and wounded soldiers became the guests of the Seventh Day Baptists during the dreary winter of 1777-78. ‘Typhus’ became epidemic, and many soldiers died, together with a number of Seventh Day Baptist women who acted as nurses. These soldiers were buried in the Seventh Day Baptist cemetery, where a fitting monument stands above their dust.

“When the Declaration of Independence was to be sent out, through which the infant Republic asked place among the nations of the world, Peter Miller, a Seventh Day Baptist scholar of Ephrata, translated that Declaration into various foreign languages, and copies of these were prepared in the printing office of the Seventh Day Baptists at Ephrata.”

**PART VII**

**Treaties**

**Religious Liberty in International Relations**



HARRIS & FAING

Signing the North Atlantic Pact

## Treaties Illustrate Principles of Liberty

**T**REATIES are part of the organic laws of the United States, as long as they are in force. The Constitution of the United States provides that "the Constitution, and the laws of the United States which shall be made in pursuance hereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." Article VI. The Supreme Court of the United States has declared that "a treaty is the Supreme Law of the Land" (*Hauenstein v. Lynham*, 100 U.S. 483), and has defined a treaty thus: "A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress." (*United States v. Rauscher*, 119 U.S. 407). Into the treaties concluded under the Constitution have been written provisions which illustrate clearly the principles of religious liberty maintained by the governments, Federal and State, in the United States.

### United States Government Not Founded on the Christian Religion

As the Government of the United States of America is not in any sense founded on the Christian Religion; as it has in itself no character of enmity against the laws, religion, or tranquillity of Musselmen; and as the said States never have entered into any war or act of hostility against any Mehomitan nation, it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the

two countries.<sup>1</sup>—Treaty with Tripoli, 1796, Article XI, p. 1786.\*

### Freedom of Worship in a Treaty Country

The Consul of the United States of North America shall have every personal security given him and his household. He shall have liberty to exercise his religion in his own house. All slaves of the same religion shall not be impeded in going to said Consul's house at hours of prayer. The Consul shall have liberty and personal security given him to travel, wherever he pleases, within the Regency. He shall have free license to go on board any vessel lying in our roads, whenever he shall think fit. The Consul shall have leave to appoint his own dragoman and broker.—Treaty with Algiers, 1795, Article XVII, p. 4.

As the Government of the United States of America has in itself no character of enmity against the laws, religion, or tranquillity of Musselmen, and as the said States never have entered into any voluntary war or act of hostility against any Mahometan nation, except in the defense of their just rights to freely navigate the high seas, it is declared by the contracting parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two nations. And the Consuls and Agents of both nations respectively, shall have liberty to exercise his religion in his own house. All slaves of the same religion shall not be impeded in going to said Consul's house at hours of prayer. The Consuls shall have liberty and personal security given them to travel within the territories of each other both by land and sea, and shall not be prevented from going on board any vessel that they may think proper to visit. They shall have likewise the liberty to appoint their own dragoman and broker.<sup>2</sup>—Treaty with Tripoli, 1805, Article XIV, p. 1791.

Americans in Japan shall be allowed the free exercise of their religion, and for this purpose shall have the right to erect suitable

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\* The Treaty quotations in this section, unless otherwise indicated, are taken from *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States and Other Powers*, compiled by William M. Malloy [and others]. Only the page references are given, since the four volumes are paged continuously.

places of worship. No injury shall be done to such buildings, nor any insult be offered to the religious worship of the Americans. American citizens shall not injure any Japanese temple or Mia, or offer any insult or injury to Japanese religious ceremonies, or to the objects of their worship.

The Americans and Japanese shall not do anything that may be calculated to excite religious animosity. The Government of Japan has already abolished the practice of trampling on religious emblems.—Treaty with Japan, 1858, Article VIII.

The citizens or subjects of each of the Contracting Parties shall enjoy in the territories of the other entire liberty of conscience, and, subject to the laws, ordinances, and regulations, shall enjoy the right of private or public exercise of their worship, and also the right of burying their respective countrymen, according to their religious customs, in such suitable and convenient places as may be established and maintained for that purpose.—Treaty with Japan, 1894, Article I.

### Liberty of Religion in Acquired Territory

The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the Religion which they profess.<sup>3</sup>—Treaty with France, 1803, regarding the Louisiana Purchase, Article III, p. 509.

### Freedom of Religion for Prisoners of War

Prisoners of war shall enjoy every latitude in the exercise of their religion, including attendance at their own church services, provided only they comply with the regulations for order and police issued by the military authorities.<sup>4</sup>—First Hague Conventions, 1899, Annex to the Convention—Regulations: Article XVIII, p. 2051.

### Sparing of Religious Property During Sieges

In sieges and bombardments all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.

The besieged should indicate these buildings or places by some particular and visible signs, which should previously be notified to the assailants.<sup>5</sup>—First Hague Conventions, 1899, Annex to the Convention—Regulations: Article XXVII, pp. 2052, 2053.

### Religious Liberty in Occupied Territory

Family honours and rights, individual lives and private property, as well as religious convictions and liberty, must be respected.

Private property cannot be confiscated.<sup>6</sup>—*Ibid.*, Article XLVI, p. 2055 (1899).

### Religious Property Exempted From Confiscation

The property of the communes, that of religious, charitable, and educational institutions, and those of arts and science, even when State property, shall be treated as private property.

All seizure of, and destruction, or intentional damage done to such institutions, to historical monuments, works of arts or science, is prohibited, and should be made the subject of proceedings.<sup>7</sup>—*Ibid.*, Article LVI (1899), pp. 2056, 2057.

### Exemption of Religious Property From Capture in Wartime

Vessels charged with religious, scientific, or philanthropic missions are likewise exempt from capture.—Second Hague Conventions, 1907, Article IV, p. 2348.

### Freedom of Conscience and Worship for United States Citizens in Mandated Territories

The United States and its nationals shall receive all the benefits of the engagements of Japan defined in Articles 3, 4, and 5 of the aforesaid Mandate, notwithstanding the fact that the United States is not a member of the League of Nations.

It is further agreed between the High Contracting Parties as follows: (1) Japan shall insure in the islands complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; American missionaries of all such religions shall be free to enter the islands and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the islands; it being understood, however, that Japan shall have the right to exercise such control as may be necessary for the maintenance of public order and good government and to take all measures required for such control.\*—Treaty with Japan, 1922, Article II, p. 2725.

[For the benefits under the League of Nations provisions referred to under Article 2, see the following portions of the League mandate to Great Britain: Preamble and articles 2, 9 to safeguard the civil and religious rights of Jews and non-Jews in Palestine.

[Articles 13, 14 deal with rights of and access to holy places.

[Article 15 enjoins complete freedom of conscience and worship (subject to public order and morality); no racial or religious discrimination.

[Article 16. Supervision over religious and eleemosynary bodies limited to maintaining order and good government. No religious discrimination.

[Article 20. "Religious, social and other conditions" to be considered in participating in League policies for combating disease.

[Article 23. Holy days to be regarded as legal rest days for the members of the respective religious communities."—*Ibid.*, pp. 4228-4232.]

### Liberty of Religious Propagation

The Signatory Powers exercising sovereign rights or authority in African territories will . . . protect and favor, without distinction of nationality or of religion, the religious, scientific or charitable institutions and undertakings created and organized by the

nationals of the other Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention, which aim at leading the natives in the path of progress and civilization. Scientific missions, their outfits and their collections, shall likewise be the object of special solicitude.

Freedom of conscience and the free exercise of all forms of religion are expressly guaranteed to all nations of the Signatory Powers and to those of the States, Members of the League of Nations, which may become parties to the present Convention. Accordingly, missionaries shall have the right to enter into, and to travel and reside in, African territory with a view to pursuing their religious work.<sup>10</sup>—General Multilateral Treaties, 1919, [concerning Africa], Article 11, pp. 4853, 4854.

#### **Refusal of Extraditions for Offenses Against Religion**

Extradition will not be granted: . . . (f) when the offense is purely military or directed against religion.—Multilateral Treaties Between the United States of America and other American Republics, 1933, Article 3, pp. 4801, 4802.<sup>11</sup>

#### **Rights of Religion for Americans in China Treaty Ports<sup>12</sup>**

Citizens of the United States residing or sojourning at any of the ports open to foreign commerce shall enjoy all proper accommodation in obtaining houses and places of business, or in hiring sites from the inhabitants on which to construct houses and places of business, and also hospitals, churches and cemeteries. The local authorities of the two Governments shall select in concert the sites for the foregoing objects, having due regard to the feelings of the people in the location thereof; and the parties interested will fix the rent by mutual agreement, the proprietors on the one hand not demanding any exorbitant price, nor the merchant on the other unreasonably insisting on particular spots, but each conducting with justice and moderation. And any desecration of said cemeteries by subjects of China shall be severely punished according to law.—Treaty with China, 1844, Article XVII, p. 201.

### Religious Rights to Western Christians and Their Chinese Converts

The principles of the Christian religion, as professed by the Protestant and Roman Catholic churches, are recognized as teaching men to do good, and to do to others as they would have others do to them. Hereafter those who quietly profess and teach these doctrines shall not be harassed or persecuted on account of their faith. Any person, whether citizen of the United States or Chinese convert who, according to these tenets, peaceably teach and practice the principles of Christianity, shall in no case be interfered with or molested.—Treaty with China, 1858, Article XXIX, pp. 220, 221.

### Reciprocal Religious Rights in Treaty Ports

The twenty-ninth article of the treaty of the eighteenth of June 1858, having stipulated for the exemption of Christian citizens of the United States and Chinese converts from persecutions in China on account of their faith, it is further agreed that citizens of the United States in China of every religious persuasion, and Chinese subjects in the United States shall enjoy entire liberty of conscience, and shall be exempt from all disability or persecution on account of their religious faith or worship in either country. Cemeteries for sepulture of the dead, of whatever nativity or nationality, shall be held in respect and free from disturbance or profanation.—Treaty with China, 1868, Article IV, p. 235.

### Definition of Religious Rights of Missionaries and Their Chinese Converts

The principles of the Christian religion, as professed by the Protestant and Roman Catholic Churches, are recognized as teaching men to do good and to do to others as they would have others do to them. Those who quietly profess and teach these doctrines shall not be harassed or persecuted on account of their faith. Any person, whether citizen of the United States or Chinese convert, who, according to these tenets, peaceably teaches and practices the principles of Christianity shall in no case be interfered with or

molested therefor. No restrictions shall be placed on Chinese joining Christian churches. Converts and non-converts, being Chinese subjects, shall alike conform to the laws of China; and shall pay due respect to those in authority, living together in peace and amity; and the fact of being converts shall not protect them from the consequences of any offence they may have committed before or may commit after their admission into the church, or exempt them from paying legal taxes levied on Chinese subjects generally, except taxes levied and contributions for the support of religious customs and practices contrary to their faith. Missionaries shall not interfere with the exercise by the native authorities of their jurisdiction over Chinese subjects; nor shall the native authorities make any distinction between converts and non-converts, but shall administer the laws without partiality so that both classes can live together in peace.

Missionary societies of the United States shall be permitted to rent and to lease in perpetuity, as the property of such societies, buildings or lands in all parts of the Empire for missionary purposes and, after the title deeds have been found in order and duly stamped by the local authorities, to erect such suitable buildings as may be required for carrying on their good work.—Treaty with China, 1903, Article XIV, pp. 268, 269.

### Reciprocal Recognition of Liberty of Conscience and Worship

There shall be an entire and perfect liberty of conscience allowed to the subjects and inhabitants of each party, and to their families; and no one shall be molested in regard to his worship, provided he submits, as to the public demonstration of it, to the laws of the country: There shall be given, moreover, liberty, when any subjects or inhabitants of their party shall die in the territory of the other, to bury them in the usual burying-places, or in decent and convenient grounds to be appointed for that purpose, as occasion shall require; and the dead bodies of those who are buried shall not in any wise be molested. And the two contracting parties

shall provide, each one in his jurisdiction, that their respective subjects and inhabitants may henceforward obtain the requisite certificates in cases of deaths in which they shall be interested.<sup>13</sup>—Treaty with the Netherlands, 1782, Article IV, pp. 1234, 1235.

### Freedom of Belief

It is likewise agreed that the most perfect and entire security of conscience shall be enjoyed by the citizens of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties, who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent and suitable places, and shall be protected from violation or disturbance.<sup>14</sup>—Treaty with Colombia, 1824, Article XI, p. 295.

### Freedom of Belief and Worship

The citizens of the United States residing in the territories of the Republic of Venezuela shall enjoy the most perfect and entire security of conscience, without being annoyed, prevented, or disturbed on account of their religious belief. Neither shall they be annoyed, molested, or disturbed in the proper exercise of their religion in private houses, or in the chapels or places of worship, appointed for that purpose, with the decorum due to divine worship, and with due respect to the laws, usages, and customs of the country. Liberty shall also be granted to bury the citizens of the United States who may die in the territories of the Republic of Venezuela, in convenient and adequate places, to be appointed and established by themselves for that purpose, with the knowledge of the local authorities, or in such other places of sepulture as may be chosen by the friends of the deceased; nor shall the funerals or sepulchres of the dead be disturbed in any wise nor upon any account. In like manner, the citizens of Venezuela shall enjoy within

the Government and territories of the United States a perfect and unrestrained liberty of conscience and of exercising their religion publicly or privately, within their own dwellinghouses, or in the chapels and places of worship appointed for that purpose, agreeable to the laws, usages, and customs of the United States.<sup>35</sup>—Treaty with Venezuela, 1836, Article XIV, p. 1835.

### Worship Allowed "According to the System of Tolerance"

The citizens of the United States and the citizens of the Republic of Costa Rica, respectively, residing in any of the territories of the other party, shall enjoy in their houses, persons, and properties the protection of the Government, and shall continue in possession of the guarantees which they now enjoy. They shall not be disturbed, molested, or annoyed in any manner on account of their religious belief, nor in the proper exercise of their religion, either within their own private houses or in the places of worship destined for that purpose, agreeably to the system of tolerance established in the territories of the two high contracting parties; provided they respect the religion of the nation in which they reside, as well as the constitution, laws, and customs of the country. Liberty shall also be granted to bury the citizens of either of the two high contracting parties who may die in the territories aforesaid, in burial-places of their own, which in the same manner may be freely established and maintained; nor shall the funerals or sepulchres of the dead be disturbed in any way or upon any account.<sup>36</sup>—Treaty with Costa Rica, 1851, Article XII, p. 345.

### Liberty of Conscience, Worship, and Religious Work

The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate

buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the nations hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by its nationals.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

[Nothing herein contained shall be construed to affect existing statutes of either country in relation to the immigration of aliens or the right of either country to enact such statutes.]

The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they may also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained

for the purpose, subject to the reasonable mortuary and sanitary laws and regulations of the place of burial."—Treaty with Germany, 1923, Articles I and V, pp. 4191, 4193.

### Religious Liberty and the United Nations

Article 1, p. 7.

"The Purposes of the United Nations are: . . .

"3. To achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

"1. The General Assembly shall initiate studies and make recommendations for the purpose of: . . .

"b. . . . assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Article 55, pp. 15, 16.

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: . . .

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Article 62, section 2, p. 16.

"1. The Economic and Social Council . . .

"2. . . . may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

Article 76, pp. 18, 19.

"The basic objectives of the trusteeship system, . . . shall be: . . .

"c. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."—Treaty Series, No. 993.

## DISCUSSION

<sup>1</sup> Although this treaty was superseded by the treaty of 1805, the principle it sets forth is in keeping with the studied omission from the Constitution of the United States, of any reference to God or the espousing of religion, the Constitutional specification that "no religious test shall ever be required as a qualification to any office or public trust under the United States" (Article VII), and Amendment I, which prohibits the Congress of the United States from legislating concerning the establishment for the free exercise of religion. Article XI of the treaty with Tripoli, here quoted, although not in the original Arabic text, was inserted in the official English text sent to the United States by the United States Minister, Joel Barlow, and then was ratified by the Senate.

<sup>2</sup> A very similar provision was made in Article XV of the Treaty with Algiers executed in 1815 and 1816.

<sup>3</sup> This included the right to hold church property without interference, and the same rights were specified or granted in the Spanish Treaty of 1819 ceding Florida (Art. V); in the Mexican Treaty of 1848 which closed the Mexican war (Art. IX), and that of 1853 which ratified the Gadsden Purchase (Art. V); in the Russian Treaty of 1867 ceding Alaska (Arts. II and III); in the Spanish Treaty of 1898, closing the Spanish-American war (Art. X); and in the Danish Treaty of 1916, ceding the Danish West Indies (Art. II and VI). Because in 1848 and 1853 Mexico had a government to which a specific church was organically joined, the treaties of those years have preambles stating that they are effected in the name and under the protection of the Almighty God. For the same reason, the treaties with Colombia in 1824, with Russia in 1824 and 1832, with Brazil in 1828, with Chile in 1832, with Costa Rica in 1851 and Paraguay, 1859, were executed "in the name of God," or "in the name of the Trinity."

<sup>4</sup> This was also provided in the Second Hague Convention of 1907 (Art. XVIII), and in Article XVI of the General Multilateral Treaties of 1929. Article XX of the later treaty provided that prisoners of war should have twenty-four consecutive hours of rest each week preferably on Sunday.

<sup>5</sup> This was repeated in the Second Hague Convention of 1907 for both land (Art. XXVII) and naval warfare (Art. V).

<sup>6</sup> This was repeated in the Conventions of 1907 (Art. XLVI).

<sup>7</sup> This was repeated in the Hague Conventions of 1907 (Art. LVI).

<sup>8</sup> Similar provisions appeared in the convention with France respecting the Cameroons and Togoland in 1923 (Art. II); with Belgium

respecting East Africa in 1923-24 (Art. II); with Great Britain in respect to the Cameroons, East Africa, and Togoland in 1925 (Art. II). The Treaty with Iraq in 1930 (Art. II and IV) recognized similar liberties.

<sup>9</sup> Similar provisions were maintained in the mandate to France respecting Syria and Lebanon in 1924.

<sup>10</sup> A treaty concerning the Congo in 1891 (Art. IV) had previously given "full and entire liberty of conscience" in the maintenance of missions. A treaty concerning Madagascar in 1867 (Art. II) while granting freedom of worship to Americans, made the building of new places of worship subject to permission of the government. Entire liberty of conscience was granted reciprocally to United States citizens in China and Chinese citizens in the United States in a treaty with China executed in 1868. Freedom to missionaries was granted by Siam treaties concluded in 1856, 1920, 1937.

<sup>11</sup> "Mexico signs the Convention on Extradition in 1933 with the declaration with respect to Article 3, paragraph f, that the internal legislation of Mexico does not recognize offenses against religion."—Multilateral Treaties Between United States of America and Other American Republics, 1933, Reservations, p. 4805.

<sup>12</sup> This series of treaties with China is given as a unit because it shows the progression from a one-sided demand by the more powerful party for extraterritorial privileges in treaty ports, to a genuine recognition of reciprocal rights to liberty of faith and worship.

<sup>13</sup> This is the first of a long series of *reciprocal* treaty provisions for religious liberty. The same article, practically, was incorporated into the treaties with Sweden (1783) (Art. V), Sweden and Norway (1816) (Art. XII) and 1827 (Art. XVII), and, in less specific wording, with Prussia (1785) (Art. XI) and 1799 (Art. XII). To avoid repetition, it is noted here that all these reciprocal treaties (except Hawaii, 1849) guarantee the right of burial.

<sup>14</sup> With the Colombia treaty of 1824 begins an interesting progression in varying degrees of religious freedom. In the earliest group of treaties with countries in the Western Hemisphere "perfect and entire security of conscience" seems to be defined as freedom from molestation for religious *belief*, with no mention of freedom of worship, so long as the laws and usages of the country are respected. The wording is nearly identical in the following treaties: Central American Federation (1825) (Art. XIII); Brazil (1828) (Art. XIII); Chile (1832) (Art. XI); Peru-Bolivian Federation (1836) (Art. X); Ecuador (1839) (Art. XIV); Guatemala (1849) (Art. XIII); Peru (1851) (Art. XX), (1870) (Art. XX), (1887) (Art. XVI); Bolivia (1858) (Art. XIV). The same pro-

visions in variant forms appear in the treaties with Mexico (1831) (Art. XV); Hawaii (1849 (Art. XI), including a non-interference clause regarding Hawaiian schools); and Prague (1859) (Art. XIV). This last article grants permission to Americans to hold religious services in private dwellings or consular offices.

<sup>35</sup> The next step is the specific guarantee of the right of worship as well as belief. Unless the Mexico treaty of 1831, already mentioned, is meant to include worship in the general term "religion," which it uses in place of "religious belief," the Venezuela Article XIV of 1836 is the first to include freedom of worship since the early treaties with The Netherlands, Norway, Sweden, and Prussia. This same article is repeated in the treaties with New Granada (Colombia), 1846 (Art. XIV); Salvador, 1850 (Art. XIV), and 1870 (Art. XIV); and, in different wording, with the Argentine Confederation 1853 (Art. XIII). Several later treaties contain somewhat similar provisions with the omission of the qualification of "proper" worship—with Venezuela, 1860 (Art. IV); Haiti, 1864 (Art. VIII); Dominican Republic, 1867 (Art. IV); Tonga, 1886 (Art. XIII).

<sup>36</sup> In three treaties—with Costa Rica, 1851; Honduras, 1864 (Art. XII); and Nicaragua, 1867 (Art. XII)—the stipulation "agreeably to the system of tolerance established in the territories of the two high contracting parties" may or may not have been inserted intentionally for that purpose, but a strict interpretation of the words would result in toleration only.

<sup>37</sup> Provisions identical with those of the treaty with Germany were included in those made with Hungary, 1924 (Art. I and V); Estonia, 1925 (Art. I and V); Salvador, 1926 (Art. I and V); Honduras, 1927 (Art. I and V); Austria, 1928 (Art. I and V); Latvia, 1928 (Art. I and V); Norway, 1928-29 (Art. I and V); Poland, 1931 (Art. I and V); Finland, 1934 (Art. I and V); and Liberia, 1938 (Art. I and V).

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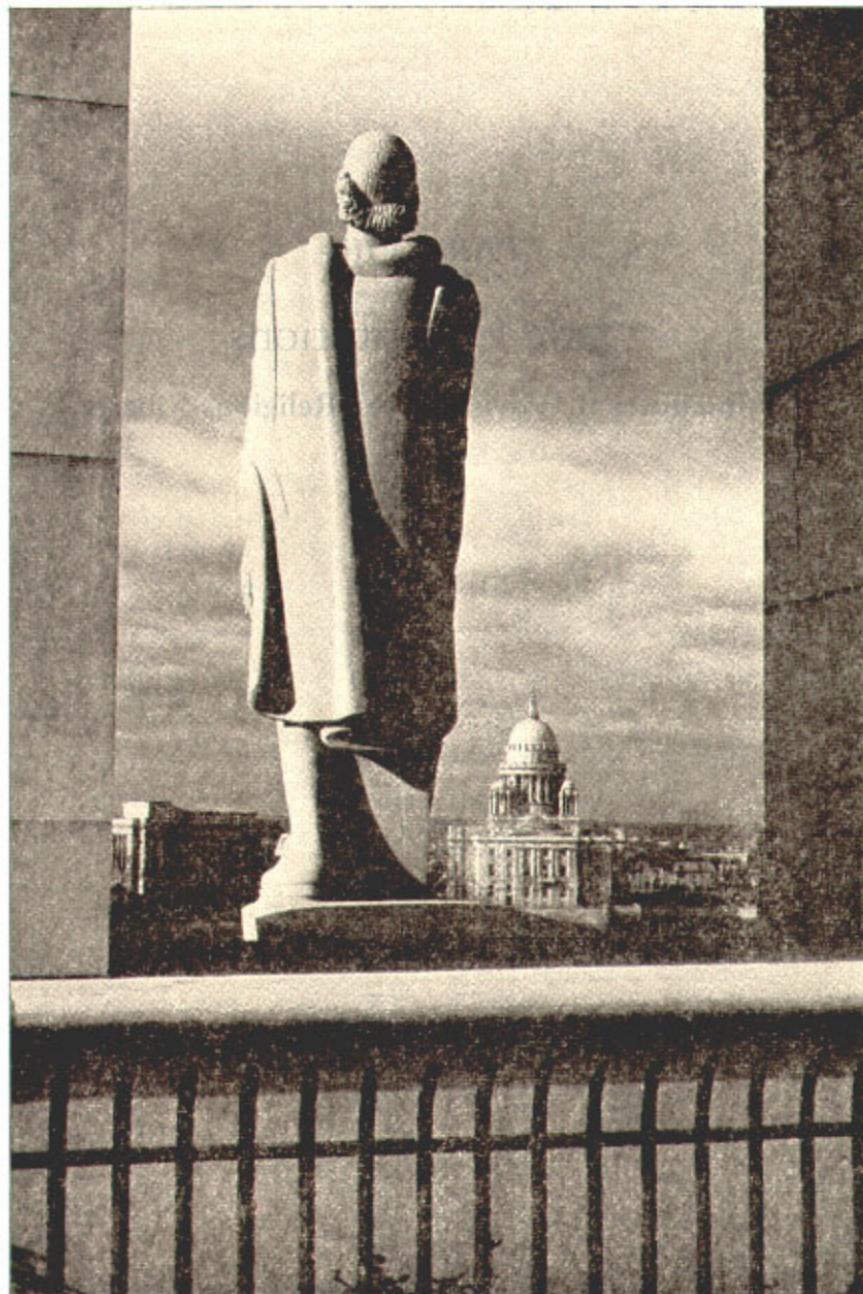
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**PART VIII**

**State Constitutions**

**Fundamental Provisions for Religious Liberty**



SOISELMAN

The Statue of Roger Williams Looks Out Over the City He Founded,  
While the Rhode Island Capitol Rises in the Distance

## Religious Liberty Guaranteed or Restricted in State Constitutions

IT may be said in general that the States have lagged behind the Federal Government in granting constitutional religious freedom. But in this regard some States have been far more liberal than others. Since in each particular case it is a State constitution, rather than the Federal, to which the prosecuted person is accused of running counter, it is all-important to know the wording of the State constitution under which one is living. Does it guarantee or restrict liberty of religious belief and practice?

The provisions of the State constitutions which either guarantee or restrict the rights of conscience are here inserted, though in the fundamental laws very few restrictions are made upon the rights of the individual; and when they are made, they not infrequently manifest their injustice and incompatibility with freedom by being absolutely contradictory to some of the provisions of the declaration of rights. To illustrate: Section 26 of the declaration of rights of the constitution of Arkansas declares that "no religious test shall ever be required of any person as a qualification to vote or hold office, nor shall any person be rendered incompetent to be a witness on account of his religious belief"; and then in article 19, section 1, we find the following: "No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court." In other States ministers of the gospel are disqualified from holding any civil office.

In the State of Vermont the declaration is made that "every sect or denomination of Christians ought to observe the Sabbath, or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God." Thus it is evident that the religio-political ideas of medieval Europe have never been fully eradicated from our political institutions; but absolute religious liberty can never be attained while these church-and-state provisions remain on our statute books.

Let the reader note that, in connection with the constitutional provision in some States for the support of public schools, we have brought in the prohibitions on the teaching of religion in these schools. This presents a new angle from which to view true liberty. The issue is acute at the present time.

The State constitutions here quoted are revised up to 1945.

## ALABAMA \*

### PREAMBLE

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquillity and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama:

### ARTICLE I. DECLARATION OF RIGHTS

That the great, general and essential principles of liberty and free government may be recognized and established, we declare:

SECTION 1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

SECTION 3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this state; and that the civil rights, privileges and capacities of any citizen shall not be, in any manner, affected by his religious principles.

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\* In the arrangement of the constitutions, the marks of ellipsis are omitted where sections are left out, as the numbering of the sections sufficiently indicates the omission. Where irrelevant matter has been omitted from sections, the omission is indicated in the usual way.

## ARTICLE XIV. EDUCATION

SECTION 263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

## ARIZONA

## ARTICLE II. DECLARATION OF RIGHTS

SECTION 12. The liberty of conscience \* secured by the provisions of this constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

## ARTICLE XI

SECTION 7. No sectarian instruction shall be imparted in any school or state educational institution that may be established under this constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the state, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the state, or with the rights of others.

## ARTICLE XX

First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this

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\* Sunday closing. This section does not deprive the state of police power to provide for a day of rest at periodic intervals. *Elliott v. State*, 29, Ariz. 389, 242 Pac. 340, 46 A. L. R., 284.

state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

## ARKANSAS

### ARTICLE II. DECLARATION OF RIGHTS

SECTION 18. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

SECTION 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences: no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination, or mode of worship above any other.

SECTION 25. Religion, morality, and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

SECTION 26. No religious test shall ever be required of any person as a qualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

SECTION 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

## ARTICLE XIX. MISCELLANEOUS PROVISIONS

SECTION 1. No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court.

## CALIFORNIA

## ARTICLE I. DECLARATION OF RIGHTS

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

## ARTICLE IX. EDUCATION

SECTION 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

## ARTICLE XX. MISCELLANEOUS SUBJECTS

SECTION 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.<sup>1</sup>

## COLORADO

## ARTICLE II. BILL OF RIGHTS

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured

shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

#### ARTICLE IX. EDUCATION

SECTION 7. Neither the General Assembly, nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose.

SECTION 8. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

### CONNECTICUT

#### ARTICLE I. DECLARATION OF RIGHTS

SECTION 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this State; provided that the right hereby declared and established, shall not be so construed as to excuse acts of

licentiousness, or to justify practices inconsistent with the peace and safety of the state.

SECTION 4. No preference shall be given by law to any Christian sect or mode of worship.

#### ARTICLE VII. OF RELIGION

SECTION 1. It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship, in the mode most consistent with the dictates of their consciences; no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church or religious association. But every person now belonging to such congregation, church, or religious association, shall remain a member thereof, until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this state, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship, by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner.

SECTION 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

#### DELAWARE

#### ARTICLE I. BILL OF RIGHTS

SECTION 1. Although it is the duty of all men frequently to assemble together for the public worship of Almighty God; and piety and morality, on which the prosperity of communities depends, are thereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the

erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

SECTION 2. No religious test shall be required as a qualification to any office, or public trust, under this State.

[In article 1 there are nineteen sections. The article closes with this declaration:]

We declare that everything in this article is reserved out of the general powers of government hereinafter mentioned.

## FLORIDA

### DECLARATION OF RIGHTS

SECTION 5. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness or practices subversive of, or inconsistent with, the peace or moral safety of the State or society.

SECTION 6. No preference shall be given by law to any church, sect or mode of worship and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution.

SECTION 24. This enunciation of rights shall not be construed to impair or deny others retained by the people.

### ARTICLE XII. EDUCATION

SECTION 13. No law shall be enacted authorizing the diversion or the lending of any County or District School Funds, or the appropriation of any part of the permanent available school Fund to any other than school purposes; nor shall the same, or any

part thereof, be appropriated to or used for the support of any sectarian school.

## GEORGIA

### ARTICLE I

#### SECTION I

PARAGRAPH II. Protection to person and property is the paramount duty of government, and shall be impartial and complete.

PARAGRAPH XIII. No inhabitant of this State shall be molested in person or property, or prohibited from holding any public office or trust, on account of his religious opinions; but the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

PARAGRAPH XIV. No money shall ever be taken from the public Treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution.

## IDAHO

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State. . . . No person shall be required to attend or support any ministry or place of worship, religious sect or denomination or pay tithes, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

### ARTICLE IX. EDUCATION AND SCHOOL LANDS

SECTION 5. Neither the legislature nor any county, city, town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys

whatever, anything in aid of any church or sectarian, or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian or religious purpose.

SECTION 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this Article, nor shall any teacher or district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this Article.

## ILLINOIS

### ARTICLE II. BILL OF RIGHTS

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right; privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the state. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

## ARTICLE VIII. EDUCATION

SECTION 3. Neither the general assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the state or any such public corporation to any church, or for any sectarian purpose.

## INDIANA

## ARTICLE I. BILL OF RIGHTS

SECTION 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

SECTION 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SECTION 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry against his consent.

SECTION 5. No religious test shall be required, as a qualification for any office of trust or profit.

SECTION 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

SECTION 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

SECTION 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.

## ARTICLE VIII. EDUCATION

SECTION 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever.

## IOWA

## ARTICLE I. BILL OF RIGHTS

SECTION 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

SECTION 4. No religious test shall be required as a qualification for any office of public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion. . . .

SECTION 6. All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

## KANSAS

## BILL OF RIGHTS

SECTION 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

## ARTICLE VI. EDUCATION

SECTION 8. No religious sect or sects shall ever control any part of the common-school or university funds of the state.\*

## KENTUCKY

## PREAMBLE

We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

## BILL OF RIGHTS

SECTION 1. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First. The right of enjoying and defending their lives and liberties.

Second. The right of worshipping Almighty God according to the dictates of their consciences.

SECTION 5. No preference shall ever be given by laws to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in any wise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

SECTION 26. To guard against transgression of the high powers which we have delegated, We Declare that everything in this

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\* Repeating Lord's prayer or twenty-third psalm in school not prohibited. *Billard v. The Board of Education*, 69 K. 53, 57, 76 P. 422.

Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

#### EDUCATION

SECTION 189. No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denomination school.

#### GENERAL PROVISIONS

SECTION 232. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

### LOUISIANA

#### ARTICLE I

SECTION 4. Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion, nor prohibiting the free exercise thereof; nor shall any preference ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship.

#### ARTICLE IV

SECTION 8. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship. No appropriation from the State treasury shall be made for private, charitable or benevolent purposes to any person or community; provided, this shall not apply to . . . public charitable institutions conducted under State authority.

## ARTICLE XII

SECTION 13. No public funds shall be used for the support of any private or sectarian school.

## MAINE

## ARTICLE I. DECLARATION OF RIGHTS

SECTION 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;—and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers and contracting with them for their support and maintenance.

## MARYLAND

## DECLARATION OF RIGHTS

We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare: . . .

ARTICLE 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law to be molested in his person or estate, on account of his religious persuasion or pro-

profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that, under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor in this world or the world to come.

ARTICLE 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

#### ARTICLE III. LEGISLATIVE DEPARTMENT

SECTION 11. No minister or preacher of the gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible as senator or delegate.

### MASSACHUSETTS

#### A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OF MASSACHUSETTS

ARTICLE 2. It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the SUPREME BEING, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace or obstruct others in their religious worship.

ARTICLE III. As the public worship of GOD and instructions in piety, religion and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made, or entered into by such society:—and all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

## MICHIGAN

### ARTICLE II. DECLARATION OF RIGHTS

SECTION 3. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the Gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious beliefs.

## MINNESOTA

## ARTICLE I. BILL OF RIGHTS

SECTION 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of, or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

SECTION 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

## ARTICLE VIII. EDUCATION

SECTION 3. . . . In no case shall . . . any public moneys or property, be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught.

## MISSISSIPPI

## ARTICLE III. BILL OF RIGHTS

SECTION 18. No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be

held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or exclude the Holy Bible from use in any public school of this state.

#### ARTICLE VIII. EDUCATION

SECTION 208. No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated towards the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

#### ARTICLE XIV. GENERAL PROVISIONS

SECTION 265. No person who denies the existence of a Supreme Being shall hold any office in this state.

### MISSOURI

#### ARTICLE II. BILL OF RIGHTS

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others.

SECTION 6. That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed, or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

SECTION 7. That no money shall ever be taken from the pub-

lic treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship.

SECTION 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages and cemeteries.

#### ARTICLE XI. EDUCATION

SECTION 11. Neither the General Assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose; or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever.<sup>2</sup>

### MONTANA

#### ARTICLE III. A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the state, or opposed to the civil authority thereof,

or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

#### ARTICLE XI. EDUCATION

SECTION 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make, directly, or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

SECTION 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

### NEBRASKA

#### ARTICLE I. BILL OF RIGHTS

SECTION 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense

with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

#### ARTICLE VII. EDUCATION

SECTION 11. No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes, nor shall the state accept any grant, conveyance, or bequest of money, lands or other property to be used for sectarian purposes. Neither the state Legislature nor any county, city or other public corporation, shall ever make any appropriation from any public fund, or grant any public land in aid of any sectarian or denominational school or college, or any educational institution which is not exclusively owned and controlled by the state or a governmental subdivision thereof. No religious test or qualification shall be required of teacher or student, for admission to or continuance in any public school or educational institution supported in whole or in part by public taxation.

### NEVADA

#### ARTICLE I. DECLARATION OF RIGHTS

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

#### ARTICLE XI. EDUCATION

SECTION 2. The legislature shall provide for a uniform system of common school, . . . and any school district neglecting to estab-

lish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction. . . .

SECTION 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution.

SECTION 10. No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.

## NEW HAMPSHIRE

### PART I. BILL OF RIGHTS

ARTICLE 4. Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience.

ARTICLE 5. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion: provided he doth not disturb the public peace or disturb others in their religious worship.

ARTICLE 6. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of this state have a right to empower, and do hereby fully empower, the legislature, to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies, within this state, to make adequate provision, at their

own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality. <sup>a</sup>

*Provided, notwithstanding,* that the several towns, parishes, bodies corporate, or religious societies, shall, at all times, have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no person, of any one particular religious sect or denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect, or denomination.

And every denomination of Christians, demeaning themselves quietly, and as good subjects, of the state, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another, shall ever be established by law.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain, and be in the same state as if this constitution had not been made.

## NEW JERSEY

### ARTICLE I. RIGHTS AND PRIVILEGES

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretence whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect, in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles.

## NEW MEXICO

## ARTICLE II

SECTION 11. Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.

## ARTICLE VII

SECTION 3. The right of any citizen of the state to vote, hold office, or sit upon juries, shall never be restricted, abridged or impaired on account of religion, race, language or color, or inability to speak, read or write the English or Spanish languages, except as may be otherwise provided in this constitution; and the provisions of this section . . . of this article shall never be amended except upon a vote of the people of this state in an election which at least three-fourths of the electors voting in the whole state, and at least two-thirds of these voting in each county of the state shall vote for such amendment.

## ARTICLE XII. EDUCATION

SECTION 3. The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.

SECTION 9. No religious test shall ever be required as a condition of admission into the public schools or any educational institution of this state either as a teacher or student, and no

teacher or student of such school or institution shall ever be required to attend or participate in any religious service whatsoever.

## NEW YORK

### ARTICLE I

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

SECTION 11. . . . No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.\*

### ARTICLE XI. EDUCATION

SECTION 4. Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning. †

## NORTH CAROLINA

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own

\* Section 11 of Article 1 was added as an amendment by the Constitutional Convention of 1938 and approved by vote of the people, November 8, 1938.

† Last clause from amendment of 1938, and renumbered Article XI, Section 4.

consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

ARTICLE VI. SUFFRAGE AND ELIGIBILITY TO OFFICE

SECTION 8. The following classes of persons shall be disqualified for office: First, all persons who shall deny the being of Almighty God. Second, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law. \*

ARTICLE IX. EDUCATION

SECTION 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

NORTH DAKOTA

ARTICLE I. DECLARATION OF RIGHTS

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

SECTION 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE VIII. EDUCATION

SECTION 152. All colleges, universities, and other educational

institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

#### ARTICLE XVI. COMPACT WITH THE UNITED STATES

The following article shall be irrevocable without the consent of the United States and the people of this State:

SECTION 203. First. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

### OHIO

#### ARTICLE I. BILL OF RIGHTS

SECTION 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

#### ARTICLE VI. EDUCATION

SECTION 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this State for educational and religious purposes, shall

forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

SECTION 2. The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

## OKLAHOMA

### ARTICLE I. FEDERAL RELATIONS

SECTION 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. . . .

### ARTICLE II. BILL OF RIGHTS

SECTION 5. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

## OREGON

### ARTICLE I. BILL OF RIGHTS

SECTION 2. All men shall be secured in the natural right to worship Almighty God according to the dictates of their own consciences.

SECTION 3. No law shall in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SECTION 4. No religious test shall be required as a qualification for any office of trust or profit.

SECTION 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly.

SECTION 6. No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief, to affect the weight of his testimony.

SECTION 7. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

## PENNSYLVANIA

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

SECTION 4. No person who acknowledges the being of a God, and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

### ARTICLE X. EDUCATION

SECTION 2. No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

## RHODE ISLAND

ARTICLE I. DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS  
AND PRINCIPLES

In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, and maintained, and preserved, and shall be of paramount obligation in all legislative, judicial and executive proceedings.

SECTION 3. Whereas, Almighty God hath created the mind free; and all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and, whereas a principal object of our venerable ancestors, in their migration to this country and their settlement of this state, was, as they expressed it, to hold forth a lively experiment, that a flourishing civil state may stand and be best maintained with full liberty in religious concerns: we, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by argument to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

## SOUTH CAROLINA

## ARTICLE I. DECLARATION OF RIGHTS

SECTION 4. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press.

## ARTICLE IV

SECTION 3. No person shall be eligible to the office of Governor who denies the existence of the Supreme Being.

## ARTICLE XI. EDUCATION

SECTION 9. The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

## SOUTH DAKOTA

## ARTICLE VI. BILL OF RIGHTS

SECTION 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

## ARTICLE VIII

SECTION 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made

by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift or bequest of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

## TENNESSEE

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister, against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.

SECTION 4. That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State.

SECTION 6. That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

### ARTICLE IX. DISQUALIFICATIONS

SECTION 1. Whereas, Ministers of the Gospel are, by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no Minister of the Gospel, or Priest of any denomination whatever, shall be eligible to a seat in either House of the Legislature.

SECTION 2. No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

## ARTICLE XI. MISCELLANEOUS PROVISIONS

SECTION 15. No person shall, in time of peace, be required to perform any service to the public on any day set apart by his religion as a day of rest.

## TEXAS

## ARTICLE I. BILL OF RIGHTS

SECTION 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

SECTION 7. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

## ARTICLE VII. EDUCATION—THE PUBLIC FREE SCHOOLS

SECTION 5. . . . And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever: nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school.

## UTAH

## ARTICLE I. DECLARATION OF RIGHTS

SECTION 1. All men have the inherent and inalienable right to . . . worship according to the dictates of their consciences; . . . to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

SECTION 4. The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

## ARTICLE X

SECTION 13. Neither the Legislature nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church, sect or denomination whatever.

## VERMONT

## CHAPTER I. A DECLARATION OF THE RIGHTS

ARTICLE 3RD. That all men have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God: and that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner controul the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the sabbath or Lord's day,<sup>5</sup> and keep

up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

#### CHAPTER II

SECTION 64. . . . All religious societies, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

### VIRGINIA

#### ARTICLE I. BILL OF RIGHTS

SECTION 16. That religion or the duty which we owe to our creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.

#### ARTICLE IV

SECTION 58. . . . No man shall be compelled to frequent or support any religious worship, place, or ministry, whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect, their civil capacities. And the general assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every

person to select his religious instructor, and to make for his support such private contract as he shall please.

SECTION 59. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

SECTION 67. The General Assembly shall not make any appropriation of public funds, or personal property, or of any real estate, to any church, or sectarian society, association, or institution of any kind whatever, which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. . . .

## WASHINGTON

### ARTICLE I. BILL OF RIGHTS

SECTION 6. The mode of administering an oath or affirmation shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

SECTION 11. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

### ARTICLE IX. EDUCATION

SECTION 4. All schools maintained or supported wholly or in

part by the public funds shall be forever free from sectarian control or influence.

#### ARTICLE XXVI. COMPACT WITH THE UNITED STATES

The following ordinance shall be irrevocable without the consent of the United States and the people of this state.

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship. . . .

Fourth. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control, which shall be open to all the children of said state.

### WEST VIRGINIA

#### ARTICLE III. BILL OF RIGHTS

SECTION 11. Political tests, requiring persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths, of past alleged offenses, are repugnant to the principles of free government, and are cruel and oppressive. No religious or political test oath shall be required as a prerequisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment. Nor shall any person be deprived by law, of any right, or privilege, because of any act done prior to the passage of such law.

SECTION 15. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief; but all men shall be free to profess, and by argument, to maintain their opinions in matters of religion; and the same shall, in no wise, affect, diminish or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or author-

izing any religious society, or the people of any district within this State, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support, such private contract, as he shall please.

## WISCONSIN

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

### ARTICLE X. EDUCATION

SECTION 3. The legislature shall provide by law for the establishment of district schools, . . . and no sectarian instruction shall be allowed therein.

SECTION 6. Provision shall be made by law for the establishment of a state university, . . . and no sectarian instruction shall be allowed in such university.

## WYOMING

### ARTICLE I. DECLARATION OF RIGHTS

SECTION 7. Absolute arbitrary power over the lives, liberty

and property of freemen exists nowhere in a republic, not even in the largest majority.

SECTION 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

SECTION 19. No money of the state shall ever be given or appropriated to any sectarian or religious society or institution.

#### ARTICLE VI

SECTION 1. The rights of citizens of the state of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this state shall equally enjoy all civil, political and religious rights and privileges.

#### ARTICLE VII

SECTION 12. No sectarian instruction, qualifications, or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this Constitution.

#### ARTICLE XXI. ORDINANCES

SECTION 5. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

## DISCUSSION

## Marriage a Civil Contract (P. 333)

<sup>1</sup>This section is simply a constitutional provision for a firmly established American principle. The marriage contract is purely a civil contract, and the absence of religious ceremonies no more detracts from the validity of the marriage than does the absence of religious ceremonies detract from the validity of any other civil contract. In the history of American jurisprudence there is probably but a single isolated exception to this principle—a Massachusetts decision, *Milford v. Worcester* (towns of), 7 Mass., 55, 56, in which it was held that “parties are themselves prohibited from solemnizing their own marriages,” and that a marriage by mutual agreement, not in accordance with the statute, was void. Johnson’s *New Universal Cyclopaedia* (1881) says:

“In the United States, by the law which prevails very generally, if not, in fact, universally, throughout the States, marriage is regarded as wholly based upon contract, upon the present mutual consent of the parties, and no special forms are necessary to its validity. If a man and a woman, by words of present import, promise and agree with each other to be husband and wife, the contract and the resulting status of marriage are perfected; solemnization by a clergyman or by a civil magistrate, the presence of witnesses, and all the ceremonies and forms which are customarily used, even those provided for by statute, are nothing more than convenient means of perpetuating the evidence of the contract between the spouses, which itself constitutes the marriage; *they are not in the least essential to its efficacy*. Whenever certain preliminary steps, such as license, notice, and the like, are prescribed by statute, a failure to comply with these provisions does not impair the marriage which has been contracted without their presence; it simply subjects the delinquent parties to a slight pecuniary penalty. The words of the contract by which the parties signify their intention must be *in praesenti* (of a present force and operation), and they do not need to be followed by a cohabitation, since the status of marriage arises from the mental and not the physical union of the spouses. In this respect the United States law of marriage is identical with that which has long prevailed in Scotland, so that the decisions of the Scotch courts furnish valuable precedents which may be followed by our own tribunals.”—Art. “Marriage.”

The leading case on this question is that of *Dalrymple v. Dalrymple*, 161 *English Reports*, 665, 669, 670, the decision being written by

Sir William Scott, one of England's most distinguished judges. From that able opinion the following is taken:

"Marriage in its origin is a contract of natural law; it may exist between two individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind; it is the parent, not the child, of civil society. . . . In civil society it becomes a civil contract, regulated and prescribed by law and endowed with civil consequences. . . . It was natural enough that such a contract should, under the religious system which prevailed in Europe, fall under ecclesiastical notice and cognizance with respect both to its theological and its legal construction; though it is not unworthy of remark that amidst the manifold ritual provisions made by the divine Lawgiver of the Jews for various offices and transactions of life *there is no ceremony prescribed for the celebration of marriage.*

"At the Reformation this country disclaimed, amongst other opinions of the Romish Church, the doctrine of a sacrament in marriage, though still retaining the idea of its being of divine institution in its general origin; and on that account, as well as of the religious forms that were prescribed for its regular celebration, an *holy estate, holy matrimony*, but it likewise retained those rules of the canon law which had their foundation not in the sacrament or in any religious view of the subject, but in the *natural and civil contract of marriage.*"

On this question Mr. Bishop, in his *Commentaries on the Law of Marriage and Divorce*, says:

"We have seen that law compels no one to assume the matrimonial status. Therefore every marriage requires for its constitution a consent of the parties. The consent must be mutual; for, as there cannot be a husband without a wife, one of them cannot be married without the other. This mutual consent is in fact a contract, differing not essentially from other contracts. It is that circumstance without which the status of marriage is never superinduced upon the parties. And by the law of nature, by the canon law prior to the Council of Trent, perhaps by the law of England as it stood before the passage of the first marriage act, by the law of Scotland, and by the laws of several of the United States, *nothing need be added to this simple consent to constitute perfect marriage.*

"Even where a statute requires the marriage to be attended with specified formalities, in order to its validity, this mutual consent of the parties is no less essential. The forms are not a substitute for it. *They are but methods of declaring and substantiating it; having ref-*

*erence to the matter of publicity, or evidence.* If they are gone through with, without the added consent, the marriage is a nullity, as regards both the parties and third persons.”—Fifth edition, vol. 1, secs. 218, 219.

In *Dumaresly v. Fishly* (1821), 3 A. K. Marshall (Kentucky) 368, 370, Chief Justice Boyle said:

“Marriage is nothing but a contract; and to render it valid, it is only necessary, upon the principles of natural law, that the parties should be able to contract, willing to contract, and should actually contract. A marriage thus made without further ceremony was, according to the simplicity of the ancient common law, deemed valid to all purposes.”

Simon Greenleaf, also, in his *Treatise on the Law of Evidence* (14th ed.), volume 2, sec. 460, pp. 468, 469, says:

“Marriage is a civil contract *jure gentium*, to the validity of which the consent of parties, able to contract, is all that is required by natural or public law. . . . And though in most, if not all, the United States there are statutes regulating the celebration of the marriage rites, and inflicting penalties on all who disobey the regulations, yet it is generally considered that, in the absence of any positive statute declaring that all marriages not celebrated in the prescribed manner shall be absolutely void, or that none but certain magistrates or ministers shall solemnize a marriage, *any marriage, regularly made according to the common law, without observing the statute regulations, would still be a valid marriage.*”

The following is from the case of *Meister v. Moore* (1877), 96 United States, 76, the opinion being delivered by Mr. Justice Strong of the United States Supreme Court:

“That such a contract [*per verba de presenti*] constitutes a marriage at common law there can be no doubt, in view of the adjudications made in this country, from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract.”

### No State Money for Religious Teaching (P. 348)

<sup>2</sup>The American principle of absolute separation of the state from religion requires the state to carry out these provisions to the letter. If all men are equal—which is a self-evident truth—the Christian has no right whatever to the use of public funds or to the services of anyone hired by public money, for the propagation of the religion which he believes.

## Established Religion in New England (P. 352)

<sup>3</sup> This article, taken from the Constitution ratified in 1792, is a relic of the old colonial religious establishments. It is sectarian, in that it provides for the "support and maintenance of public *Protestant* teachers of piety, religion, and morality." It thus virtually establishes Protestantism as the state religion.

## Disqualifying the Atheist (P. 355)

<sup>4</sup> This article, by *reductio ad absurdum*, makes the injustice of disqualifying atheists from holding public trusts peculiarly manifest. "Persons who shall have been convicted . . . of any treason, or felony, or of any other crime" can hold office when legally "restored to the rights of citizenship;" but an atheist, never—unless he compromises his manhood by becoming a hypocrite and perjurer by swearing that he believes in God (when he does not), and then he is rewarded by having all disqualifications removed! This contemptible way of gaining accessions to Christianity from the servile classes has ever been a characteristic of state religion; in fact, is a necessary consequence of its existence. Gibbon, in relating how state Christianity first obtained the ascendancy in the Roman Empire, says:

"The exact balance of the two religions [paganism and Christianity] continued but a moment; and the piercing eye of ambition and avarice soon discovered that the profession of Christianity might contribute to the interest of the present, as well as of a future life. The hopes of wealth and honors, the example of an emperor, his exhortations, his irresistible smiles, diffused conviction among the venal and obsequious crowds which usually fill the apartments of a palace. The cities which signalized a forward zeal by the voluntary destruction of their temples, were distinguished by municipal privileges, and rewarded with popular donatives; and the new capital of the East gloried in the singular advantage that Constantinople was never profaned by the worship of idols. As the lower ranks of society are governed by imitation, the conversion of those who possessed any eminence of birth, of power, or of riches, was soon followed by dependent multitudes. The salvation of the common people was purchased at an easy rate, if it be true that, in one year, twelve thousand men were baptized at Rome, besides a proportionable number of women and children, and that a white garment, with twenty pieces of gold, had been promised by the emperor to every convert."—*Decline and Fall of the Roman Empire*, chapter 20.

The unbeliever, however, who will not compromise principle for any reward, not even the highest office in the land, is rewarded by being placed politically beneath the level of hypocrites and the basest felons! No wonder that John Adams wrote to Jefferson that "we think ourselves possessed, or at least we boast that we are so, of Liberty of conscience on all subjects and of the right of free inquiry and private judgment, in all cases," and then said, "yet how far are we from these exalted privileges in fact"! (See p. 163.)

John Stuart Mill, in discoursing on this subject in his essay "On Liberty," writes as follows:

"It will be said that we do not now put to death the introducers of new opinions; we are not like our fathers who slew the prophets; we even build sepulchers to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force. In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months imprisonment for uttering, and writing on a gate, some offensive words concerning Christianity. [A number of instances also might be cited in the United States, notably, *People v. Ruggles*, 8 Johnson (New York), 290; *State v. Chandler*, 2 Harrington (Delaware), 553; *Updegraph v. Commonwealth*, 11 Sergeant and Rawle (Pennsylvania), 394; and *Commonwealth v. Kneeland*, 20 Pickering (Massachusetts), 206.] Within a month of the same time, at the Old Bailey, two persons, on two separate occasions, were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner, for the same reason was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine that no person can be allowed to give evidence in a court of justice, who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but anyone else may be robbed or assaulted with

impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded, is that the oath is worthless, of a person who does not believe in a future state: a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honor); and would be maintained by no one who had the smallest conception how many of the persons in greatest repute with the world, both for virtues and for attainments, are well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecuting; a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in a future state, necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

"These, indeed, are but rags and remnants of persecutions, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind, that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong, permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution."—Chap. 2, pp. 42, 45.

Religious liberty must be absolute; for the same logic that would give the state the power to require belief in God, would give it the power to require belief in any other doctrine to which the majority might take a fancy.

#### Religion in Vermont (P. 363)

<sup>5</sup> As well might the state say that "every sect or denomination of Christians ought to baptize, partake of the Lord's supper, offer prayer three times a day, and read their Bibles regularly."

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**PART IX**

**Sunday Laws in the United States**

**Religious Liberty Denied by Law**



COURTESY, PHILADELPHIA "RECORD"

A Public Hearing Before the Joint Session of the Senate and House of Representatives of Pennsylvania  
on the Musmanno Local Option Bill on Sunday Observance, March 17, 1931

## Specific Religious Laws in the Various States

CONSTITUTIONS state broad principles; laws specify in detail how these principles are to be applied to the everyday life of the citizen. We have shown in Part VIII how the constitutions of the States have guaranteed or restricted religious liberty. We now confine our attention to the restrictive laws on religion, which the State legislatures have enacted and the courts have tested, carrying out the fundamental principles laid down in State constitutions. Again it will be evident that a great majority of these State laws and local ordinances pertain to the religious observance of a certain day of the week.

The Sunday-observance laws cited in this Part are not intended to embrace everything that can be found in the codes of the various States.\* The primary purpose in referring to them is to show that in most of the States there are religious laws of greater or less stringency, in spite of the fact that in America religion and government are supposed to be entirely separate. The inconsistency revealed in many cases is most striking. That the lawmakers must have had some questions in their minds concerning their right to legislate on purely religious matters is shown by the fact that in many States exemptions from the provisions of the Sunday laws are made for those who conscientiously observe another day than Sunday. The material in this Part is chiefly for reference.

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\* The laws given are from the latest official codes of the various States, supplemented where necessary by reference to statutes enacted since the codes were compiled. Readers who notice the lack of uniformity in grammatical construction, spelling, and punctuation should remember that the quotations cited are given exactly as they appear in the official edition of the codes of the various States.

PROVISIONS OF THE SEVERAL STATES PROHIBITING  
SECULAR LABOR, ETC., ON SUNDAY<sup>1</sup>

## Alabama

[Code of Alabama, 1940]

TITLE 9, SEC. 21. All contracts made on Sunday, unless for the advancement of religion, or in the execution, or for the performance of some work of charity, or in case of necessity, or contracts for carrying passengers or perishable freight or transmissions of telegrams or for the performance of any duty authorized or required by law to be done on Sunday, are void.

TITLE 14, SEC. 420. Any person who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing, or racing on that day; or who, being a merchant or shop-keeper, druggist excepted, keeps open the store on that day, shall be fined not less than ten nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than three months; but the provisions of this section do not apply to the running of railroads, stages, or steamboats, or other vessels navigating the waters of this state, or any manufacturing establishment which is required to be kept in constant operation. Nothing herein shall prevent the sale of gasoline or other motor fuels or motor oils on Sunday.

TITLE 14, SEC. 421. Any person or persons who play or engage in the playing of any baseball, or football, tennis, or golf on Sunday, in any public place or places where people resort for such purpose, shall be guilty of a misdemeanor.\*

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\* Certain exemptions are granted permitting the playing of golf, tennis, and baseball, and the operation of motion-picture shows on Sundays in cities above 15,000 population. However, the things permitted by legislative acts may be prohibited by municipal ordinance passed by the governing body of the city. To be effective, however, the ordinance must be submitted to the qualified electors of the city at the next election held for that purpose. "If a majority of the qualified electors participating in such election shall vote in favor of permitting any one or all of the acts prohibited by such ordinance, such ordinance as to such act or acts shall thereafter be of no force or effect and such acts shall be lawful in such city."

TITLE 14, SEC. 422. Any person who opens, or causes to be opened, for the purpose of selling or trading, any public market or place on Sunday, or opens, or causes to be opened, any stall or shop therein, or connected therewith, or brings anything for sale or barter to such market or place, or offers the same for sale therein on that day, or buys or sells therein on that day (including live stock or cattle), shall, on conviction, be punished.

### Arizona

[Arizona Code Annotated, 1939]

SEC. 43-5301. Any person who carries on or engages in the business of a barber on Sunday, shall be punished.

SEC. 67-405. [No permit shall be issued for a boxing or sparring match to be held on a Sunday.]

SEC. 72-113. (b., 7) [Liquor may not be sold by any hotel or under an on-sale or off-sale license from 1 a.m. to 12 noon on Sundays.]

### Arkansas

[1944 Cumulated Annotated Supplement to Pope's Digest  
of the Statutes of Arkansas 1937]

SEC. 3418. Every person, partnership, firm or corporation who shall, on the Sabbath or Sunday, be found laboring, or shall compel his apprentice or servant to labor or to perform other service than customary household duties of daily necessity, comfort or charity, or operators or employees of amusements in theaters and educational institutions, upon conviction thereof, shall be fined.

SEC. 3419. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the State, nor to such manufacturing establishments as require to be kept in continual operation.

SEC. 3420. No person who from religious belief keeps any other day than the first day of the week as the Sabbath shall be required to observe the first day of the week, usually called the Christian Sabbath, and shall not be liable to the penalties enacted against Sabbath breaking. Provided, no store or saloon shall be

kept open or business carried on there on the Christian Sabbath; and provided further, no person so observing any other day shall disturb any religious congregation by his avocation or employment.\*

SEC. 3421. Every person who shall, on Sunday, keep open any store or retail any goods, wares and merchandise, or keep open any dram shop or grocery, or who shall keep the doors of the same so as to afford ingress or egress, or retail or sell any spirits or wine, shall on conviction thereof, be fined.

SEC. 3422. Charity or necessity on the part of the customer may be shown in justification of the violation of the last preceding section.

SEC. 3423. [Horse racing or cock fighting forbidden on Sunday.]

SEC. 3424. Every person who shall, on the Christian Sabbath or Sunday, be engaged in any game of brag, bluff, poker, seven-up, three-up, twenty-one, vintun, thirteen cards, the odd trick, forty-five, whist, or at any other game at cards known by any name now known to the laws, or with any new name, for any bet or wager on such games, or for amusement, without any bet or wager, shall, on conviction thereof, be fined.

SEC. 3425. If any person shall be found hunting with a gun, with intent to kill game, or shooting for amusement on the Sabbath day, on conviction thereof he shall be fined.

SEC. 3426. If such offense should be committed by a minor, under the age of twenty-one years, and it shall be made to appear that the offense was committed by or with the consent or approbation of the parent or guardian of said minor, then such parent or guardian, as aforesaid, shall also be fined.

SEC. 3427. If any person shall be engaged in running a horse-race on the day known as the Christian Sabbath or Sunday, on a bet or wager or for sport or pastime, with or without such bet or wager, he shall be deemed guilty of a misdemeanor.

\* For the speech of Senator Crockett on the reenactment of the exemption clause, in 1887, see pages 460-465.

SEC. 4908, 4909. [Operation of picture shows on Sunday permitted by local option.]

### California <sup>2</sup>

[Deering's Penal Code of California, 1941]

SEC. 4131½. Any person or persons holding, or conducting, or participating in, or present as a spectator, at any boxing exhibition held on Memorial Day, May 30, or on Sundays, shall be guilty of a misdemeanor.

### Colorado

[Colorado Statutes Annotated, 1935]

CHAP. 48. SEC. 215. If any person . . . shall keep open any tippling or gaming house on the Sabbath day or night, . . . every such person shall, on conviction, be fined . . . or imprisoned.

SEC. 269. Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement, on the first day of the week, commonly called Sunday (works of necessity and charity excepted), shall be fined.

SEC. 270. Whoever shall be guilty of any noise, rout or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, . . . such person so offending shall be deemed guilty of a misdemeanor.

SEC. 286. It shall be a misdemeanor for any person to carry on the business of barbering on Sunday in any city of the first or second class, whether incorporated by general law or special charter, in the State of Colorado.

CHAP. 89. SEC. 17-d. [Sale of liquor on Sunday prohibited prior to 8:00 a.m. and after 8:00 p.m.]

CHAP. 100. SEC. 9. This article shall extend to and include all theaters, circuses and shows, where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theater, circus or show, on the Sabbath or Lord's day.

## Connecticut

[General Statutes of Connecticut, 1945 Supplement]

SEC. 84h. [Motion picture exhibitions may be permitted on Sunday between 1 P.M. and 11:30 P.M., by local legislative enactment.]

SEC. 85h. [Professional baseball, football, basketball, or hockey, and amateur hockey, skating, field contests, basketball, miniature golf, ski racing and jumping, bowling, billiards, and motor vehicle and motorcycle exhibitions of skill may be permitted on Sunday after 2 p.m. by local legislative enactment.]

[General Statutes of Connecticut, 1939 Supplement]

SEC. 145e. [Theatrical exhibitions and vaudeville entertainments may be permitted on Sunday between the hours of 2 and 11 P.M. by local legislative enactment.]

[General Statutes of Connecticut, 1930 Revision]

SEC. 478. [Public concerts of symphonic compositions and music of a classical nature may be permitted on Sunday by local legislative enactment between the hours of 2 P.M. and 6 P.M.]

SEC. 812. [Rifle practice and shot gun shooting may take place between the hours of 1 P.M. and 6 P.M. on Sunday on ranges under control of organized military forces or gun clubs affiliated with the national rifle association of America.]

[General Statutes of Connecticut, 1939 Supplement]

SEC. 1452e. Any person who shall do, or require an employee to do, any secular business or labor, except works of necessity or mercy, or, unless required by necessity or mercy, keep open any shop, warehouse or manufacturing or mechanical establishment, or sell or expose for sale any goods, wares or merchandise, or, except as hereinafter provided, engage in any sport, between the hours of twelve o'clock Saturday night and twelve o'clock Sunday night next following, shall be fined not more than fifty dollars. The provisions of this section shall not prohibit the making of emergency repairs to motor vehicles, motorcycles, motor boats

and aircraft, including the furnishing of any labor necessary to permit the same to proceed under their own power, nor the towing of any such motor vehicles, motorcycles, motor boats or aircraft. The selectmen of any town, the mayor and aldermen or common council of any city or the warden and burgesses of any borough may permit the repair of motor vehicles or the sale of motor vehicle accessories in such town, city or borough on Sundays, provided, in the case of a town having a borough within its limits, the concurrent action of the selectmen of such town and the warden and burgesses of such borough shall be necessary. . . . The foregoing provisions of this section shall not apply to any amateur ball game, or other outdoor game or sport by or between amateurs, on Sunday; provided no admission fee shall be charged and the same shall be so conducted as not to interfere with public worship or disturb the reasonable comfort, quiet and peace of any person. The park commissioners or park committee of any town, city or borough are authorized to permit free concerts or music to be given, and proper amateur athletic sports to be engaged in, on Sunday, at stated places, in one or more of the public parks belonging to such town, city or borough, subject to such rules as the respective committee or commissioners may adopt for the purpose of securing order and quiet conduct on the part of all who shall engage in such music or sports and also of all persons in attendance; provided only places shall be so designated where such music can be given or sport engaged in without disturbing the reasonable comfort, quiet and peace of any other person, and provided no game or sport shall be permitted in any tournament or for any admission fee or prize. Any person who shall be present at any concert of music, dancing or other public diversion on Sunday or on the evening thereof, except as permitted by this section, shall be fined not more than four dollars. The provisions of this section shall not affect those of sections 478, 143e, 144e, 812, 1453e, 6297 and 6298.

SEC. 1453e. The sale of milk, bakery products, fruit, ice, ice cream, confectionery, non-alcoholic beverages, tobacco in any form,

smokers' supplies, newspapers and other periodicals, drugs or supplies and repair parts for motor vehicles, motorcycles, motor boats and aircraft, by retail dealers whose places of business are open for the sale thereof on secular days, shall not be a violation of the provisions of section 1452e.

[General Statutes of Connecticut, 1930 Revision]

SEC. 3641. [Sunday laws are not applicable to electric cars or motor busses so as to prohibit or limit operation of public service to transportation.]

SEC. 3741. Any railroad company may run such trains or classes of trains on Sunday as the commission may authorize. No railroad company shall permit the handling, loading or unloading of freight on any road operated by it, or at any of its stations within this state, between sunrise and sunset on Sunday, except from necessity or mercy; provided the commission may suspend the operation of this section, so as to permit the handling, loading or unloading of freight by transfer of such freight between steamboats and cars, until eight o'clock in the forenoon, at any depot or station where, upon application made to it, it shall find that the same is required by public necessity or for the preservation of freight.

SEC. 6297. Except in cases of emergency, no person shall require or permit any employee engaged in any commercial occupation or in the work of any industrial process to do any work of his occupation on Sunday, unless such employee shall be relieved from work for one full regular working day during the six days next ensuing. This section shall not be construed as authorizing any work on Sunday not authorized by law; nor as applying to farm or personal service, to druggists, watchmen, superintendents or managers, janitors or persons engaged solely in transportation, nor to the sale or delivery of milk, food or newspapers, nor to such commercial occupations or industrial processes as by their nature are required to be continuous; nor as prohibiting the doing of necessary work of inspection, repair or care of any manufacturing or other plant or of any merchandise or stock on Sunday.

SEC. 6298. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, or who conscientiously believes that the Sabbath begins at sundown on Friday night and ends at sundown on Saturday night, and actually refrains from secular business and labor during said period, and who has filed written notice of such belief with the prosecuting attorney of the court having jurisdiction, shall be liable to prosecution for performing secular business and labor on Sunday, provided he shall not disturb any other person who is attending public worship.

### Delaware

[Revised Code of Delaware, 1935]

CHAP. 74. (2833) SEC. 32. It shall be unlawful on the first day of the week, commonly called Sunday, to hunt or pursue with any kind of firearms, dog or dogs, any birds or animals whatsoever.

CHAP. 176. (6162) SEC. 33. (3) It is forbidden for any holder of a license for the sale of "spirits or wines" in a store to sell or to deliver the same on any holiday as hereinafter named, or to sell or deliver beer on Sunday.

[Laws of Delaware, 1911]

CHAP. 238. SEC. 1. That 5253. Sec. 4. of Chapter 153 of the Revised Code of Delaware, 1935, be and the same is hereby amended by striking out the first six paragraphs thereof and substituting in lieu thereof the following:

CHAP. 153. 5253. SEC. 4. It shall be unlawful for any person, firm, or corporation to engage in, participate in, or attend, outside the corporate limits of any incorporated city or town of the State of Delaware any horse racing, public auction, public dance, public theatrical performance or public performances of motion pictures, with or without sound, on Sunday.

It shall be unlawful for any person, firm, or corporation to engage in, participate in, or attend any of the activities mentioned in the preceding paragraph within the limits of any incorporated

city or town of this State on Sunday before the hours of twelve noon and between the hours of six P.M. and eight P.M.

The city or town council or other legislative body of any incorporated city or town shall have the power to prohibit or regulate by ordinances or other legislative act any worldly activity other than those mentioned in the second preceding paragraph hereof before twelve noon and between the hours of six P.M. and eight P.M. on Sunday.

The city or town council or other legislative body of any incorporated city or town shall have the power to prohibit or regulate any worldly activity on Sunday between the hours of noon and six P.M. and between the hours of eight P.M. and midnight on Sunday.

Nothing contained herein shall affect in any way the provisions of chapters 74 and 176 of the Revised Code of Delaware, 1935, as amended.

The term "theatrical performance" in this section shall not include the reception of broadcast, radio or television programs or any lecture or musical concert.

### District of Columbia

[Code of the District of Columbia, 1940]

SEC. 2-1114. [Subsection (a.), (6)]. After June 7, 1938 in the District of Columbia it shall be unlawful for a person to maintain seven days consecutively any establishment wherein the occupation or trade of barbering, hair dressing, or beauty culture is pursued. All such establishments shall be required to remain closed one day in every seven beginning at midnight or at sunset and no person shall maintain his establishment open to serve the public on the day he has selected it to be closed and has so registered the closing day at the Health Department.

SEC. 4-119. It shall be the duty of the Commissioners of the District of Columbia . . . To see that all laws relating to the observance of Sunday . . . are promptly enforced.

SEC. 4-180. In lieu of Sunday there shall be granted to the Metropolitan police of the District of Columbia one day off out

of each week of seven days. . . . *Provided, however,* That whenever the commissioners of the District of Columbia declare that an emergency exists of such a character as to require the continuous services of all the members of the Metropolitan police force and the members of the fire department, the major and superintendent of police and the chief engineer of the fire department shall have authority, and it shall be their duty, to suspend and discontinue the granting of the said one day off in seven during the continuation of such emergency.

SEC. 4-410. In lieu of Sunday there shall be granted to each officer and member of the fire department of the District of Columbia one day off out of each week of seven days [subject to same proviso as Section 4-180.].

### Florida

[Florida Statutes Annotated, 1944]

SEC. 550.04 [No dog or horse racing permitted on Sunday.]

SEC. 551.11 No permit shall be issued for the operation of any fronton to be constructed or operated within one thousand feet of any existing church or public school, nor shall any such exhibition be held on Sunday.

SEC. 562.14 [Sale of liquor is prohibited on Sunday except in incorporated towns, which may regulate or prevent such sales.]

SEC. 855.01. Whoever follows any pursuit, business or trade on Sunday, either by manual labor or with animal or mechanical power, unless the same be work of necessity, shall be punished by a fine not exceeding fifty dollars; provided, however, that nothing contained in the laws of Florida shall be so construed as to prohibit the preparation or printing between the hours of midnight Saturday and six in the morning, Sunday, of any newspaper intended to be circulated and sold on Sunday, or to prohibit the circulation and sale on Sunday of same, or to prohibit the circulation and sale on Sunday of any newspaper theretofore printed. Provided nothing contained in this section shall apply to theaters in which moving pictures are shown.

SEC. 855.02. Whoever keeps open store or disposes of any

wares, merchandise, goods or chattels on Sunday, or sells or barbers the same, shall be punished by a fine not exceeding fifty dollars. In cases of emergency or necessity, however, merchants, shopkeepers and others may dispose of the comforts and necessities of life to customers without keeping open doors.

SEC. 855.04. Whoever uses firearms by hunting game or firing at targets upon Sunday shall be punished.\*

SEC. 855.03. Whoever employs his apprentice or servant in labor or other business on Sunday, unless it be in the ordinary household business of daily necessity, or other work of necessity or charity, shall be punished.

SEC. 855.05. Whoever engages on Sunday in any game or sport, such as baseball, football or bowling, as played in bowling alleys, or horse racing, whether as player, manager, director or otherwise, shall be deemed guilty of a misdemeanor.

SEC. 855.06. It shall be lawful to engage in the sport of trap, target and skeet shooting on Sunday.

SEC. 954.11. The board of commissioners of state institutions shall adopt such regulations as they may deem proper, governing . . . the proper observance of Sunday within the prison and the instruction of prisoners in their moral and religious duties.

### Georgia

[Code of Georgia Annotated, 1945 Supplement]

SEC. 14-1810. The only days to be declared, treated and considered as religious holidays shall be the first day of each week, called Sunday.

[Code of Georgia, Annotated, 1936]

SEC. 26-6903. [Forbids operation of any except regular mail or passenger trains, with exemptions, under specified conditions, for trains carrying livestock or perishable foodstuffs, through freights, etc.]

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\* In 1937, the legislature exempted hunters in certain counties from the provisions of section 855.04.

In 1939, in counties having a population of 110,000 to 170,000 the legislature exempted certain places of business from the operation of certain provisions of the Sunday law.

SEC. 26-6905. Any person who shall pursue his business or the work of his ordinary calling on the Lord's day, works of necessity or charity only excepted, shall be guilty of a misdemeanor.\*

SEC. 26-6906. Any person who shall hunt any kind of game with gun or dogs, or both, on the Sabbath day shall be guilty of a misdemeanor.

SEC. 26-6907. Any person who shall wilfully or wantonly fire off or discharge any loaded gun or pistol on Sunday, except in defense of person or property, shall be guilty of a misdemeanor.

SEC. 26-6908. Any person who shall fish or attempt to catch any kind of fish with hook and line, nets, gigs, or by any other manner or means, in any of the waters or streams within the State on the Sabbath day, shall be guilty of a misdemeanor.

SEC. 26-6909. Any warden or other prison official who shall cause any convict to do any work on Sunday, except works of necessity, shall be guilty of a misdemeanor.

SEC. 26-6910. Any person who shall bathe in a stream or pond of water on the Sabbath day, in view of a road or passway leading to or from a house of religious worship, shall be guilty of a misdemeanor.

SEC. 26-6914. Dancing at any public place on the Lord's day, commonly known as Sunday, is hereby prohibited. The owner, proprietor, manager, agent, lessee or tenant of any public place who shall permit dancing at said public place on the Lord's day, commonly known as Sunday, shall be guilty of a misdemeanor.

[1915 Supplement]

SEC. 58-738. [Sale of certain beverages is prohibited on Sunday.]

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\* Acts of 1906, page 123, making it a misdemeanor for any person to operate any public dance hall or place of amusement for profit "beyond the limits of any incorporated town in any county in this State having a city of a population of 80,000 or more, without first obtaining the written consent of one-half of the freeholders within a radius of two miles" of such place, has been omitted from this Code because of the limitation of the number of counties in which it applies.

SEC. 58-1060. [Sale of spirituous liquors is prohibited on Sundays.]

SEC. 58-1079. [It is unlawful to sell liquor in certain counties on Sunday.]

### Hawaii

[Revised Laws of Hawaii, 1945]

SEC. 6233. (14). [County supervisors may provide by ordinance for the exhibition of moving pictures on Sunday after 12:30 P.M. and stage plays after 6:30 P.M.]

SEC. 6521. (38). [Honolulu supervisors may provide by ordinance for the exhibition of moving pictures on Sunday after 12:30 P.M. and stage shows after 6:30 P.M.]

SEC. 7266. [Liquor shall not be sold or delivered on Sundays.]

SEC. 7558. [Boxing is prohibited on Sunday.]

SEC. 11611. All labor on Sunday is forbidden, excepting works of necessity or mercy, in which are included all labor that is needful for the good order, health, comfort or safety of the community, or for the protection of property from unforeseen disaster, or danger of destruction or injury, or which may be required for the prosecution of or attendance upon religious worship, or for the furnishing of opportunities of reading or study;

*Provided*, however, that this section shall not apply to newspaper printing offices, steamship companies, railroads, telegraph and telephone companies, hotels, inns, restaurants, cigar stores, ice cream parlors, soda water stands, garages, service stations, vendors of fishing poles, lines, hooks, sinkers, lures and bait, vendors of petroleum products, automobile parts and accessories, hackmen, owners and operators of licensed shore boats, operators and owners of licensed automobiles, news depots, graziers and ranchmen, electric light plants, gas works and slaughter houses;

*Provided*, further, that personal baggage may be conveyed to and from vessels leaving and arriving at port on that day, and to and from any railroad stations; that on Sunday the loading and unloading vessels engaged in inter-island, interstate or foreign commerce shall be permitted; and freight may be conveyed thereto

or therefrom on Sunday; that during the entire day flowers, ice, fruit and food stuffs and materials of every nature to be used for and in the preparation of food may be sold and delivered, laundrymen and laundries may deliver and collect laundry or washing, and medicinal drugs, first aid supplies, and such things as are necessary for the practice of medicine and the care of the sick, may be sold and dispensed;

*Provided*, further, that except as forbidden by the liquor laws of the Territory, during the visit of the United States naval fleet in Hawaiian waters and also during the visit of cruise ships at any territorial port, all stores in any county in any port of which any ship of such fleet or any cruise ship is then visiting may operate and carry on business on Sunday;

*Provided*, further, that it shall be lawful for bowling alleys and shooting galleries in the Territory to operate on Sundays between the hours of noon and 11:30 P.M., *provided* that such bowling alleys and shooting galleries are located not less than three hundred feet from any church; *provided*, further, that the last proviso shall not apply to bowling alleys and shooting galleries which are in operation on April 22, 1939;

*Provided*, further, that it shall be lawful on Sunday to make repairs and alterations to any building used exclusively for the conduct of business, or to take a record or inventory of stock or merchandise held in a place of business.

SEC. 11612. [It is lawful for drug stores to operate and carry on business on Sundays.]

SEC. 11613. No person shall prosecute, conduct or take part, on Sunday, in any recreation, amusement, sport or game in such a manner as to commit a common nuisance.

SEC. 11614. Sections 11611 and 11613 shall not be construed as permitting the conducting of any show, theater, circus or entertainment on Sunday other than aquariums, museums, zoological gardens, and outdoor athletic sports, roller skating rinks after the hour of 1:00 o'clock P.M., and moving picture exhibitions duly

authorized by ordinance under the provisions of sections 6233 and 6521.

### Idaho

[Idaho Code, 1932]

SEC. 17-2502. The first day of the week, commonly called Sunday, is hereby set apart as a day of public rest.

SEC. 17-2504. [It is unlawful for any person to keep open on Sunday any place of public amusement such as theater, dance house, etc., except when city council provides otherwise.]

SEC. 53-513. No boxing, wrestling or sparring match or exhibition shall be held on Sunday.

[Idaho Session Laws, 1941]

CHAP. 86. SEC. 1. . . . It shall be unlawful for any person or persons in this state to keep open (on Sunday) any theater, moving picture show, play house, dance house, race track, merry-go-round, circus or show, concert saloon, billiard or pool room, . . . or variety hall.

### Illinois

[Illinois Revised Statutes, 1945]

CHAP. 8. SEC. 37s. 7. [Harness racing prohibited on Sundays.]

CHAP. 38. SEC. 547. Whoever keeps open any tippling house, or place where liquor is sold or given away, upon the first day of the week, commonly called Sunday, shall be fined.

SEC. 549. Whoever disturbs the peace and good order of society by labor (works of necessity and charity excepted), or by any amusement or diversion on Sunday, shall be fined not exceeding twenty-five dollars. This section shall not be construed to prevent watermen and railroad companies from landing their passengers, or watermen from loading and unloading their cargoes, or ferrymen from carrying over the water travelers and persons moving their families, on the first day of the week, nor to prevent the due exercise of the rights of conscience by whomever thinks proper to keep any other day as a Sabbath.

SEC. 550. Whoever shall be guilty of any noise, rout or amuse-

ment on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, shall be fined.

CHAP. 43. SEC. 129. No person shall sell at retail any alcoholic liquor . . . on Sundays unless authorized by general ordinance or resolution of the city council, president and board of trustees or county board, as the case may be.

CHAP. 108. SEC. 31. [Provides for Sunday to be observed in penitentiaries.]

### Indiana

[Burns Annotated Indiana Statutes, With Replacements to 1946]

SEC. 10-4301. Whoever being over fourteen [14] years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, quarreling, at common labor, or engaged in his usual vocation, works of charity and necessity only excepted, shall be fined; . . . but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers, and those engaged in conveying them, families removing, keepers of toll bridges and toll gates, ferrymen acting as such persons engaged in the publication and distribution of news, or persons engaged in playing the game of baseball or ice hockey after one o'clock P.M. and not less than one thousand [1,000] feet distant from any established house of worship or permanent church structure used for religious services, or any public hospital or private hospital erected prior to the passage of this act.

SEC. 10-4302. [It is unlawful to play football or any other game on Sunday where any fee is charged, or where any reward is depending upon result of such game.]

[1945 Supplement]

SEC. 10-4303. [Hunting with firearms on Sunday is unlawful and persons found guilty of this offense are subject to fine.]

SEC. 12-436. [Sale of liquor is prohibited on Sundays from 12:01 A.M. to 7 A.M.]

SEC. 63-205. [Boxing and wrestling exhibitions where an admission fee is charged may not be held on Sunday.]

SEC. 63-216. [No boxing or wrestling exhibitions may be held on Sunday.]

### Iowa

[Code of Iowa, 1946]

SEC. 123.25. It shall be unlawful to transact the sale or delivery of any liquor in, on, or from the premises of any state liquor store, special distributor, or warehouse . . . on any Sunday.

SEC. 124.20. [No beer shall be sold or delivered to or consumed by any person on the premises of any class "B" permit holder, between the hours of 12 o'clock midnight on Saturday and 7 o'clock of the following Monday morning.]

SEC. 124.35. [No beer shall be sold or consumed in the places of business of class "B" permittees located outside of a city or town between the hours of 1 A.M. and 6 A.M. except clubs.]

SEC. 729.1. If any person be found on the first day of the week, commonly called Sunday, engaged in carrying firearms, dancing, hunting, shooting, horse racing, or in any manner disturbing a worshipping assembly or private family, or in buying or selling property of any kind, or in any labor except that of necessity or charity, he shall be fined not more than five nor less than one dollar, and be imprisoned in the county jail until the fine, with costs of prosecution, shall be paid; but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week as the Sabbath, or to prevent persons traveling or families emigrating from pursuing their journey, or keepers of toll bridges, toll gates, and ferrymen from attending the same.

### Kansas

[General Statutes of Kansas, Annotated, 1935]

SECS. 13-430, 14-417, 15-422. [Cites of first, second, and third class may prohibit "desecrations of the Sabbath day," Sunday theatrical performances being specified.]

SEC. 19-2220. [Dance halls shall be closed on Sunday.]

SEC. 21-952. Every person who shall either labor himself or compel his apprentice, servant or any other person under his charge or control to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor.

SEC. 21-953. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as the Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week.

SEC. 21-954. Every person who shall be convicted of horse racing, cockfighting, or playing at cards or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor.\*

SEC. 21-955. Every person who shall sell or expose to sale any goods, wares or merchandise, or shall keep open any grocery, on the first day of the week, commonly called Sunday, shall on conviction be adjudged guilty of a misdemeanor.

SEC. 21-956. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

[1945 Supplement]

SEC. 21-2704. [No cereal malt beverages may be sold on Sunday.]

SEC. 69-104. [Museums and other exhibits open on week days may also be open on Sunday from 1:30 to 5 P.M.]

### Kentucky

[Kentucky Revised Statutes, 1944]

SEC. 244.290. [Sale of distilled spirits or wine is not permitted on Sundays.]

[Revised Statutes, 1947]

SEC. 244.480 [Brewers must not deliver malt beverages on

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\* Playing baseball not prohibited, 79 K 513.

Sunday. Retailers must not sell or give away malt beverages on Sundays.]

[Revised Statutes, 1943]

SEC. 436.160. (1) Any person who works on Sunday at his own or at any other occupation or employs any other person, in labor or other business, whether for profit or amusement, unless his work or the employment of others is in the course of ordinary household duties, work of necessity or charity or work required in the maintenance or operation of a public service or public utility plant or system, shall be fined. . . .

(2) Persons who are members of a religious society which observes as a Sabbath any other day in the week than Sunday shall not be liable to the penalty prescribed in subsection (1) of this section, if they observe as the Sabbath one day in each seven.

(3) Subsection (1) of this section shall not apply to amateur sports, athletic games, operation of moving picture shows, chautauquas, filling stations or opera.

(4) Any person who holds any boxing or wrestling match or exhibition on Sunday shall be fined. . . .

(5) Any person licensed to keep, or any person controlling, a billiard, pigeon-hole or pool table who permits any game to be played on it on Sunday shall be fined. . . .

(6) Any person who hunts game, with a gun or dogs, on Sunday shall be fined. . . .

### Louisiana

[Louisiana Code of Criminal Law (Dart), 2d ed.]

SEC. 1174. From and after the 31st day of December, A.D., 1886, all stores, shops, saloons, and all places of public business, which are or may be licensed under the laws of the state of Louisiana, or under any parochial or municipal law or ordinance, and all plantation stores, are hereby required to be closed at twelve o'clock on Saturday nights, and to remain closed continuously for twenty-four (24) hours, during which period of time it shall not be lawful for the proprietors therefore to give, trade, barter, exchange or

sell any of the stock or any article of merchandise kept in any such establishment.

SEC. 1176. The provisions of this act shall not apply to newspaper offices, printing offices, book stores, drug stores, apothecary shops, undertaker shops, public and private markets, bakeries, dairies, livery stables, railroads, whether steam or horse, hotels, boarding-houses, steamboats and other vessels, warehouses for receiving and forwarding freights, restaurants, telegraph offices and theaters, or any place of amusement, providing no intoxicating liquors are sold in the premises; provided, that stores may be opened for the purpose of selling anything necessary in sickness and for burial purposes; provided, that nothing in this act shall be construed so as to allow hotels or boarding-houses to sell or dispose of alcoholic liquors, except wine for table use on Sunday; and provided, further, that no alcoholic, vinous, or malt liquors shall be given, traded or bartered or sold or delivered in any public place on said day, except when actually administered or prescribed by a practicing physician in the discharge of his professional duties in case of sickness; in such case the physicians administering intoxicating liquors may charge therefor.

SEC. 1177. It shall be unlawful hereafter for the operation of barber shops, tonsorial parlors or any other places of business where the trades of cutting and clipping hair, shaving or massaging is carried on within the state of Louisiana, on Sunday.

[Louisiana General Statutes (Dart), 1939]

SEC. 5827. The municipal authorities of any incorporated city or town in this state shall have the power and authority to regulate or prohibit the opening and closing of barber shops within their corporate limits on Sunday.

SEC. 5829. The municipal authorities of any incorporated city or town in the state of Louisiana, having a population of over 25,000 and under 100,000 inhabitants, shall have the power and authority to regulate or prohibit the opening and closing of butcher shops and meat markets, baker shops and bakeries within their corporate limits on Sunday.

SEC. 5831. The municipal authorities of any incorporated city in the state of Louisiana, having a population of over 100,000 inhabitants, shall have the power and authority to regulate or prohibit the opening and closing of butcher shops and meat markets, baker shops and bakeries and the sale and delivery of bakery products within their corporate limits on Sunday.

SEC. 6260. [Municipal councils shall have full power to make and pass such by-laws and ordinances as are necessary and proper to prohibit and suppress desecration of the Sabbath day.]

SEC. 9670.10. [Horse racing is not permitted on Sundays.]

### Maine

[Statutes of Maine, Session Laws of 1943-1945]

CHAP. 33. SEC. 66. It shall be unlawful to hunt on Sunday.

[Revised Statutes of Maine, 1944]

CHAP. 77. SEC. 9. [Harness horse racing forbidden on Sunday.]

CHAP. 79. SEC. 91. All persons going to or from . . . public worship on the Lord's day, may pass over toll-bridges, free of toll.

SEC. 195. The jailer, at the expense of the county, shall furnish to each prisoner who is able to read a copy of the Bible, and to all, on Sundays, such religious instruction as he may be able to obtain without expense, and to such as may be benefited thereby, instruction in reading, writing, and arithmetic 1 hour every evening except on Sunday.

CHAP. 121. SEC. 36. No person conscientiously believing that the 7th day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business or labor on the 1st day of the week, if he does not disturb other persons.

SEC. 37. Whoever, on the Lord's Day or at any other time, behaves rudely or indecently within the walls of any house of public worship; wilfully interrupts or disturbs any assembly for religious worship within the place of such assembly or out of it; sells or exposes for sale within 1 mile thereof and during the time of their meeting, refreshments or merchandise, except in

his usual course and place of business; exhibits any show or play; engages or aids in any horse-race, gambling, or other sport to the disturbance of such assembly; or, coming within their neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing, or to conform to their established regulations, shall be punished.

SEC. 39. Whoever, on the Lord's Day, keeps open his shop, workhouse, warehouse, or place of business; travels; does any work, labor, or business on that day, except works of necessity or charity; uses any sport, game, or recreation; or is present at any dancing, public diversion, show, or entertainment, encouraging the same, shall be punished by a fine of not more than \$10; provided, however, that this section shall not apply to the operation of common carriers; to the driving of taxicabs and public carriages in attendance upon the arrival or departure of such carriers; to the operation of airplanes; to the driving of private automobiles or other vehicles; to the printing and selling of Sunday newspapers; to the keeping open of hotels, restaurants, garages, and drug stores; to the selling of gasoline; or to the giving of scientific, philosophical, religious, or educational lectures where no admission is charged.

SEC. 40. [Local governments may legalize sports on Sunday.]

SEC. 41. [Local governments may legalize motion pictures on Sunday between 3 P.M. and 11:30 P.M.]

SEC. 43. If an innholder or victualer, on the Lord's Day, suffers any persons, except travelers, strangers, or lodgers, to abide in his house, yard, or field, drinking or spending their time idly, at play, or doing any secular business, except works of charity or necessity, he shall be punished; . . . and every person so abiding shall be punished.

### Maryland

[Annotated Code of Maryland, 1943 Supplement]

ART. 2B, SEC. 3B. ["Special Sunday Licenses" may be granted to persons holding alcoholic beverage licenses in Anne Arundel

County which will allow them to sell liquor on Sunday under certain conditions.]

[Annotated Code of Maryland, 1939]

ART. 19, SEC. 26. He [the Comptroller] shall have inserted in all ordinary licenses a clause especially excepting the Sabbath day, commonly called Sunday, from the operation of said licenses.

ART. 27, SEC. 560. No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county.

SEC. 561. [In Hagerstown non-commercial baseball permitted all day Sunday, basketball, bowling, and swimming permitted between 1 P.M. and 6 P.M. on Sunday, and commercial baseball between 2 P.M. and 5 P.M.]

SEC. 562. [Managers and attendants permitted to work on Sunday at a commercial baseball game in Hagerstown.]

SEC. 564. [In Montgomery County amateur games of baseball, golf, tennis, croquet, basket ball, lacrosse, soccer, and hockey permitted on Sunday, with baseball restricted to the hours of 2 P.M. to 6 P.M.]

SEC. 565. [In Montgomery County officiating and assisting at amateur games as an occupation permitted on Sunday.]

SEC. 566. [In Montgomery County motion pictures permitted after 2 P.M. on Sunday.]

SEC. 567. [In Montgomery County work of employees in connection with motion pictures permitted on Sunday after 2 P.M.]

SEC. 568. [In Montgomery County operation of swimming pool permitted on Sunday.]

SEC. 569. In Montgomery County work of attendants in operation of a swimming pool permitted on Sunday.]

SEC. 570. [In Montgomery County recreation centers, amusement parks, and picnic grounds permitted to operate on Sunday after 1 P.M.]

SEC. 571. [In Montgomery County managers and employees of recreation centers, amusement parks and picnic grounds permitted to work on Sunday after 1 P.M.]

SEC. 572. [In Montgomery County, fifth precinct of thirteenth election district and first and fourth precincts of seventh election district, bowling permitted after 1 P.M. Sunday.]

SEC. 574. [In Allegany County bowling permitted on Sunday 1 P.M. to 6 P.M. and 9 P.M. to 12 P.M.]

SEC. 575. No person in this State shall sell, dispose of, barter, or deal in, or give away any articles of merchandise on Sunday, except retailers, who may sell and deliver on said day tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases. . . . This section is not to apply to apothecaries and such apothecaries may sell on Sunday drugs, medicines and patent medicines as on week days; and this section shall not apply to the sale of newspapers and periodicals.\*

SEC. 576. It shall not be lawful to keep open or use any dancing saloon, opera house, tenpin alley, barber saloon or ball alley within this State on the Sabbath day, commonly called Sunday.\*

[Annotated Code of Maryland, 1943 Supplement]

SEC. 560A. [In Frederick City baseball, golf, tennis, bowling, croquet, basket ball, lacrosse, soccer, hockey or any other lawful sport permitted on Sunday from 2 P.M. to 6 P.M., and bowling the additional time from 8:30 P.M. to 12 P.M.]

SEC. 560C. [In Frederick City motion pictures may be shown

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\* Sections 575 and 576 no longer applicable to Baltimore City.

on Sunday between the hours of 1:30 P.M. and 6 P.M. and after 8 P.M.]

SEC. 572A. [Certain parts of sections 560, 575 and 576 of Article 27 of the General Laws are repealed to make lawful the Sunday operation of or work at bathing beaches, bath houses, amusement parks, dancing saloons, souvenir shops, and like establishments in Anne Arundel County.]

SEC. 573C. [In Hagerstown motion pictures may be shown on Sunday between the hours of 1 P.M. and 6:30 P.M. and after 9 P.M.]

SEC. 574A. [In Baltimore City bowling is lawful between the hours of midnight Saturday and 1 A.M. Sunday and after 2 P.M. on Sunday.]

SEC. 574B. [In Kent County bowling is lawful on Sunday, except that in Chestertown not before 2:00 P.M.]

SEC. 576A. [In Carroll County motion pictures may be shown on Sunday between the hours of 2 P.M. and 6 P.M. and after 9 P.M.]

SEC. 573A. [In Aberdeen motion pictures may be shown on Sunday between the hours of 1 P.M. and 7 P.M. and after 8:30 P.M. It is unlawful for children under 12 years of age to attend any motion pictures on Sunday, however, unless accompanied by an adult member of the family.]

[Annotated Code of Maryland, 1939]

ART. 72. SEC. 20. It shall be unlawful for any person to take or catch oysters on Sunday.

### Massachusetts

[Annotated Laws of Massachusetts, 1912]

CHAP. 136. SEC. 2. [Being present at or participating in a game, sport, play, or public diversion, except a concert of sacred music, locally licensed entertainments, golf, tennis, or dancing at a wedding, is forbidden on Sunday.]

SEC. 3. [Maintaining or operating a public entertainment, except as noted in other sections, on Sunday is forbidden.]

SEC. 4. [Local authorities may license public entertainment on Sunday after 1 P.M.]

SEC. 4A. [Local authorities may license the operation on Sunday of concessions at amusement parks and beach resorts.]

SEC. 5. Whoever on the Lord's day keeps open his shop, warehouse or workhouse, or does any manner of labor, business or work, except works of necessity and charity, shall be punished.

SEC. 6. The preceding section shall not prohibit the manufacture and distribution of steam, gas or electricity for illuminating purposes, heat or motive power; the distribution of water for fire or domestic purposes; the use of the telegraph or the telephone; the manufacture and distribution of oxygen, hydrogen, nitrogen, acetylene and carbon dioxide; the retail sale of drugs and medicines, or articles ordered by the prescription of a physician, or mechanical appliances used by physicians or surgeons.

Nor shall it prohibit the retail sale of tobacco in any of its forms by licensed innholders, common victuallers, druggists and newsdealers whose stores are open for the sale of newspapers every day in the week; the retail sale of bread, before ten o'clock in the forenoon and between the hours of four o'clock and half past six o'clock in the afternoon by licensed innholders and by licensed common victuallers authorized to keep open their places of business on the Lord's day and by persons licensed under the following section to keep open their places of business as aforesaid; the retail sale of frozen desserts and/or ice cream mix, soda water, and confectionery by licensed innholders and druggists, and by such licensed common victuallers as are not also licensed to sell alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, and who are authorized to keep open their places of business on the Lord's day; the sale of frozen desserts and/or ice cream mix, soda water, confectionery or fruit by persons licensed under the following section or the keeping open of their places of business for the sale thereof.

Nor shall it prohibit work lawfully done by persons working under permits granted under section nine; the sale by licensed innholders and common victuallers of meals such as are usually served by them, consisting in no part of alcoholic beverages, as so

defined, which meals are cooked on the premises but are not to be consumed thereon; the operation of motor vehicles; the sale of gasoline and oil for use, and the retail sale of accessories for immediate necessary use, in connection with the operation of motor vehicles, motor boats and aircraft; the making of such emergency repairs on disabled motor vehicles as may be necessary to permit such vehicles to be towed or to proceed under their own power, and the towing of disabled motor vehicles; the letting of horses and carriages or of boats, motor vehicles or bicycles; the letting on trains of equipment or accessories for personal use in connection with outdoor recreation and sports activities; unpaid work on pleasure boats; the running of steam ferry boats on established routes; the running of street railway cars; the running of steam-boat lines and trains or of steamboats, if authorized under section nineteen.

Nor shall it prohibit the preparation, printing and publication of newspapers, or the sale and delivery thereof; the wholesale or retail sale and delivery of milk, or the transportation thereof, or the delivery of frozen desserts or ice cream mix, or both, or the retail sale of ice or of fuel; the handling, transportation and delivery of fish and perishable foodstuffs at wholesale; the sale at wholesale of dressed poultry, and the transportation of such poultry so sold, on the Lord's day next preceding Thanksgiving day, and on the Lord's day next preceding Christmas day except when Christmas day occurs on Saturday, the Lord's day or Monday; the making of butter and cheese; the keeping open of public bathhouses; the making or selling by bakers or their employees, before ten o'clock in the forenoon and between the hours of four o'clock and half past six o'clock in the afternoon, of bread and other food usually dealt in by them; whenever Rosh Hashonah, or the Day of Atonement, begins on the Lord's day, the retail sale and delivery of fish, fruit and vegetables before twelve o'clock noon of that day; the selling or delivering of kosher meat by any person who, according to his religious belief, observes Saturday as the Lord's day by closing his place of business during the day until

six o'clock in the afternoon, or the keeping open of his shop on the Lord's day for the sale of kosher meat between the hours of six o'clock and ten o'clock in the forenoon. [This paragraph in 1944 Supplement.]

Nor shall it prohibit the performing of secular business and labor on the Lord's day by any person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath and actually refrains from secular business and labor on that day, if he disturbs no other person thereby; the carrying on of the business of bootblack before eleven o'clock in the forenoon, unless prohibited in a city or town by ordinance or by-law; the digging of clams; the icing and dressing of fish; the cultivation of land, and the raising, harvesting, conserving and transporting of agricultural products during the existence of war between the United States and any other nation and until the first day of January following the termination thereof; such unpaid work in or about private gardens or private grounds, adjacent to a dwelling house, as shall not cause unreasonable noise, having regard to the locality where such work is performed.

Nor shall it prohibit the sale of catalogues of pictures and other works of art in exhibitions held by societies organized for the purpose of promoting education in the fine arts or the exposure of photographic plates and films for pleasure, if the pictures to be made therefrom are not intended to be sold and are not sold.

Nor shall it prohibit the conduct of any enterprise lawfully conducted under section 4A.

SEC. 7 [Sale of confectionery articles in Boston and other cities may be permitted on Sunday by local licensing.]

SEC. 9. [Police Commissioner of Boston may grant permission for certain work to be performed on Sundays.]

SEC. 10. [Veterans or fraternal organizations may hold parades on Sundays.]

SEC. 11. [Policemen or firemen may hold parades on certain Sundays.]

SEC. 12. [Persons keeping places of public entertainment are

subject to fine if other than travelers are entertained on Sunday.]

SEC. 14. [Persons behaving rudely or indecently in house of public worship on Lord's day are subject to fine.]

SEC. 17. [Discharging firearms and fishing on Lord's day forbidden except in harmony with provided regulations.]

SEC. 18. [Innholders may not permit implements of gaming to be used on Lord's day.]

SEC. 19. [The Department of Public Utilities may authorize the running of trains and steam boats on Lord's day.]

SEC. 21. [In any city which accepts sections twenty-one to twenty-five by local legislative enactment it is lawful to witness or participate in certain sports on Sunday between 1:50 P.M. and 6:30 P.M.]

SEC. 25. Sections twenty-one to twenty-five, inclusive, shall not prohibit participation at other hours on the Lord's day in other outdoor exercise not involving the element of contest, nor shall they permit horse racing, automobile racing, boxing, or hunting with firearms.

SEC. 26. [It is lawful to take part in or witness amateur sports in certain cities on Sunday between 2 P.M. and 6 P.M.]

SEC. 32. Sections twenty-six to thirty-one, inclusive, shall not prohibit participation at other hours on the Lord's day in other outdoor exercise not involving the element of contest, nor shall they permit horse racing, automobile racing, boxing, or hunting with firearms.

CHAP. 149, SEC. 47. Whoever, except at the request of the employee, requires an employee engaged in any commercial occupation or in the work of any industrial process not subject to the following section or in the work of transportation or communication to do on Sunday the usual work of his occupation, unless he is allowed during the six days next ensuing twenty-four consecutive hours without labor, shall be punished by a fine of not more than fifty dollars; but this and the following section shall not be construed as allowing any work on Sunday not otherwise authorized by law.

SEC. 48. Every employer of labor engaged in carrying on any manufacturing, mechanical or mercantile establishment or workshop in the commonwealth shall allow every person, except those specified in section fifty, but including watchmen and employees maintaining fires, employed in such manufacturing, mechanical or mercantile establishment or workshop at least twenty-four consecutive hours of rest, which shall include an unbroken period comprising the hours between eight o'clock in the morning and five o'clock in the evening, in every seven consecutive days. No employer shall operate any such manufacturing, mechanical or mercantile establishment or workshop on Sunday unless he has complied with section fifty-one.

SEC. 51. Before operating on Sunday, every employer subject to section forty-eight or fifty A shall post in a conspicuous place on the premises a schedule containing a list of his employees who are required or allowed to work on Sunday, and designating the day of rest for each. No employee shall be required or allowed to work on the day of rest designated for him.

### Michigan

[Michigan Statutes Annotated, 1937]

SEC. 5.1740. [Incorporated cities may have power by local legislative enactment to (9) prevent and punish violations of the Sabbath day, and the disturbance of any religious meeting, congregation or society, or other public meeting assembled for any lawful purpose; and to require all places of business to be closed on the Sabbath day.]

SEC. 18.121. Sec. 1. *The People of the State of Michigan enact,* That it shall be unlawful for any person or persons to carry on or engage in the art or calling of hair-cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first [1st] day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person on said day.

SEC. 18.122. Sec 2. That it shall be unlawful for any such person or persons to keep open their shops or places of business afore-

said, on said day of the week commonly called Sunday, for any of the purposes mentioned in section one [1] of this act: *Provided, however,* That nothing in this act shall apply to persons who conscientiously believe the seventh [7th] day of the week should be observed as the sabbath and who actually refrain from secular business on that day.

SEC. 18.531. [Pool rooms shall not be operated outside of an incorporated city on Sundays.]

SEC. 18.851. No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, or be present at any dancing, or at any public diversion, show, or entertainment, or take part in any sport, game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages.

SEC. 18.852. No tavern keeper, retailer of spirituous liquors or other person keeping a house of public entertainment, shall entertain any persons, not being travelers, strangers or lodgers in his house, on the said first day of the week, or shall suffer any such persons on said day to abide or remain in his house, or in the buildings, yards, or orchards, or fields appertaining to the same, drinking, or spending their time idly, or at play, or in doing any secular business.

SEC. 18.854. No person shall be present at any game, sport, play, or public diversion, or resort to any public assembly, excepting meetings for religious worship or moral instruction, or concerts of sacred music, upon the evening of the said first day of the week.

SEC. 18.855. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties provided in this chapter, for performing secular business or labor on the said first day of the week, provided he disturb no other person.

[Michigan Statutes Annotated, 1945 Supplement]

SEC. 18.856 (1). Whenever in the statutes of this state, rights, privileges, immunities or exemptions are given or duties and responsibilities are imposed on persons who conscientiously believe the seventh day of the week ought to be observed as the sabbath, said sabbath or seventh day shall mean and be construed in accordance with the worship and belief of such persons to include the period from sunset on Friday evening to sunset on Saturday evening.

SEC. 18.989 (1). [The sale of beer and wine may be prohibited on Sunday between the hours of 2 A.M. and 12 P.M. by local enactment.]

[Michigan Statutes Annotated, 1937]

SEC. 19.597. [Pawnbrokers may not operate on the first day of the week.]

### Minnesota

[Minnesota Statutes, 1945]

SEC. 154.16. [The board of barber examiners may refuse to issue or renew, or suspend or revoke a barber's certificate of registration because of a violation of the Sunday closing laws.]

SEC. 221.42. [Commercial trucks are not to operate on highways within 35 miles of cities of the first class on Sundays between the hours of 9:00 A.M. and 12:00 midnight, except vehicles carrying dairy products, ice, poultry, live stock, etc., repair cars, emergency vehicles, etc.]

SEC. 340.021. No non-intoxicating liquors containing from one-half of one per cent by volume or 3.2 per cent of alcohol by weight shall be sold in this state . . . between the hours of two A.M. and 12 M. on any Sunday.

SEC. 340.14. (Subdivision 1.) No sale of intoxicating liquor shall be made on Sunday.

SEC. 341.07. [Boxing and sparring exhibitions prohibited on Sunday.]

SEC. 614.28. The law prohibits the doing on the first day of the week of the certain acts specified in section 614.29, which are serious interruptions of the repose and religious liberty of the community, and the doing of any of such acts on that day shall constitute Sabbath breaking.

SEC. 614.29. All horse racing, except horse racing at the annual fairs held by the various county agricultural societies of the state, gaming, and shows; all noises disturbing the peace of the day; all trades, manufacturers, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property, and all other labor except works of necessity and charity are prohibited on the Sabbath day.

Meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health, or comfort of the community, including the usual shoe-shining service; but keeping open a barber shop or shaving and hair-cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes. The game of baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose, and comfort of the community, may be played on the Sabbath day.

SEC. 614.30. Every person who breaks the Sabbath shall be guilty of a misdemeanor and punished by a fine of not less than \$1.00, nor more than \$10.00, or by imprisonment in the county jail for not more than five days; but it shall be a sufficient defense to a prosecution for Sabbath breaking that the defendant uniformly keeps another day of the week as holy time and that the act

complained of was done in such manner as not to disturb others in the observance of the Sabbath.

SEC. 617.51. [Public dancing prohibited on Sunday before 12 noon.]

### Mississippi

[Mississippi Code, Annotated, 1912]

SEC. 2368. If any person, on the first day of the week, commonly called Sunday, shall himself labor at his own, or any other trade, calling, or business, or shall employ his apprentice or servant in labor or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall, on conviction, be fined not more than twenty dollars for every offense, deeming every apprentice or servant so employed as constituting a distinct offense; but nothing in this section shall apply to labor on railroads or steamboats, telegraph or telephone lines, street railways, newspapers, or in the business of a livery stable, garage or gasoline stations, or ice house, in municipalities of less than 5,000 inhabitants, meat markets. Provided, however, that municipalities may, by ordinance, prescribe certain hours, said hours not to exceed three per Sabbath, that garages and gasoline stations within the limits of said municipalities shall remain closed.

SEC. 2369. A merchant, shop-keeper, or other person shall not keep open store, or dispose of any wares or merchandise, goods, or chattels, on Sunday, or sell or barter the same; . . . but this shall not apply to apothecaries or druggists who may open their stores for the sale of medicines.

SEC. 2370. If any person shall engage in, show forth, exhibit, act, represent, perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, ball-playing of any kind, juggling, sleight of hand, or feats of dexterity, agility of body, or any bear-baiting or any bull-fighting, horse-racing, or cock-fighting, or any such like show or exhibit whatsoever, on Sunday, every person so offending shall be fined.

SEC. 2371. [Hunting with a gun or with dogs, or fishing in any way is forbidden on Sunday.]

### Missouri

[Missouri Revised Statutes, Annotated, 1942]

SEC. 4739. Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or who shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor.\*

SEC. 4740. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observe such Sabbath, nor to prohibit any ferryman from crossing passengers on any day of the week; nor shall said last section be extended or construed to be an excuse or defense in any suit for the recovery of damages or penalties from any person, company or corporation voluntarily contracting or engaging in business on Sunday.

SEC. 4741. Every person who shall be convicted of horse-racing, cock fighting, or playing at cards or games of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

SEC. 4742. Every person who shall expose for sale any goods, wares or merchandise, or shall keep open any ale or porter house, grocery or tipping-shop, or shall sell or retail any fermented or distilled liquor on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor.

SEC. 4743. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions or other articles of immediate necessity.

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\* Does not apply to athletic sports.

SEC. 4891. [Liquor may not be disposed of in any quantity between 12:00 midnight Saturday and 12:00 midnight Sunday.]

SEC. 4901. [Prohibits sale of liquor on Sundays.]

SEC. 9087. [Convicts shall not be required to do any work on the Sabbath day excepting necessary labor for the state.]

### Montana

[Revised Code of Montana, 1935]

SEC. 11039. Every person who on Sunday, or the first day of the week, keeps open or maintains, or who aids in opening or maintaining any dance-hall, dance-house, racetrack, gambling-house, or pool-room, variety-hall, or any other place of amusement where any intoxicating liquors are sold or dispensed, is guilty of a misdemeanor; provided, however, that the provision of this section shall not apply to such dancing-halls or pavilions as are maintained or conducted in public parks or playgrounds where no admission is charged, and where good order is maintained, and where no intoxicating liquors are sold.

SEC. 11040. It is unlawful to conduct the business of hair cutting, shaving, or shampooing, or to open barber shops for the doing of such business, on Sunday.

### Nebraska

[Revised Statutes of Nebraska, 1943]

SEC. 2-1213. [Racing on Sunday prohibited.]

SEC. 15-258. [A primary city may restrain, prohibit and suppress desecration of the Sabbath day, commonly called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon said day.]

SEC. 16-226. [A city of the first class by ordinance may regulate, prohibit, and suppress desecration of the Sabbath day, commonly called Sunday, and prohibit all public amusements, shows, exhibitions, and all business pursuits upon said day.]

SEC. 17-128. A second-class city shall have power to prevent any desecration of the Sabbath day, commonly called Sunday, and

to prohibit public amusements, shows, exhibitions or ordinary business pursuits upon said day.

SEC. 28-938. It shall be unlawful for any person . . . to conduct, carry on or to perform any of the services of a barber on the first day of the week, commonly called Sunday.

SEC. 28-940. If any person of the age of fourteen years or upwards shall be found on the first day of the week commonly called Sunday, rioting, quarreling, or engaged in public dancing, he or she shall be fined in a sum not exceeding twenty dollars or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. If any person of the age of fourteen years or upwards shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted) he or she shall be fined in a sum not exceeding five dollars nor less than one dollar; *Provided*, the provision of this act relating to public dancing shall not apply to cities and villages in which public dancing is supervised and regulated by the municipal authorities. . . . Nothing herein contained in relation to common labor on the day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week on the Sabbath, nor prevent emigrating families from traveling, watermen from landing their passengers, and superintendents and helpers of toll bridges or toll gates from attending and superintending the same, or ferrymen from conveying travelers over the water, or persons moving their families on such days, or to prevent railway companies from running necessary trains. It shall be unlawful for any person over fourteen years of age to play baseball in a competitive game on Sunday in this state, except on the conditions following: In all cities and villages such games may be authorized by a vote of the majority of the electors of such city or village, voting at a general or special election for that purpose; and in the several counties of the state, outside of the corporate limits of the cities and villages therein, such games may be authorized by the county board, and the authority therefor shall be in

the form of a resolution duly passed by the county board. Any person over the age of fourteen years, who shall engage in playing baseball on Sunday in a competitive game, where therefor has not been granted as herein provided, shall be deemed guilty of a misdemeanor.

SEC. 66-521. [Prohibits motor fuel trucks to use highways from 6 A.M. to midnight on Sundays.]

SEC. 69-207. [Prohibits pledges or sale of property on Sunday.]

### Nevada

[Nevada Compiled Laws, 1929]

SEC. 782. It shall be unlawful in any town or city of this state having a population of more than five hundred people, for any person, or persons, company or corporation, to keep open, or permit to be kept open, any barber-shop or public place for the purpose of carrying on or plying the barber trade or business, or to conduct such business on the first day of each week, commonly called Sunday, that is to say, between the hours of twelve (12) o'clock midnight of Saturday of any week, and twelve (12) o'clock midnight of the following day, Sunday.

### New Hampshire

[Revised Laws of New Hampshire, 1912]

CHAP. 212. SEC. 36. Whoever requires an employee engaged in any commercial occupation or in the work of any industrial process not subject to the following section or in the work of transportation or communication to do on Sunday the usual work of his occupation, unless he is allowed during the six days next ensuing twenty-four consecutive hours without labor, shall be fined not more than fifty dollars; provided that this section and the following section shall not be construed as allowing any work on Sunday not otherwise authorized by law.

SEC. 37. Every employer of labor engaged in carrying on any manufacturing or mercantile establishment in the state, shall allow every person, except those specified in section 47 employed

in such manufacturing or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days. No employer shall operate any such manufacturing or mercantile establishment on Sunday unless he has posted in a conspicuous place on the premises a schedule containing a list of the employees who are required or allowed to work on Sunday and designating the day of rest for each and shall file a copy of such schedule with the commissioner of labor, and promptly file with him a copy of every change therein. No employee shall be required or allowed to work on the day of rest designated for him.

SEC. 38. The two preceding sections shall not apply to establishments used for the manufacture or distribution of gas, electricity, milk or water, hotels, restaurants, drug stores, livery stables, or garages, nor to the transportation, sale or delivery of food.

SEC. 39. Sections 36 and 37 shall not apply to the following employees:

I. Janitors, watchmen, firemen employed at stationary plants, or caretakers.

II. Employees whose duties on Sunday include only setting sponges in bakeries; caring for live animals or caring for machinery and plant equipment.

III. Employees engaged in the preparation, printing, publication, sale or delivery of newspapers, or periodicals with definite on-sale news-stand dates.

IV. Employees engaged in farm or personal service.

V. Employees engaged in any labor called for by an emergency which could not reasonably have been anticipated.

VI. Employees engaged in any work connected with the theatre or motion picture houses.

VII. Employees engaged in the canning of perishable goods.

VIII. Employees of telegraph and telephone offices.

CHAP. 448. SEC. 3. No person shall do any work, business, or labor of his secular calling, to the disturbance of others, on the first day of the week, commonly called the Lord's day, except works

of necessity and mercy, and the making of necessary repairs upon mills and factories which could not be made otherwise without loss to operatives; and no person shall engage in any play, game, or sport on that day.

SEC. 4. No person shall keep his shop, warehouse, cellar, restaurant or workshop open for the reception of company, or shall sell or expose for sale any merchandise whatever on the Lord's day; but this section shall not be construed to prevent the entertainment of boarders, nor the sale of milk, bread, and other necessaries of life, nor of drugs and medicines.

SEC. 5. Nothing in this chapter shall prevent the selectmen of any town from adopting by-laws and ordinances permitting and regulating retail business, plays, games, sports, and exhibitions on the Lord's Day, provided such by-laws and ordinances are approved by a majority vote of the legal voters present and voting at the next regular election. But no such by-laws or ordinances shall permit public dancing, horse racing, or prize fights at any time on the Lord's Day, or the games of baseball, hockey, or football, or any games, sports, or exhibitions of physical skill at which admission is charged or donations accepted, to be held earlier than one o'clock in the afternoon, or the opening of theatrical or vaudeville performances or motion pictures earlier than six o'clock in the afternoon.

SEC. 6. No person shall, on the Lord's day, within the walls of any house of public worship or near the same, behave rudely or indecently, either in the time of public service, or between the forenoon and afternoon services.

### New Jersey

[New Jersey Statutes Annotated, Permanent Edition with Supplements to 1947]

SEC. 2:207-1. No traveling, worldly employment or business, ordinary or servile labor or work either upon land or water, except works of necessity and charity, and no shooting, fishing, not including fishing with a seine or net, which is hereinafter provided for, sporting, hunting, gunning, racing, frequenting of tippling houses, or any interludes or plays, dancing, singing, fid-

dling or other music for the sake of merriment, playing at football, fives, ninepin., bowls, long bullets, or quoits, nor any other kind of playing sports, pastimes, or diversions shall be done, performed, used, or practiced by any person within this State on the Christian Sabbath, or first day of the week, commonly called and hereinafter designated as Sunday.

SEC. 2:207-2. No person going to or returning from any church or place of worship within the distance of twenty miles, or going to call a physician, surgeon or midwife, or carrying mail to or from any post office, or going by express by order of any public officer, shall be considered as traveling within the meaning of this chapter [chapter 207].

SEC. 2:207-3. Railroad companies in this state may run one passenger train each way over their roads on Sunday for the accommodation of the citizens of this state.

SEC. 2:207-4. Nothing contained in this chapter shall be construed so as to prevent the transportation of the United States mail by railroad or on the public highways, or the regular trips of ferry boats within the state or between this and another state.

SEC. 2:207-5. Nothing contained in this chapter shall be construed to prohibit the dressing of victuals in private families or in lodging houses, inns and other houses of entertainment for the use of sojourners, travelers or strangers.

SEC. 2:207-6. No person shall cry, show forth, expose to sale, or sell or barter any wares, merchandise, fruit, herbs, meat, fish, goods or chattels on Sunday.

SEC. 2:207-8. If any person shall be found fishing, sporting, playing, dancing, fiddling, shooting, hunting, gunning, traveling, or going to or returning from any market or landing with carts, wagons or sleds, or behaving in a disorderly manner, on Sunday, any constable or other citizen may stop every person so offending and detain him until the next day, to be dealt with according to law.

SEC. 2:207-9. No person shall, on Sunday, cast, draw or make use of any seine or net for the purpose of catching fish in

any pond, lake, stream or river within the territorial limits or jurisdiction of this state, or aid or assist therein.

SEC. 2:207-11. [Stages may not be driven through the state on Sunday except in cases of necessity and mercy, or to carry the mail.]

SEC. 2:207-12. [Use of certain vehicles, loading and unloading goods, driving cattle, sheep or swine prohibited on Sunday.]

SEC. 2:207-13. No transportation of freight, excepting milk, on any public highway, railroad or canal . . . shall be done or allowed by any person on Sunday.

SEC. 2:207-18. From and after April twelfth, one thousand nine hundred and thirty-three, any person or corporation, on the Christian Sabbath, or first day of the week, commonly called Sunday, may (a) print, publish and sell newspapers, (b) sell and deliver milk, (c) walk, ride or drive for recreation, (d) hire horses and carriages or other conveyances for riding and driving, or (e) engage or take part in any form of recreation, sport, or amusement that is not unlawful on other days of the week, if in so doing such person or corporation does not disturb others in their observance of Sunday.

The governing bodies of any municipality or incorporated camp meeting association of this state shall, however, have the power to adopt such ordinances or rules as they may deem necessary and proper to control and regulate the conduct of the forms of recreation, sports or amusements made lawful by this section, and to control, regulate or restrict the commercialization of any such form or forms of recreation, sport or amusement, within their respective boundaries.

SEC. 2:207-29. If any person, charged with having labored or worked on Sunday, shall be brought before a justice of the peace to answer the information and charge thereof, and shall then and there prove to the satisfaction of the justice that he uniformly keeps the seventh day of the week as the Sabbath, habitually abstains on that day from following his usual occupation or business and from all recreation, and devotes the day to the exercise of

religious worship, and if the work or labor for which such person is informed against was done and performed in his dwelling house or work shop, or on his premises or plantation, and has not disturbed other persons in the observance of the first day of the week as the Sabbath, then such defendant shall be discharged. This section shall not be construed to allow any such person to openly expose to sale on Sunday any goods, wares, merchandise, or other article or thing whatsoever in the line of his business or occupation.

SEC. 5:5-38. [Horse race meetings on Sunday are unlawful.]

SEC. 5:5-47. [Permits to hold horse race meetings on Sunday shall not be given.]

SEC. 23:3-32. [Licensed hunters may shoot semiwild pheasants on Sunday.]

SEC. 23:4-24. [Prohibits hunting on Sunday.]

SEC. 23:5-24.4. [Net fishing is unlawful on Saturday afternoons and Sundays, except under certain conditions.]

SEC. 23:9-74. [Sunday fishing prohibited in the Manasquan river.]

SEC. 23:9-81. [Sunday fishing prohibited in the Mullica river.]

SEC. 24:10-22.1. [Deliveries of milk and cream on Sundays and holidays not more than two hours prior to 6:30 A.M. are deemed lawful. Deliveries must be made between 6:30 A.M. and 6:00 P.M. on all other days.]

SEC. 33:1-40. [The governing board or body of each municipality may prohibit the retail sale of alcoholic beverages on Sunday, or regulate the hours of sale of such beverages.]

SEC. 34:2-10. No child under the age of sixteen years . . . shall be permitted to work on Sunday.

SEC. 40:48-2.1. The governing body of any municipality in this State shall have the power . . . to regulate the opening and closing of beauty parlors on Sunday and holidays.

SEC. 40:52-1. The governing body [of a municipality] may make, amend, repeal and enforce ordinances to license and regulate

. . . the opening and closing of barber shops on Sundays and legal holidays.

SEC. 40:95-3. Within the limits of any incorporated camp meeting association or seaside resort the grounds belonging to which are located outside the corporate limits of any city or borough possessing a special charter, the corporate authorities may by ordinance or otherwise regulate and restrain the running of any railroad train, locomotive or cars upon any railroad track within said premises on Sunday.

SEC. 40:95-4. The said corporate authorities, may by ordinance or otherwise regulate and restrain, within the limits of said premises, or upon any pier or landing place adjacent thereto, the carrying of any person by means of any boat or vessel of any kind to and from said premises, piers or landing place on Sunday; regulate and restrain the landing on said premises, by either public or private conveyance, of any person on Sunday, except on errands of mercy, sickness or death.

SEC. 45:4-26. No person shall carry on or engage in the business of shaving, hair cutting or other work of a barber on Sunday.

SEC. 45:22-31. A pawnbroker shall not . . . transact any business on Sunday.

SEC. 50:2-11. [Fishing for shellfish on Sunday is unlawful.]

### New Mexico

[New Mexico Statutes, Annotated, 1941]

SEC. 41-4402. Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse-racing, cock fighting, or in any other manner disturbing any worshiping assembly, or private family, or attending any public meeting, or public exhibition, excepting for religious worship, or instruction, or engaged in any labor, except works of necessity, charity or mercy, shall be punished.

SEC. 41-4403. It shall be lawful in cases of necessity for farmers and gardeners to irrigate their lands and when necessary to preserve the same, to remove grain and other products from the

fields on said day; and it shall be lawful for cooks, waiters and other employees of hotels and restaurants, and butchers and bakers to perform their duties on said day; and it shall be lawful for any person to operate any drug store, filling station, camp ground, news stand, picture show, garage, tire repairing shop, ice station, confectionery, soft drink stand, truck and stage line, and all works or enterprises of necessity on said day.

No municipality or the governing body thereof shall enact or enforce any ordinance in conflict with the provisions of this section.

SEC. 51-1505. (b). [No auction sales shall be held on Sundays.]

SEC. 61-1014. [Sunday sale of alcoholic liquors prohibited unless permitted by local referendum.]

## New York

[McKinney's Consolidated Laws of New York]

### Penal Law

SEC. 2140. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community.

SEC. 2141. A violation of the foregoing prohibition is Sabbath breaking.

SEC. 2142. Sabbath breaking is a misdemeanor.

SEC. 2143. All labor on Sunday is prohibited, excepting the works of necessity and charity. In works of necessity or charity is included whatever is needful during the day for the good order, health or comfort of the community.

SEC. 2144. It is a sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such man-

ner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

SEC. 2145. All shooting, hunting, playing, horse-racing, gaming or other public sports, exercises or shows, upon the first day of the week, and all noise unreasonably disturbing the peace of the day are prohibited. Notwithstanding the provisions of this section or of any general or local act, it shall be lawful to play baseball games on the first day of the week after two o'clock in the afternoon and to witness which an admission fee may or may not be charged, and to conduct or participate in games of bowling on said day after two o'clock in the afternoon and to participate in or witness which an admission or other fee may or may not be charged, in a city, town or village, if an ordinance shall have been adopted by the common council or other legislative governing body of the city, town or village respectively permitting such games on such day and after such hour.

SEC. 2146. All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity they may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community.

SEC. 2147. All manner of public selling or offering for sale of any property upon Sunday is prohibited, except as follows: 1. Articles of food may be sold, served, supplied and delivered at any time before ten o'clock in the morning; 2. Meals may be sold to be eaten on the premises where sold at any time of the day; 3. Caterers may serve meals to their patrons at any time of the day; 4. Prepared tobacco, bread, milk, eggs, ice, soda water, fruit, flowers, confectionery, souvenirs, newspapers, gasoline, oil, tires, drugs, medicines, and surgical instruments may be sold in places other than a room where spirituous or malt liquors or wines are kept or offered for sale and may be delivered at any time of the day; 5. Delicatessen dealers and bakeries may sell, supply, serve and deliver cooked and prepared foods, between the hours of four

o'clock in the afternoon and half past seven o'clock in the evening, in addition to the time provided for in subdivision one hereof; 6. Persons, firms or corporations holding licenses and/or permits issued under the provisions of the Alcoholic Beverage Control Law permitting the sale of beer at retail, may sell such beverages at retail for off-premises consumption to persons making purchases at the licensed premises to be taken by them from the licensed premises.

The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day. Delicatessen dealers shall not be considered as caterers within subdivision three hereof.

SEC. 2151. All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disturbing noise. At a military funeral, or at the funeral of a United States soldier, sailor or marine, or of a national guardsman, or of a deceased member of an association of veteran soldiers, sailors or marines, or of a disbanded militia regiment, or of a secret fraternal society, or of an association of employees of the national, state, or municipal governments, music may be played while escorting the body; also in patriotic military processions on Sunday previous to Decoration day, known as Memorial Sunday, to cemeteries or other places where memorial services are held, and also by organizations of the national guard or naval militia or of an association of employees of the national, state, or municipal governments, attending religious service on Sunday; but in no case within one block of a place of worship where service is then being celebrated. Music may also be played in any procession conducted by a religious organization or society in connection with a religious service or religious rally after one o'clock noon on Sunday.

SEC. 2152. The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with or without gloves, sparring contest, trial of strength, or any part or parts therein, or any circus, equestrian, or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances or rope dancers on the first day of the week is forbidden; and every person aiding in such exhibition, performance or exercise by advertisement, posting or otherwise, and every owner or lessee of any garden, building or other room, place or structure, who leases or lets the same for the purpose of any such exhibition, performance or exercise, or who assents to the use of the same, for any such purpose, if it be so used, is guilty of a misdemeanor.

SEC. 2152-a. Notwithstanding provisions of the preceding section or of any local law, it shall be lawful to perform concert and recital dances on the first day of the week after two o'clock in the afternoon and to witness which an admission fee may or may not be charged, in a city, town or village, if an ordinance shall have been adopted by the common council or other legislative governing body of the city, town or village permitting such dancing on such day and after such hour, provided such concert and recital dances are not included as a part of any then current theatrical or other production and have not been performed more than three consecutive times during the six days preceding such first day of the week.

SEC. 2153. Any person who carries on or engages in the business of shaving, hair cutting or other work of a barber on the first day of the week, shall be deemed guilty of a misdemeanor.

SEC. 2154. If in any city, town or village motion pictures, legitimate theatre productions, such as dramatic and musical productions are now exhibited on the first day of the week, they may continue to be so exhibited during such time after two o'clock in the afternoon as the exhibition of such pictures, productions and performances shall not have been prohibited by an ordinance hereafter adopted by the common council or other legislative

body of such city, town or village, the adoption, repeal or readoption of which is hereby authorized. If in any city, town or village such pictures, productions and performances are not now exhibited on the first day of the week, they shall not be so exhibited except during such time after two o'clock in the afternoon as shall be permitted by an ordinance hereafter adopted by the common council or other legislative body of such city, town or village, the adoption, repeal or readoption of which is hereby authorized. Provided any law adopted by the legislative body of a city, town or village, which shall authorize the exhibition on the first day of the week of dramatic and musical productions, shall be invalid unless it conforms to section one hundred and sixty-one of the labor law.

#### Labor Law

SEC. 161. [An employer must allow his employees one day's rest in seven, except under certain given conditions.]

SEC. 168. [State employees are not required to work more than six days a week except upon their own request or in an emergency.]

SEC. 169a. [One day of rest in each week is allowed for all state employees except officers and the state police force except during an emergency or upon their own request to work seven days.]

#### Alcoholic Beverage Control Law (1945)

SEC. 105 (14). No premises licensed to sell liquor and/or wine for off-premises consumption shall be permitted to remain open . . . on Sunday.

SEC. 106 (5). [No alcoholic beverages shall be sold, offered for sale or given away upon any premises licensed to sell alcoholic beverages at retail for on-premise consumption, on Sunday from 3 A.M. to 1 P.M.]

#### Correction Law (1929)

SEC. 171. [Prisoners in state penitentiaries shall not be employed on Sundays or public holidays.]

## North Carolina

[General Statutes of North Carolina, 1943]

SEC. 14-265. All prisoners in the State's Prison, or in any county jail or county convict camp, who shall be assigned to regular work which requires the performance of the same, or substantially the same duties on Sundays as on other days of the week, shall be allowed a commutation of their sentences for each Sunday, or fractional part of a Sunday on which they shall be required to perform the duties of the task assigned to them.

SEC. 18-45. [All liquor stores shall remain closed on Sundays.]

SEC. 18-47. [All county liquor stores shall be closed on Sundays.]

SEC. 103-1. On the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person shall, upon land or water, do or exercise any labor, business or work, of his ordinary calling, works of necessity and charity alone excepted, nor employ himself in hunting, fishing or fowling, nor use any game, sport or play.

SEC. 103-2. If any person shall, except in defense of his own property, hunt on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor. [Amended, 1945.]

## North Dakota

[North Dakota Revised Code, 1943]

SEC. 12-2115. The first day of the week being by general consent set apart for rest and religious uses, the following acts are forbidden to be done on that day, the doing of any of which is Sabbath breaking:

1. Servile labor, except work of necessity and charity. The operation of steam railroads, street railways, telegraph and telephone systems, electric light, gas, heat and power systems, livery and feed barns, taxicabs, and busses, automobile garages and filling stations, bakeries, bootblack stands, popcorn stands, and newspaper plants shall be deemed works of necessity;

2. Public sports, including shooting, sporting, horse racing, or other public sports, circuses, and street carnivals. Baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose, and comfort of the community may be played between the hours of one o'clock P.M. and 6 o'clock P.M. on the Sabbath day, if played more than five hundred feet away from any church edifice;

3. Trades, manufactures, and mechanical employments;

4. All manner of public selling, or offering or exposing for sale publicly, of any commodity, except that meats and fish may be sold at any time before 10 o'clock A.M., and foods may be sold to be eaten upon the premises where sold, and drugs, medicines, surgical appliances, milk, ice cream and soda fountain dispensations, fruits, candy and confectionery, tobacco and cigars, newspapers and magazines may be sold at any time of the day. None of said articles or commodities shall be sold in any billiard hall, pool hall, bowling alley, saloon, or any other place where gaming of any kind is conducted unless said gaming is discontinued from 12 o'clock midnight on Saturday until 6 o'clock A.M. on Monday.

SEC. 12-2117. It is a sufficient defense in prosecutions for performing servile labor on the first day of the week to show that the accused uniformly keeps another day of the week as holy time and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

SEC. 12-2119. [It is a misdemeanor for any person to keep open or run any place for public dancing between the hours of 12 o'clock midnight on Saturday and sunrise the following Monday morning.]

SEC. 12-2120. The operation of theaters showing motion pictures and other theatrical performances for profit or otherwise after 2 o'clock P.M. on Sunday is lawful.

SEC. 12-2121. Any licensed bowling alley in the state may be operated from and after one o'clock P.M. on the first day of the week, and all necessary labor performed and service rendered in connection therewith is legal and lawful. Any municipality, by

ordinance, may prohibit the operating of bowling alleys on the first day of the week.

SEC. 12-2122. It shall be lawful for chautauqua associations, summer resorts, firms, corporations, and private persons to operate bathhouses, bathing beaches, or pleasure boats of all kinds on Sunday.

### Ohio

[Throckmorton's Ohio Code, Annotated 1940, Baldwin's Certified Revision]

SEC. 13044. Whoever, being over fourteen years of age, engages in common labor or opens or causes to be opened a building or place for the transaction of business, or requires a person in his employ or under his control to engage in common labor on Sunday, on complaint made within ten days thereafter, shall be fined.

SEC. 13045. The next preceding section shall not apply to work of necessity or charity, and does not extend to persons who conscientiously observe the seventh day of the week as the Sabbath, and abstain thereon from doing things herein prohibited on Sunday.

SEC. 13046. The provisions of section 13044 shall not prevent emigrating families from traveling, watermen from landing their passengers, or keepers of toll-bridges, toll-gates or ferries from attending them on Sunday.

SEC. 13047. Whoever engages in the business of barbering on Sunday, shall be fined.

SEC. 13048. Whoever, being over fourteen years of age, engages in sporting, rioting, quarreling, hunting, fishing or shooting on Sunday, on complaint made within ten days thereafter, shall be fined.

SEC. 13049. Whoever, on Sunday, participates in or exhibits to the public with or without charge for admittance, in a building, room, ground, garden or other place, a theatrical or dramatic performance or an equestrian or circus performance of jugglers, acrobats, rope dancing or sparring exhibitions, variety show, negro minstrelsy, living statuary, ballooning, baseball play-

ing in the forenoon, exhibition of motion pictures in the forenoon, tenpins or other games of similar kind, or participates in keeping a low or disorderly house of resort or sells, disposes of or gives away ale, beer, porter or spirituous liquor in a building appendant or adjacent thereto, where such show, performance, or exhibition is given, or houses or place is kept, on complaint within twenty days thereafter, shall be fined.

SEC. 13053. Whoever, in the open air on Sunday, has implements for hunting or shooting with intention to use them for that purpose, shall be fined. Neither this nor any other section shall render illegal the use of hunting implements in trapshooting on Sunday afternoons when conducted under the auspices of a recognized hunt, trapshooting, rifle or game club of this state.

### Oklahoma

[Oklahoma Statutes, 1941, Official Edition]

SEC. 182. It shall be unlawful to hunt quail of any kind on the first day of the week, commonly called Sunday, and for any violation of this section the person so offending shall be punished as for Sabbath Breaking.

SEC. 907. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community. Any violation of this prohibition is Sabbath-breaking.

SEC. 908. The following are the acts forbidden to be done on the first day of the week, the doing of any of which is Sabbath-breaking: First. Servile labor, except works of necessity or charity. Second. Trades, manufactures and mechanical employment. Third. All shooting, horse racing or gaming. Fourth. All manner of public selling, or offering or exposing for sale publicly, of any commodities, except that meats, bread, and fish may be sold at any time before nine o'clock in the morning, and except that food and drink may be sold to be eaten and drank upon the premises where sold, and drugs, medicines, milk, ice and sur-

gical appliances and burial supplies may be sold at any time of the day.

SEC. 909. It is sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

### Oregon

[Oregon Compiled Laws, 1940]

[Oregon has no *general* Sunday law. At the general election held November 17, 1916, all existing Sunday laws were repealed by a direct vote of the people. The vote was: for repeal, 125,839; against repeal 93,076. Since that time, however, the following specific enactments have been made.]

SEC. 42-330. It shall be unlawful for a pawnbroker to: (1) Transact any business on Sunday.

SEC. 49-501. It shall be a misdemeanor for any person or persons to carry on the business of barbering on Sunday in Oregon.

### Pennsylvania

[Purdon's Pennsylvania Statutes, Annotated, Permanent Edition (1940) ]

TITLE 4. SEC. 1. Boxing, sparring, and wrestling matches or exhibitions are hereby allowed, except on Sundays.

[1946 Cumulative Supplement]

SEC. 60. [Motion picture exhibitions on Sunday before two o'clock in the afternoon are unlawful. They are also unlawful after 2 P.M. unless the voters of a municipality have voted in favor of them.]

SEC. 82. [Baseball and football games on Sunday before 2 P.M. and after 6 P.M. are unlawful. Between the hours of 2 and 6 P.M. they are also unlawful unless the voters of a municipality have voted in favor of them.]

SEC. 121. [Musicians permitted to receive compensation for Sunday concerts.]

SEC. 122. [Department of Public Instruction to authorize public concerts on Sunday after twelve o'clock noon.]

SEC. 152. [Polo playing on Sunday before 1 P.M. and after 7 P.M. is unlawful. It is also unlawful between 1 and 7 P.M. unless the voters of a municipality have voted in favor of it.]

SEC. 182. [Sunday tennis games are lawful between the hours of one and seven P.M.]

[Purdon's Pennsylvania Statutes, Annotated]

TITLE 18. SEC. 4651. [Public pool-rooms, billiard-rooms, bowling-saloons and tenpin alleys to be closed on Sunday.]

TITLE 18. SEC. 4699.4. Whoever does or performs any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted), or uses or practices any game, hunting, shooting, sport or diversion whatsoever on the same day not authorized by law, shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine. . . .

Nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake-houses, lodging-houses, inns and other houses of entertainment for the use of sojourners, travellers or strangers, or to hinder watermen from landing their passengers, or ferrymen from carrying over the water travellers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessaries of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day.

TITLE 30. SEC. 118. It shall be unlawful for any person to catch and take fish of any kind or description from the Delaware River above Trenton Falls by the means of a net or to use a net of any character in the waters aforesaid between Saturday at two o'clock post meridian and twelve o'clock midnight Sunday night in each week.

SEC. 138. [Use of nets to catch fish below Trenton Falls in the Delaware River on Saturday afternoon and Sunday prohibited.]

SEC. 153. [Use of nets, seines, and eelpots for the purpose of catching fish in the Delaware River prohibited on Saturday night and on Sunday.]

[1946 Cumulative Supplement]

SEC. 265. [Sunday fishing is lawful under prescribed conditions.]

TITLE 34. SEC. 1311.702. [It is unlawful for any person to hunt game on Sunday or at night. Fur-bearing animals may be removed from traps, however, on Sunday when lawfully caught.]

SEC. 1311.719. [Training of dogs on certain game unlawful on Sunday, unless consent of the owner of the land where such training is done has been secured.]

[Purdon's Pennsylvania Statutes, Annotated]

TITLE 47. SEC. 100f. [It is unlawful to sell, trade or barter in malt or brewed beverages on Sunday and on certain hours of other days.]

SEC. 581. It shall not be lawful for any person or persons to sell, trade or barter in any spirituous or malt liquors, wine or cider, on the first day of the week, commonly called Sunday; or for the keeper or keepers of any hotel, inn, tavern, ale-house, beer-house, or other public house or place, knowingly, to allow or permit any spirituous or malt liquors, wine or cider, to be drank on or within the premises or house occupied or kept by such keeper or keepers . . . on the said first day of the week.

SEC. 721. All persons who are found drinking and tipping in ale-houses, taverns or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense, forfeit and pay one shilling and sixpence to any constable that shall demand the same, to the use of the poor; and all constables are hereby empowered, and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and then, when found,

quietly to disperse; but in case of refusal, to bring the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks, or bind them to their good behavior, as to him shall seem requisite. . . .

SEC. 744-411. [Certain Sunday restrictions are placed on liquor sales by licensees in hotels and restaurants.]

TITLE 53. SEC. 9658. [Municipal Corporations are empowered to restrain, prohibit and suppress desecration of the Sabbath day, commonly called Sunday.]

TITLE 63. SEC. 519. [Licenses or certificates for the operation of beauty parlors may be refused, revoked, or suspended if it is proved that beauty culture work was done on Sunday.]

SEC. 559-9. The department [of Public Instruction] may suspend or revoke any permit or certificate of registration granted by it under this act to any person who (a) habitually indulges in the use of ardent spirits, narcotics, or other stimulants to such an extent as, in the opinion of the department, incapacitates such person from the duties of a barber; (b) has or imparts any contagious or infectious disease to any recipient of such person's services as a barber; (c) performs work in an unsanitary or filthy manner or place of business; [or] (d) who is grossly incompetent; (e) who conducts his business of barbering on Sunday.

TITLE 67. SEC. 457. [No canal or railroad company is required to attend their works on Sunday.]

### Rhode Island

[General Laws of Rhode Island, 1938, as amended to 1946]

CHAP. 16. SEC. 4. [Boxing and sparring matches prohibited on Sunday.]

CHAP. 102. SEC. 6. No dealer shall have open for the conduct of business any display room or outdoor display lot where motor vehicles are exhibited on the first day of the week, commonly called Sunday.

"Business," as used in this section, shall mean the sale of, or attempting to sell motor vehicles; *provided, however*, that the storage

alone of motor vehicles in open lots shall not be held to be display for sale purposes.

CHAP. 165. SEC. 1. [Sunday sales of intoxicating beverages restricted.]

CHAP. 262. SEC. 8. No barber shop shall open for business on the . . . first day of the week (commonly called Sunday).

CHAP. 333. SEC. 22. Town councils and city councils may from time to time make and ordain all ordinances and regulations for their respective towns, not repugnant to law, which they may deem necessary for the safety of their inhabitants; . . . against breakers of the Sabbath.

[As Amended March 22, 1916]

CHAP. 362. SEC. 6. [Town councils or the board of police commissioners of the several cities and towns may license Sunday shows and exhibitions of various kinds, subject to regulations and restrictions such as they may prescribe.]

CHAP. 364. SEC. 12. No license granted under the provisions of this chapter shall authorize any business to be transacted by pawnbrokers on the first day of the week.

CHAP. 403. SECS. 1 to 4. [Town councils are authorized to issue licenses for the sale of certain commodities and conduct of certain businesses on Sunday, subject to their restrictions and specifications.]

CHAP. 610. SEC. 18. Except as provided in Section 2, Chapter 362, every person who shall do or exercise any labor or business or work of his ordinary calling, or use any game, sport, play or recreation on the first day of the week, or suffer the same to be done or used by his children, servants or apprentices, works of necessity and charity only excepted, shall be fined . . . ; *provided, further, however,* that the above prohibitions shall not apply to any person or persons operating or functioning under a valid permit or license.

SEC. 19. Every person who shall employ, improve, set to work or encourage the servant of any other person to commit any

act named in the preceding section, shall suffer the like punishment.

SEC. 21. Every professor of the Sabbatarian faith or of the Jewish religion, and such others as shall be owned or acknowledged by any church or society of said respective professions as members of or as belonging to such church or society, shall be permitted to labor in their respective professions or vocations on the first day of the week, but the exception in this section contained shall not confer the liberty of opening shops or stores on the said day for the purpose of trade and merchandise, or lading, unlading or fitting out of vessels, or of working at the smith's business or any other mechanical trade in any compact place, except the compact villages in Westerly and Hopkinton, or of drawing seines or fishing or fowling in any manner in public places and out of their own possessions; and in case any dispute shall arise respecting the person entitled to the benefit of this section, a certificate from a regular pastor or priest of any of the aforesaid churches or societies or from any three of the standing members of such church or society, declaring the person claiming the exemption aforesaid to be a member of or owned by or belonging to such church or society, shall be received as conclusive evidence of the fact.<sup>3</sup>

### South Carolina

[Code of Laws of South Carolina, 1942]

SEC. 1732. No tradesman, artificer, workman, laborer, or other person whosoever, shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's Day (commonly called the Sabbath), or any part thereof (work of necessity or charity only excepted).

SEC. 1733. No public sports or pastimes, as bear-baiting, bull-baiting, football playing, horse-racing, interludes or common plays, or other games, exercises, sports or pastimes, such as hunting, shooting, chasing game, or fishing, shall be used on the Lord's Day by any person or persons whatsoever.

SEC. 1734. Hereafter, it shall be unlawful for any person, firm

or corporation to keep open or admit persons to any public dancing hall owned or operated by them, or to allow any person to continue thereat, or therein between the hours of twelve o'clock (midnight) of Saturday and twelve o'clock (midnight) of Sunday, and all such places shall be and remain closed to the public between said hours.

SEC. 1735. In addition to the penalties prescribed against tradesmen, artificers, workmen and laborers who shall do or exercise any worldly labor, business or work of their ordinary calling upon the Lord's Day (commonly called the Sabbath) or Sunday, or any part thereof, any corporation, company, firm or person who shall order, require or direct any work to be done in any machine shop or shops on Sunday . . . shall . . . be deemed guilty of a misdemeanor.

SEC. 1735-1. It shall be unlawful for any person, firm, association or corporation owning or controlling or operating any textile manufacturing, finishing, dyeing, printing and processing plant within the State of South Carolina, to request or require or permit any regular employee to do or exercise or perform any of the usual or ordinary worldly labor or work in, of, about or connected with such employee's regular occupation or calling or any part thereof, in or about such textile manufacturing, finishing, dyeing, printing and processing plant on the Sabbath Day, commonly called Sunday, work of absolute necessity or emergency alone excepted, and then only upon condition that such employee be paid on the basis of one and one-half the amount of the usual average day wage or salary earned by such employee during other days of the week.

SEC. 1735-2. It shall be unlawful for any owner, person, firm or corporation, to employ, require, or permit the employment of women or children to work or labor in any mercantile establishment, or manufacturing establishment, on the Sabbath day, commonly called Sunday.

[1944 Supplement]

SEC. 1737-1. [It is lawful to exhibit motion pictures, athletic

sports and musical concerts in counties with army forts, naval or marine bases on Sunday after 2 P.M.]

SEC. 1748. Whoever shall keep, or suffer to be kept any gaming table, or permit any game or games to be played in his, her, or their house, on the Sabbath day, such person or persons, on conviction thereof before any court having jurisdiction, shall be fined.

SEC. 1850. No alcoholic beverages as herein defined shall be sold on Sundays.

SEC. 8343. It shall be unlawful for any railroad corporation or person owning or controlling railroads operating in this State to load or unload, or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars or trains of cars moved by steam power, except as hereinafter provided, and except to unload cars loaded with animals.

SEC. 8344. Said railroad corporations or persons may lawfully run on Sunday their regular passenger, mail and express trains, and their through freight trains between terminals within this State, or interstate into or through this State, and such extra freight trains as may be necessary to transport perishable freight and fertilizer, and such wrecking or repair trains as may be rendered necessary by casualty or emergency; *provided*, that when it is necessary to operate an extra freight train to transport perishable freight, such train may carry also non-perishable freight.

### South Dakota

[Code of South Dakota, 1939]

SEC. 5.0226. (4). . . no licensee of any class shall sell intoxicating liquor on Sunday.

SEC. 13. 1709. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless, and serious interruptions of the repose and religious liberty of the community. The term "day" as used herein includes the time from midnight to midnight. The following acts are forbidden to be done on the first day of the week, the doing of any of which is Sabbath breaking:

- (1) Servile labor, excepting works of necessity or charity;
- (2) Trades, manufactures, and mechanical employments;
- (3) All manner of public selling or offering or exposing for sale publicly of any commodities, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten on the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day;
- (4) All shooting, sporting, horse racing, gaming, or other public sports. . . .

Every person guilty of Sabbath breaking is punishable by a fine.

SEC. 13. 1710. It is a sufficient defense in proceedings for servile labor on the first day of the week to show that the accused uniformly keeps another day of the week as holy time and does not labor upon that day and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

SEC. 13. 1711. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time and does not labor on that day or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial is guilty of a misdemeanor.

SEC. 13. 1712. The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, sparring contest, trial of strength, or any part or parts therein, and any moving picture show of the same, or any circus, equestrian, dramatic performance, or exercise, or any performance or exercise of jugglers, acrobats, club performers, or rope dancers, or baseball games where an admission fee is charged or anything of value is accepted by the manager or any of the players or any one connected with said game as a condition of witnessing the same by the public, on the first day of the week is forbidden; and every person aiding in such exhibition, performance, exercise, or game, advertisement, post-

ing, or otherwise, and every owner or lessee of any garden, building or room, place or structure, ground or park, who leases or lets the same for the purpose of such exhibition or performance or exercise or game, on the first day of the week, or who assents to the use of the same for any such purpose, if it be used, is guilty of a misdemeanor.

### Tennessee

[Annotated Code of Tennessee, 1934]

SEC. 5253. If any person shall be guilty of exercising any of the common vocations of life, or of causing or permitting the same to be done by his children or servants, acts of real necessity or charity excepted, on Sunday, he shall, on due conviction thereof before any justice of the peace of the county, forfeit and pay ten dollars, one-half to the person who will sue for the same, the other half for the use of the county.

SEC. 5254. It shall be a misdemeanor for any person to carry on the business of barbering on Sunday; and any person found guilty of violating this section shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned in the county jail not less than fifteen nor more than thirty days, or both, in the discretion of the court.

SEC. 5255. Any person who shall hunt on Sunday, shall be subject to the same proceedings, and liable to the same penalties, as those who work on the Sabbath.

SEC. 11202. [Upon vote of a majority of the legislative council of any municipality, theatrical and motion-picture entertainment may be permitted.]

### Texas

[Texas Revised Civil Statutes, 1941]

ART. 6153. [Sales by a pawnbroker shall not be made on Sunday.]

[Texas Penal Code, 1941]

ART. 283. Any person who shall labor, or compel, force, or oblige his employees, workmen, or apprentices to labor on Sun-

day, or any person who shall hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined.

ART. 284. The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations, in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll bridges, keepers of hotels, boarding houses and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons.

ART. 285. Any person who shall run or be engaged in running any horse race, or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined.

ART. 286. Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employee of any such person, who shall sell, barter, or permit his place of business or place of public amusement to be opened for the purpose of traffic or public amusement on Sunday, shall be fined. . . . The term place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission.

ART. 287. The preceding Article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock A.M., nor to the sales of burial or shrouding material, newspapers, ice, ice cream, milk, nor to any sending of telegraph or telephone messages at any hour of the day or night, nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices, nor to sales of gasoline, or other motor fuel, nor to vehicle lubricants, nor to motion picture shows, or theatres operated in any incorporated city or town, after one o'clock P.M.

SEC. 2. The Commissioners or City Council of the towns or cities in which said motion picture shows or theatres are located shall have the right and power by proper ordinance to prohibit or regulate the keeping open or showing of such motion picture shows or theatres on Sunday.

ART. 614-11. No individual, firm, club, copartnership, association, company or corporation shall . . . hold or conduct any fistic combat match, boxing, sparring or wrestling contest or exhibition on Sunday.

ART. 666-4. (c) (1). It shall be unlawful for any person to consume any alcoholic beverage in any public place, or for any person to possess any alcoholic beverage in any public place for the purpose of consuming the same in such public place, at any time on Sunday between the hours of 1:15 A.M. and 1:00 P.M.

ART. 666-25. It shall be unlawful for any person to sell or deliver any liquor . . . on Sundays.

ART. 667-10. (a). It shall be unlawful for any person to sell beer or offer same for sale . . . on Sunday at any time between the hours of 1:00 o'clock A.M. and 1:00 o'clock P.M.

## Utah

[Utah, Code Annotated, 1943]

SEC. 103-53-1. Every person who keeps open on Sunday any store, workshop, banking house, or other place of business for the purpose of transacting business therein, is punishable by a fine.

SEC. 103-53-2. The provisions of the preceding section do not apply to persons who keep open hotels, boarding houses, baths, restaurants, bakeries, taverns, livery stables, garages, automotive service stations, golf courses, bowling alleys, ball parks, theatres, bathing resorts, ice stations, news stands, skating rinks, confectionery stores for the sale of confections only, tobacco stores for the sale of tobacco, pharmacies, or the prescription counters of retail drug stores on Sunday, for the legitimate business of each, or such industries as are usually kept in continuous operation.

### Vermont

[Public Laws of Vermont, 1933]

SEC. 8546. A person who wilfully commits a trespass by entering upon the garden, orchard or other land of another on which fruit trees are grown, without permission of the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, fruit or vegetables therein, shall be imprisoned not more than thirty days or fined not more than twenty dollars; and if the offense is committed on Sunday, or in disguise, or secretly between sunset and sunrise, the imprisonment shall be not less than five days nor the fine less than five dollars.

SEC. 8706 [as amended 1941, Laws of Vermont, 1941, No. 191, Section 1]. A person shall not between twelve o'clock Saturday night and twelve o'clock the following Sunday night exercise any secular business or employment, except works of necessity and charity, nor engage in any dance, nor shall a person operate, promote or engage in any play, game, sport or entertainment during such hours which disturbs the public peace or for which admission is taken or for which any compensation is received, directly or indirectly; except, however, that the legal voters of any town, at the annual meeting duly warned in 1942, or at a special meeting called before June 1, 1941, for that purpose, may, by majority vote of the legal voters present and voting, permit the conducting of baseball, moving pictures, lectures or concerts in any such municipality on Sundays until June 1 following the annual meet-

ing at which the voters of said town vote otherwise by a person, company or corporation, who may receive compensation for and charge admission to the same, but on condition that baseball, lectures and concerts shall not commence until two o'clock in the afternoon, and all moving pictures shall not commence until six o'clock in the afternoon; provided, however, that this act shall not apply to winter sports, tennis or golf.

SEC. 8707. The public service commission may authorize the running upon any railroad of such through trains on Sunday as, in the opinion of such board, the public necessity and convenience may require, having regard to the due observance of the day.

[Laws of Vermont, 1935]

NO. 196. SEC. 14. A person, partnership, association or corporation shall not sell any malt or vinous beverages or spirituous liquors on any Sunday, . . . provided, however, that such beverages and liquors may be sold with regular meals on Sundays by the holders of both first and a third class license in accordance with the law relating to such licenses between the hours of twelve o'clock noon and three o'clock in the afternoon and between the hours of six o'clock in the afternoon and eight o'clock in the afternoon, and by and in duly licensed clubs in accordance with the law relating to such licenses and by druggists holding permits on prescriptions and in accordance with the regulations relating to such permits.

### Virginia

[Virginia Code of 1942, Annotated]

SEC. 342a. [Employees of the state government who are required to work seven days a week are to have at least two Sundays a month free, with pay.]

SEC. 585 (51) 1. No boxing or sparring match or exhibition shall be held on Sunday.

SEC. 3301. [Fishing in the Potomac river from 5 A.M. Sunday to 5 A.M. Monday is prohibited.]

SEC. 4570. If a person on a Sunday be found laboring at any

trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity, he shall be deemed guilty of a misdemeanor. . . . This section shall not apply to furnaces, kilns, plants and other business of like kind that may be necessary to be conducted on Sunday, nor to the sale of gasoline, or any motor vehicle fuel, or any motor oil or oils.

SEC. 4571. The penalty imposed by the preceding section shall not be incurred by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant, not of his belief, to do secular work or business on a Sunday, and does not on that day disturb any other person.

SEC. 4572. No railroad company, receiver, or trustee, controlling or operating a railroad, shall, by any agent or employee, load, unload, run or transport upon such road on a Sunday, any car, train of cars or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains or locomotives are used exclusively for the relief of wrecked train or trains so disabled as to obstruct the main track of the railroad; or for the transportation of the United States mail; or for the transportation of passengers and their baggage; or where such cars, trains or locomotives constitute interstate freight trains exclusively, which trains may be run through the State of Virginia without stopping at local stations for interchange of freight; or for the transportation of live stock, or for the transportation of articles of such perishable nature as would necessarily impair in value by one day's delay in their passage: provided, however, that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight; and provided, however, that the State Corporation Commission may, at such times necessity may require, either to meet an emergency or to save life or property, suspend the re-

striction of this section and authorize the running, loading or unloading on Sunday of freight trains on any railroad, and of any car or locomotive. The State Corporation Commission may, upon petition, duly verified, of any railroad company, either by general rule or special order, or both, authorize the running, loading or unloading on Sunday of freight trains on such railroad, and of any car or locomotive, for any of the causes in the provisos of this section.

SEC. 4575. No steamboat company shall by any agent or employee load or unload on a Sunday any steamship or steamboat arriving at any port or landing on the bays, rivers, or other waters of this State or permit the same to be done by any such agent or employee except where such steamship or steamboat is for the transportation of the United States mails, or for the transportation of passengers and their baggage, or for the transportation of through freight *in transitu*, or of live stock, or of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage: Provided, that nothing in this section shall be construed as preventing any steamship or steamboat arriving at any port or landing on the bays, rivers, and other waters of this State not its final point of destination from unloading any and all freight intended for delivery at such intermediate port or landing or from loading and taking on any and all freight intended for shipment from such intermediate port or landing to the final destination of said steamship or steamboat.

SEC. 4578. If any person carry any gun, pistol, bowie-knife, dagger, or other dangerous weapon, . . . on a Sunday at any place other than his own premises, he shall be fined.

### Washington

[Remington's Revised Statutes of Washington, 1932]

SEC. 2494. Every person who, on the first day of the week, shall promote any noisy or boisterous sport or amusement, disturbing the peace of the day; or who shall conduct or carry on, or perform or employ any labor about any trade or manufacture,

except livery-stables, garages and works of necessity or charity conducted in an orderly manner so as not to interfere with the repose and religious liberty of the community; or who shall open any drinking saloon, or sell, offer or expose for sale, any personal property, shall be guilty of a misdemeanor: Provided, that meals, without intoxicating liquors, may be served on the premises or elsewhere by caterers, and prepared tobacco, milk, fruit, confectionery, newspapers, magazines, medical and surgical appliances may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for the good order or health or comfort of the community, but keeping open a barber-shop, shaving or cutting hair shall not be deemed a work of necessity or charity, and nothing in this section shall be construed to permit the sale of uncooked meats, groceries, clothing, boots or shoes.

SEC. 2496. It shall be a sufficient defense to a prosecution for performing work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time and that the act complained of was done in such manner as [will] not disturb others in the observance of the Sabbath.

### West Virginia

[West Virginia Code, of 1913, Annotated]

SEC. 5907 (40). . . . Stores shall not be open nor shall agencies sell alcoholic liquors on . . . Sundays.

SEC. 2219. It shall be unlawful on Sundays to: 1. Carry an uncased gun in the woods, fields or streams of this state, except at, or on the way to or from, a regularly used skeet, target or trap shooting ground; 2. Hunt, catch, kill, trap, injure or pursue with intent to catch, kill, trap or injure any wild animals, wild birds, or any other animal or bird protected under the provisions of this chapter.

SEC. 6072. If any person, on a Sabbath day, be found laboring at any trade or calling, or employ his minor children, apprentices or servants in labor or other business, except in house-

hold or other work of necessity or charity, he shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than fifteen dollars for each offense; and every day any such minor child, servant or apprentice is so employed shall constitute a separate and distinct offense. And any person found shooting or carrying firearms on the Sabbath day shall be guilty of a misdemeanor.

SEC. 6073. No forfeiture shall be incurred or conviction had under the preceding section for the transportation on the Sabbath day of the mail, or of passengers and their baggage carried by any mode of public conveyance, or for running any railroad train, traction car or system, automobile or other motor car carrying passengers for pleasure or hire, steamboat or other boat used in carrying passengers or freight, on the Sabbath day, or for carrying firearms or shooting on that day, by any person having the right so to do under the laws of the United States or of this State; and no forfeiture shall be incurred or conviction had under the preceding section by or of any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath and actually refrains from all secular business and labor on that day, provided he does not compel any apprentice or servant not of his belief to do secular work or business on Sunday, and does not on that day disturb any other person in his observance of the same. No contract shall be deemed void because it is made on the Sabbath day.

### Wisconsin

[Wisconsin Statutes of 1915]

SEC. 56.15 No prisoner in any penal institution within this state shall be compelled to work on any Sunday or legal holiday, except on necessary household work or when necessary to maintain the management or discipline of such institution.

SEC. 169.11. No boxing or sparring exhibition shall be held on Sunday.

SEC. 180.14. [The annual election of officers and meetings of corporations are not to be held on Sundays or holidays.]

SEC. 351.50. (1) Every employer of labor, whether a person, partnership or corporation, who owns or operates any factory or mercantile establishment in this state, shall allow every person, except those specified in subsection (2), employed in such factory or mercantile establishment, at least twenty-four consecutive hours of rest in every seven consecutive days and shall not permit any such person to work for such employer during such twenty-four consecutive hour period, except in case of breakdown of machinery or equipment, or other emergency, requiring the immediate services of experienced and competent labor to prevent serious injury to person, damage to property, or suspension of necessary operations, when such experienced and competent labor is not otherwise immediately available. This shall not authorize any work on Sunday not now authorized by law.

(2) This section does not apply to: (1) Janitors; (2) watchmen; (3) persons employed in the manufacture of butter, cheese or other dairy products or in the distribution of milk or cream, or in canneries; (4) persons employed in bakeries, flour and feed mills, hotels, and restaurants; (5) employees whose duties include no work on Sunday other than (a) caring for live animals, (b) maintaining fires; (6) any labor called for by an emergency that could not reasonably have been anticipated.

SEC. 351.52. Any person who conscientiously believes that the seventh, or any other, day of the week ought to be observed as the Sabbath and who actually refrains from secular business and labor on that day may perform secular labor and business on the first day of the week unless he shall wilfully disturb thereby some other person or some religious assembly on said day.

### Wyoming

[Compiled Statutes, 1945]

SEC. 29-430. The town council of any such town, in its corporate capacity, shall have the following powers: . . . *Eleventh.*— . . . To license, regulate or prohibit gambling houses and the sale of intoxicating liquors, and to prohibit and suppress bawdy houses,

disorderly houses, houses of prostitution and houses where lewd persons assemble for dancing, desecration of the Sabbath day, commonly called Sunday, and all kinds of public indecencies within the limits of the town or within one mile thereof; . . . *Twelfth*.— . . . to close all places of business on the Sabbath day, commonly called Sunday.

SEC. 37-513. No boxing or sparring match or exhibition shall be held on Sunday.

## DISCUSSION

### Sunday Laws (P. 380)

Sections declaring Sunday to be a *dies non* (that is, legal papers shall not be served on that day), are omitted, as Sunday is by common law a *dies non juridicus*. The custom of not legislating or holding court on that day or doing any judicial business, is also practically universal in this country even in the absence of any special legislation. Also omitted are the regulations regarding the computation of time in relation to contracts, etc., since these are rather in the nature of permissive orders for the protection of those who do not wish to perform secular tasks on what they believe to be holy time. In some States (see Michigan, for example, p. 411) the same protection is extended to those who believe that the seventh day of the week is sacred. In general, to save space, penalties have been omitted.

### Sunday in California (P. 383)

<sup>2</sup>The history of Sunday legislation in California is a most interesting one. For six years after becoming a State, California got along without a Sunday law. In 1855 the first law of this character in the State was enacted, a law prohibiting "all barbarous and noisy amusements on the Christian Sabbath." In 1858 another law was enacted, entitled "An Act to Provide for the Better Observance of the Sabbath." This forbade keeping open any store, workshop, or business house, and the sale of all goods, on "the Christian Sabbath," under a penalty of fifty dollars, or in default, imprisonment not to exceed one day for each two dollars' fine and costs. The same year, a case, that of *ex parte* Newman, an Israelite engaged in the business of selling clothing at Sacramento, was carried to the supreme court of the State under this law, the court declaring the law in violation of sections

one and four of the State Bill of Rights, and therefore unconstitutional. Justice Stephen J. Field, one of the three members of the court, and later a member of the Supreme Court of the United States, wrote a long dissenting opinion to this decision, in which he said that "Christianity is the prevailing faith of our people, . . . the basis of our civilization," and that it was as natural that its spirit should "infuse itself into and humanize our laws" as that "the national sentiment of liberty should find expression in the legislation of the country." At the same time he denied that Sunday laws are religious, or, to his perception, in conflict with the constitutional provisions guaranteeing the right to acquire property and "the free exercise and enjoyment of religious profession and worship, without discrimination or preference." Opposed to this view, Chief Justice Terry, who wrote the prevailing opinion of the court, said: "The enforced observance of a day held sacred by one of these sects, is a discrimination in favor of that sect, and a violation of the religious freedom of the others. . . . Considered as a municipal regulation, the legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week, any more than it can forbid it altogether." 9 California, 502.

In 1861, the legislature enacted another Sunday law, and when a case under the law came before the State supreme court, Justice Field having in the meantime become chief justice, his former dissenting opinion was approved, and the law was sustained. (See p. 670.)

In 1880 a law forbidding the baking of bread on Sunday was declared unconstitutional (*Ex parte Westerfield*, 5 Cal. 550.) on the ground of its being class legislation.

In 1882 the question of enforcing the existing State Sunday law became a political issue. Hundreds were arrested in an attempt to enforce the law, among them the manager of the Pacific Press, the largest publishing house on the Pacific Coast. Jury trials were demanded, but juries refused to convict. The law proved obnoxious and a dead letter. But the leading political parties placed the matter in their platforms, and there was wide agitation. The Republicans were for the law; the Democrats, against it. The State had always gone Republican, but the election showed a sweeping Democratic victory. The new legislature thereupon repealed the Sunday law in 1883, and since then California has been without a general Sunday closing law.

Later the Sunday advocates pushed matters till in 1893 they secured a one-day-rest-in-seven law, not a Sunday law; but it, too, proved to be a dead letter.

Repeatedly through the years the so-called "reformers" have tried to establish a general Sunday closing law in California, but have not succeeded. The State has been able to get along quite well for sixty years of her experience without such a law. And it is said that there is better churchgoing in that State than in many others in the Union.

### Rhode Island (P. 438)

<sup>a</sup> Rhode Island, first in all the American colonies, first in all the world, set the example of founding a government upon the principle of total separation of church and state. Boldly Roger Williams took his stand against Sabbath laws along with all other religious legislation. Yet strange to say, ever since the closing days of this noble man's life, the statute books of Rhode Island have been blemished with Sunday laws. The present law authorizes town and city councils to make ordinances and regulations "against breakers of the Sabbath." (See section 22.) In order not to violate the conscientious convictions of those who observe another day, an exemption has been made for them (Section 21), which says that they "shall be *permitted* to labor in their respective professions or vocations on the first day of the week"; this, however, is not to extend to the keeping open of shops or stores, except in two specified villages; and any dispute as to who are entitled to this tolerating exemption is to be settled by a "certificate from a regular *pastor* or *priest* of any of the aforesaid *churches* or *societies*"—a purely religious exemption.

**PART X**

**Operation of Sunday Laws**

**Persecution of Religious Minorities**



COURTESY, BOSTON HERALD

F. C. YOHNS, ARTIST

Sunday Laws Today, Just as in Colonial Times, Result in Persecution,  
Though the Methods of Punishment Have Changed

## The Practical Results of Sunday Legislation

FOR more than a hundred and fifty years the government of the United States has enjoyed a pre-eminence among the nations of the earth as a result of its recognition of the "unalienable rights" with which the Creator has endowed all men as a sacred and inviolable possession. Every other nation had played its part in violating those rights, so that every avenue of escape from the cruel hand of oppression seemed closed. But just then the government of the United States arose, and espoused the cause of human freedom, placing a guaranty of religious liberty in her Constitution, thereby inviting to her bosom the victims of ecclesiastical tyranny of every land.

But by persistent skill and subtlety, this monster scourge of the ages, religious persecution, seems determined to push its conquests into this last earthly asylum of soul liberty. And by no other means has this work been carried on here so persistently or so successfully as in the matter of the making, the preservation, and the enforcement of Sunday laws.

The matter contained in the preceding sections of this book shows conclusively the character of these laws. They are religious. And being religious, they afford the bigoted and intolerant a convenient means for persecuting those who differ with them in religion, and particularly in the matter of the Sabbath and Sabbath observance.

Notwithstanding the warning voice of history, bearing to us, like peals of thunder, the cries of the oppressed from ancient, mediæval, and modern nations, resulting from the enforcement of the religious opinions of the majority enacted into civil laws, still many are oblivious to the dangers of this same kind of legislation now, and are wont to inquire, "Where have Sunday laws resulted in religious persecution in this country?"

That religious legislation is the same evil now as ever; that it operates in the United States the same as in other countries; and that Sunday laws here have already been seized upon by religious bigotry as convenient tools for persecution, and their enforcement resulted in

religious oppression to conscientious observers of another day, the matter presented in the following pages abundantly testifies. It also very forcibly witnesses to the evil of allowing such laws to remain upon the statute books, and suggests the propriety and the absolute necessity of repealing these laws, as the true American principles and the plainest constitutional provisions demand. So long as these laws remain unrepealed, honest, innocent, industrious, and upright citizens are liable at any moment to be subjected to oppression, persecution, and hardship. Under such conditions, as Jefferson says, "a single zealot may commence persecution, and better men be his victims." (See page 169.)

### ARKANSAS

[In 1885 Arkansas had a Sunday law reading as follows:]

SECTION 1883. Every person who shall, on the Sabbath or Sunday, be found laboring, or shall compel his apprentice or servant to labor or to perform other service than customary household duties, of daily necessity, comfort or charity, on conviction thereof, shall be fined one dollar for each separate offense.

SECTION 1884. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

SECTION 1885. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the state, nor such manufacturing establishments as require to be kept in continual operation.

SECTION 1886. Persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath or Sunday shall not be subject to the penalties of this act, so that they observe one day in seven agreeably to the faith and practice of their church or society.—*Ark. Stat.* 1884, Mansfield.

[Article II, Sections 24 and 29 of the Arkansas Constitution of 1874, read as follows:]

ARTICLE II, SECTION 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled to attend, erect, or support any place of worship; or to maintain any

ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship above any other.

ARTICLE II, SECTION 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.<sup>1</sup>

#### Report of the Bar Association of the State of Arkansas, on Sunday Laws

Our statute as it stands in Mansfield's Digest, provides that "persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this act (the Sunday law), so that they observe one day in seven, agreeably to the faith and practice of their church or society." [*Arkansas Statutes*, 1884], *Mans. Dig.*, sec. 1886.

This statute had been in force from the time of the organization of the State government; but it was unfortunately repealed by act of March 3, 1885. Acts 1885, p. 37.

While the Jews adhere, of course, to the letter of the original command to remember the seventh day of the week, there is also in the State a small but respectable body of Christians who consistently believe that the seventh day is the proper day to be kept sacred; and in the case of *Scales [Scoles] v. State*, our Supreme Court was compelled to affirm a judgment against a member of one of these churches, for worshipping God according to the dictates of his own conscience, supported, as he supposed, by good theological arguments. It is very evident that the system now in force, savoring

as it does very much of religious persecution, is a relic of the Middle Ages, when it was thought that men could be made orthodox by an act of Parliament. Even in Massachusetts, where Sabatarian laws have always been enforced with unusual vigor, exceptions are made in favor of persons who religiously observe any other day in the place of Sunday. We think that the law as it stood in Mansfield's Digest, should be restored, with such an amendment as would prevent the sale of spirits on Sunday, as that was probably the object of repealing the above section.

### Speech of Senator Crockett on the Working of Sunday Laws \*

In the Senate of the State of Arkansas

Sir, I take shame to myself as a member of the General Assembly of 1885, which repealed the act of religious protection which this bill is intended to restore. It was hasty and ill-advised legislation, and, like all such, has been only productive of oppressive persecution upon many of our best citizens, and of shame to the fair fame of our young and glorious State. Wrong in conception, it has proved infamous in execution, and under it such ill deeds and foul oppressions have been perpetrated upon an inoffensive class of free American citizens in Arkansas, for conscience' sake, which should mantle the cheek of every lover of his State and country with indignant shame.

For nearly half a century, the laws of our State, constitutional and statutory, were in accord with our national Constitution, in guaranteeing to every citizen the right to worship God in the manner prescribed by his own conscience and that alone. The noble patriots who framed our nation's fundamental law with

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\* In January, 1887, a bill had been introduced in the Arkansas Legislature by Senator R. H. Crockett, grandson of David Crockett, for the restoration of the clause in the State Sunday law exempting observers of the seventh day. This is Mr. Crockett's speech in support of the measure. The bill passed, and the exemption was restored. But two men voted against the measure in the senate, both of these being preachers. One of them, a member from Pike County, was acquainted with many who observed the seventh day, several of whom were at that time under bonds. In private conversation, he confessed that they were all excellent people and, in general, law-abiding citizens.

the wisdom taught by the history of disastrous results in other nations from joining church and state, and fully alive to so great a danger to our republican institutions and their perpetuity, so wisely constructed that safeguard of our American liberties that for forty years after its ratification there was no effort to interfere with its grand principle of equal protection to all, in the full enjoyment and exercise of their religious convictions. Then petitions began to pour in from the New England States upon the United States Senate "to prevent the carrying and delivery of the mails upon Sunday"—which they declared was set aside by "divine authority as a day to be kept holy."

The petitions were referred to the committee on postal matters and the report was made by Hon. Richard M. Johnson, one of the fathers of the Democratic party. I quote the following from that report,\* which was adopted unanimously and "committee discharged."

"Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for violation of what government denominated the law of God. To prevent a similar train of evils in this country, the Constitution has withheld the power of defining the divine law. It is a right reserved to each citizen. And while he respects the rights of others, he cannot be held amenable to any human tribunal for his conclusions. . . . The obligation of the government is the same on both these classes" (those who keep Saturday and those who keep Sunday); "and the committee can discover no principle on which the claims of one should be more respected than those of the other, unless it be admitted that the consciences of the minority are less sacred than those of the majority."

Listen to that last sentence—but again I quote:

"What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights, of which government cannot deprive any

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\* For this report in full see pages 210-216.

of its citizens, however small. Despotic power may invade these rights, but justice still confirms them."

And again:

"Let the national Legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid, for the usurpation of the divine prerogative in this country, which has been the desolating scourge to the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion, for enforcing religious observances."

Sir, it was my privilege during the last two years to travel through our Northwestern States in the interest of immigration. I delivered public lectures upon the material resources of Arkansas, and the inducements held out by her to those who desired homes in a new State. I told them of her cloudless skies and tropical climes, and bird songs as sweet as vesper chimes. I told them of her mountains and valleys, of her forests of valuable timber, her thousands of miles of navigable waters, her gushing springs, her broad, flower-decked and grass-carpeted prairies, sleeping in the golden sunshine of unsettled solitude. I told them, sir, of the rich stores of mineral wealth sleeping in the sunless depths of her bosom. I told them of our God-inspired liquor laws, of our "pistol laws," of our exemption laws, and oh, sir!—God forgive me the lie—I told them that our Constitution and laws protected all men equally in the enjoyment and exercise of their religious convictions. I told them that the sectional feeling engendered by the war was a thing of the past, and that her citizens, through me, cordially invited them to come and share this glorious land with us, and aid us to develop it.

Many came and settled up our wild lands and prairies, and where but a few years ago were heard in the stillness of the night the howl of the wolf, the scream of the panther, and the wail of the wildcat, these people for whom I am pleading came and settled—and behold the change! Instead of the savage sounds incident

to the wilderness, now are heard the tap, tap, tap, of the mechanic's hammer, the rattle and roar of the railroad, the busy hum of industry, and softer, sweeter far than all these, is heard the music of the church bells as they ring in silvery chimes across the prairies and valleys and are echoed back from the hillsides throughout the borders of our whole State.

These people are, many of them, Seventh-day Adventists and Seventh Day Baptists. They are people who religiously and conscientiously keep Saturday, the seventh day, as the Sabbath, in accordance with the fourth commandment. They find no authority in the Scripture for keeping Sunday, the first day of the week, nor can any one else. All commentators agree that Saturday is and was the Scriptural Sabbath, and that the keeping of Sunday, the first day of the week, as the Sabbath, is of human origin, and not by divine injunction. The Catholic writers and all theologians agree in this.

These people understand the decalogue to be fully as binding upon them today as when handed down amid the thunders of Sinai. They do not feel at liberty to abstain from their usual avocations, because they read the commandment, "Six days shalt thou labor," as mandatory, and they believe that they have no more right to abstain from labor on the first day of the week than they have to neglect the observance of Saturday as their Sabbath. They agree with their Christian brethren of other denominations in all essential points of doctrine, the one great difference being upon the day to be kept as the Sabbath. They follow no avocations tending to demoralize the community in which they live. They came among us expecting the same protection in the exercise of their religious faith as is accorded to them in all the states of Europe, in South Africa, Australia, the Sandwich Islands, and every State in the Union, except, alas! that I should say it, Arkansas! Sir, under the existing law, there have been in Arkansas within the last two years three times as many cases of persecution for conscience' sake as there have been in all the other States combined since the adoption of our national Constitution.

Let me, sir, illustrate the operation of the present law by one or two examples. A Mr. Swearingen came from a Northern State and settled a farm in ——— County. His farm was four miles from town and far away from any house of religious worship. He was a member of the Seventh-day Adventists, and after having sacredly observed the Sabbath of his people (Saturday) by abstaining from all secular work, he and his son, a lad of seventeen, on the first day of the week went quietly about their usual avocations. They disturbed no one—interfered with the rights of no one. But they were observed, and reported to the grand jury—indicted, arrested, tried, convicted, fined; and having no money to pay the fine, these moral Christian citizens of Arkansas were dragged to the county jail and imprisoned like felons for twenty-five days—and for what? For daring in this so-called land of liberty, in the year of our Lord 1887, to worship God!

Was this the end of the story? Alas, no sir! They were turned out; and the old man's only horse—his sole reliance to make bread for his children, was levied on to pay the fine and costs, amounting to thirty-eight dollars. The horse sold at auction for twenty-seven dollars. A few days afterward the sheriff came again, and demanded thirty-six dollars,—eleven dollars balance due on fine and costs, and twenty-five dollars for board for himself and son while in jail. And when the poor old man—a Christian, mind you—told him with tears that he had no money, he promptly levied on his only cow, but was persuaded to accept bond, and the amount was paid by contributions from his friends of the same faith. Sir, my heart swells to bursting with indignation as I repeat to you the infamous story.

On next Monday, at Malvern, six as honest, good, and virtuous citizens as live in Arkansas are to be tried as criminals for daring to worship God in accordance with the dictates of their own consciences, for exercising a right which this government, under the Constitution, has no power to abridge. Sir, I plead, in the name of justice, in the name of our republican institutions, in the name

of these inoffensive, God-fearing, God-serving people, our fellow citizens, and last, sir, in the name of Arkansas, I plead that this bill may pass, and this one foul blot be wiped from the escutcheon of our glorious commonwealth.—*Daily Arkansas Gazette, Feb. 8, 1887, p. 8.*

### TENNESSEE

[Section 3 of article 1 of the constitution of Tennessee says:]

“That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.”<sup>2</sup>

### SUPREME COURT OF TENNESSEE

#### The Brief Submitted by Colonel T. E. Richardson in the Case of King v. the State<sup>3</sup>

Can there be any doubt that the act of 1741 \* was passed to favor and promote Christianity, and also the interests of the Church of England, then the religion and church of the state? Is it not equally plain that the act of 1803 was passed to promote and give preference to the Christian religion? that it was passed to prevent the profanation of a day sacred to certain persons claiming to be members of the Christian church, or of certain sects of Christians? This Court knows historically, if not judicially, of the wonderful revivals and widespread religious excitement in the year 1800. They created a deep and lasting impression upon the people. They

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\* An act passed under Governor Gabriel Johnson, Esq., by and with the consent of King George II's council, and the General Assembly of the province of North Carolina, when the church was a part of the state. It required that “all and every person and persons whatsoever shall on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety.” The fine for each offense was one dollar and twenty-five cents. See *Laws of the State of Tennessee, Including those of North Carolina now in Force in this State (1715-1820)*, vol. 1, pp. 55. Cf. pp. 55, 57.

prevailed most extensively throughout the States of Kentucky and Tennessee. They were conducted principally by the Presbyterians and Methodists, and the power and influence then obtained by the latter, are felt and seen to the present time.

That the act of 1803 was the result of those revivals, and passed in obedience to the behests of those churches and to conform to their religious views, no one can doubt. That the law was enacted to compel the observance of Sunday in conformity with their tenets, and to coerce the conscience of all persons who might differ with those sects, can be denied by no candid mind. By those acts exclusive jurisdiction was given to justices of the peace, to try, and punish, those who violated their provisions. For nearly a century no member of the bar or bench ever dreamed or held that the circuit courts of the State had jurisdiction over the offense, as created by those acts. For a half century or more after the passage of the act of 1803, it was regarded as the expression of earnest but fanatical zeal, and was allowed to fall into "innocuous desuetude." It is the fit instrument of petty persecution, and has been seldom used, even by the most earnest of zealots.

To the credit of the Christian people of the State, it can be truly said, they have generally scorned to use such means of persecution or coercion. . . .

The framers of the Constitution have ever been jealous of any attempt to interfere with the rights of conscience, or the domination of any church or religious sect. In recent years, efforts have been made to revive and enforce the law of 1803, and by *judicial legislation*, the offense enacted by that act has been declared a nuisance at common law. . . .

Why is the act complained of declared to be immoral and unlawful? Why are a succession of such acts declared to be a nuisance and indictable? Because they have been done on Sunday. Then it must be because it is repugnant to the religious views of the community. If it is a nuisance, why is it not such on Monday or Saturday, as well as on Sunday? The answer is, Because the work is done on Sunday. If it is an offense because done on Sunday, then

the law declaring such acts to be illegal and immoral is a religious law, enacted for the purpose of favoring some religion. If that be so, then the law is in violation of the Constitution. . . .

The Government, State or Federal, can in no sense be said to be founded or based upon Christianity. No preference can be given to any religion. All religions are alike protected. The followers of Mahomet, the disciples of Confucius, the believers in Buddha, as well as the worshipers of the true and living God, are entitled to like protection, and are secured in the enjoyment of the same rights. In this State, in this Nation, there is no such thing as "religious toleration." Every man enjoys the same right of conscience, and is responsible to no earthly tribunal for his religious faith and worship. The assumption, therefore, that Christianity is a part of the law of the land, is inconsistent with the spirit of our institutions, as well as in violation of the reserved, accepted, and inalienable rights of the people. . . .

It goes without saying that plowing, the occupation of the farmer, is necessary for the comfort, and even the existence, of the citizens. Can it be said with propriety or reason, that this act so essential for the welfare of society, so commendable when done on Monday, when done on Sunday becomes offensive, immoral, and a common nuisance? Is it not true that to hold that it becomes a nuisance when carried on on Sunday, is a perversion of the term "nuisance"? <sup>4</sup>

The establishment of Sunday as a day of rest and worship, grew out of the union of church and state, was commanded by ecclesiastical law, and the enforcement of its observance is contrary to the spirit and purpose of our form of government. . . .

It was the spirit of the Sunday laws that banished Baptists, whipped the Quakers, and hung and burned women as witches, in the pious New England States.

Such laws have found favor and a congenial home only when there has been a union of church and state. On such legislation is based the statements and utterances of Mr. Blackstone, in his

commentaries referred to, and relied on as authority by this court, in the cases herein cited. They are contrary to the letter and spirit of our Constitution and of free government. No human law has a right to interfere with a man's religious belief, his freedom of conscience, his right to worship his Creator when and how he will, so long as he does not trespass on the rights of others. . . .

Our written constitutions and our laws were made and intended for the protection of minorities—for the protection of the weak against the strong. Majorities and the powerful can protect themselves. But it is insisted that the act of 1803 and the opinions in *Gunter v. the State* and *Parker v. the State*, do not require that he shall work on Saturday, the Sabbath. Admitted. But they do coerce his conscience. They do require him to keep and observe a day he does not believe to be holy or sacred—a day *he* knows his Creator does not require him to keep. . . . They do compel him to a religious observance repulsive to his conscience. They do give preference to a mode of worship which is contrary to his faith. It is conceded that in following his usual avocations, he has no right to incommode or interfere with or disturb the religious worship of others.

It is insisted that this law is in conformity with the religious faith of the majority of the Christian people, and that working upon Sunday is repulsive to them, and repugnant to their ideas of propriety and morality. Granted. That is a matter between them and their God. Is it not equally as offensive and repulsive to the plaintiff in error, to see the constant, open, and habitual violation and desecration of a day he holds to be holy and sacred? Is he not entitled to the same consideration and protection as the majority, or those who keep and observe Sunday? are you not giving preference to a "mode of worship" when you hold that he shall rest and observe Sunday because it is the holy day of the majority, and that the day he holds in reverence can be violated with impunity? What is this but giving a preference to a religious establishment and mode of worship, and a denial of the natural and indefeasible right to worship Almighty God according to the dic-

tates of conscience, whether it is done by legislative enactment or judicial construction?

Well was it said by the able and distinguished late chief justice of this court, that "to hold that barbering on Sunday was a nuisance, is a perversion of the term 'nuisance.'" *A fortiori* can his ruling be applied to plowing on Sunday, by a quiet, orderly citizen, in his own field, in a secluded part of the country, and in the discharge of what he conscientiously believes to be his duty to his God and his family. . . .

A fine of seventy-five dollars is imposed, to appease the demands for vengeance. Seventy-five dollars and costs are demanded of Mr. King, as due punishment for an act of which the law of the State for nearly one hundred years had declared the penalty to be ample when fixed at three dollars! <sup>5</sup>

The verdict and judgment are a travesty on justice; the fine imposed is altogether disproportionate to the act; the verdict shows that it is the result of prejudice, of intolerance, of fanatical zeal; it shows the beginning of a revival of religious persecution, that has so often cursed humanity. It is another exhibition of "man's inhumanity to man." It merits, and I doubt not will meet, the reprobation of this high tribunal,—the last refuge and asylum of the oppressed and persecuted citizen. The dangers and evils that must result from the making and enforcement of Sunday laws, are fully illustrated in this case; this verdict shows the necessity of returning to constitutional methods, the protection of inalienable rights, the danger of judicial and religious legislation, the absolute necessity of keeping forever separate the powers and functions of church and state.<sup>6</sup>

Christianity needs no legislation or judicial aid, beyond the protection of its adherents in their right to worship according to the dictates of their own consciences. "My kingdom is not of this world," said the Saviour, and no human laws are required to secure the triumph of the Christian faith. The arm of secular government is not needed to enforce the commands of the world's Redeemer. . . .

What is there in the acts proven tending to the corruption of the public morals, that was a disturbance of the community, that was offensive to the moral sense of the public, or a common nuisance? Only three men can be found who say there was anything offensive, and they only show that their sense of propriety was shocked. The other two witnesses for the State say they were not disturbed or annoyed, and saw nothing that was offensive.

The work was done on King's own premises, where he had a right to be. It was not done in a public place; it was not done where the public had a right to be! There was no crowd, or assemblage of people, when the work was done. The people had no right to assemble there. The work was not done in a place or in a manner calculated to disturb or offend the public, because the public had no right or occasion to assemble there. It is a new assumption and assertion to say that the work done by Mr. King, as described by the witnesses, was immoral, or prejudicial to public morals, or a common nuisance. The morals that were or could be prejudiced or corrupted by what the witnesses saw and have detailed, must be weak indeed. Such morals are scarce worth the protection of the courts, and will not do to come in contact with the world. It is worse than a "perversion" of the word "nuisance," to denounce and hold that the working of Mr. King was a common nuisance.

To affirm the judgment can but result in evil, and only evil; it will be to rekindle and cause to burn afresh, the fires of religious persecution; for behind and pressing the prosecution, is the spirit of bigotry, intolerance, and religious persecution. It is religious persecution. It is the very spirit of the Inquisition. It is the spirit of religious persecution, in every land, in every age, wherever found. It is the spirit that instigated the "Massacre of St. Bartholomew." It is the spirit that inspired the "Sicilian Vespers." It is the spirit that revoked the Edict of Nantes, and lighted the fires of Smithfield. It is the spirit that moves and governs those who demand and clamor for the passage by Congress of the Blair Sunday-rest bill, and the District of Columbia Sunday bill. . . .

The enforcement of Sunday laws is the initial step by which they [religio-political organizations] hope to reach their ends, and crush out all freedom of thought and individual opinion. These organizations or societies, not content with thrusting themselves upon legislative bodies and seeking to gain political power, are attempting to invade the very Temple of Justice. They hang as a portentous cloud upon the political horizon, ominous of evil. By their acts they say that the "saints shall inherit the earth, and we are the saints!"

If the ruling in *Parker v. the State* shall be adhered to, personal government, paternalism, will be the established law, while spiteful persecution and petty prosecutions will fill the courts to overflowing. Every man will be forced to adjust his conscience and his faith to fit and fill the bedstead of some religious Procrustes; this boasted "land of the free" will be such no longer.

For protection from persecution and threatened danger, the plaintiff in error invokes the aid and interposition of this court; he craves the boon of living and worshiping as his conscience dictates. In their present condition, well may he and his brethren exclaim in the words of St. Paul, "We are troubled on every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed."

The determination of the case is important, not only to the appellant, but to the people of the whole State. With confidence, with perfect trust, the cause of my client, carrying with it the cause of religious liberty and of personal freedom, is submitted to the calm and impartial judgment of this court of last resort.

#### Brief by Hon. Don M. Dickinson

[In 1891, the Supreme Court of Tennessee rendered its decision in the King case, confirming the sentence and fine imposed by the circuit court of Obion County. In the appeal from this to the Circuit Court of the United States for the Western District of Tennessee, on a writ of habeas corpus, Hon. Don M. Dickinson, Postmaster General in 1888-89, was associated with Colonel T. E. Richardson as counsel for

the petitioner. From a thirty-six page brief prepared by Mr. Dickinson in this appeal, the following extracts are taken.]

It appears by the Bill of Exemptions, settled by the learned trial court, which is a part of the record of the supreme court of the State, that the testimony for the prosecution was substantially this: King had carried on the business of farming in Obion County for about twenty years. He was a good and orderly citizen, peaceable, well disposed, and liked by all his neighbors, who found no fault in him, except that he belonged to the Seventh-day Adventists, and while keeping the seventh day of the week in accordance with the tenets of his faith, tilled his farm on Sunday.

It is now one of the great duties of the Federal Government to see to it that no citizen or person in any State shall be deprived of liberty by any State power or authority, legislative, executive, or judicial, except under the law of that State, statute or common, and by legal and orderly proceedings under that law.

It necessarily follows that when any person is deprived of his liberty in any State, and violation of this guaranty is alleged, it is made the duty of the courts of the Federal system, by Congress, to inquire whether he has been imprisoned under "the law of the land" and lawful proceedings, *i. e.*, the law and the proceedings of the State authority. For this purpose the right to the writ of habeas corpus is given by the act of Congress.

King had already been prosecuted, convicted, and fined before a magistrate, for the offense of plowing on Sunday, in June, 1889, under section 2289, *supra*, and, of course, no one has urged that the indictment was for any offense indictable and punishable under any section of the code.

It is certainly true that the public and notorious repetition of an act which is offensive to morality, as modern civilization fixes the standard of morality, may be punished as a nuisance. . . . But it is equally true that in this country, the standard and definition of morality and good order which may be thus offended, under the law, is not one fixed by any sect, or tested by any creed. Much less it is true that there can be superadded to that code of morals,

which is at the base of civilized society, and has regard to the family relation, the rights of property, the sacredness of the person, the public peace and the like, all within the protection of fundamental law, a precept of mere religious faith, be it Christian, Mahometan, Jewish, Buddhist, or pagan, that is not *a priori*, necessarily and essentially a part of the organic law for the preservation of social order, irrespective of its character as a part of any religious creed.

Still less it is true in this country, that a dogma of one sect of Christians, though concurred in by all other sects of Christians, except one, can be set up as a rule of legal morality for the dissentient sect, for violation of which its members may be punished under the principle of that law, which, in the absence of any statute, punishes murder, theft, licentiousness, polygamy, assault, public disturbance, drunkenness, and violation of the public peace.

Doubtless, but for the provisions of State constitutions, securing liberty of conscience in the matter of religious belief and practice, valid State laws might be enacted, enforcing observance of the creed and belief of any religious sect which might obtain control of State authority. This was certainly true prior to the Fourteenth Amendment; as we have seen that before that amendment the guaranty of religious liberty in the Constitution of the United States, had no application to the States.

So, inasmuch as the adherents of all religions are political equals in this country, as regards the election franchise, and are equally eligible to office of every kind, it is properly conceivable that some other sect than Christians—the Hebrew, or any other—might control the lawmaking power of a commonwealth, and set up infractions of its peculiar precepts, as crimes. It is conceivable that some State, untrammelled by the constitutional prohibition, or after repealing such prohibition, might pass a valid law, punishing the celebration of mass, or prayers to the Virgin, or the immersion of converts in baptism. Would it follow in such a State, with such a statute, that the fact of the existence of such offenses against decency and morality, as that their public and

notorious repetition would constitute a nuisance at common law?

But suppose the Seventh-day Adventists and the Jews should come into political control of a State, even with a constitution like those of this and other States, and resting their reasoning as to the validity of such an enactment upon the logic of all our courts which have sustained laws punishing Sabbathbreaking, should enact statutes fixing upon Saturday as the day of rest, and prohibiting all secular labor upon that day under pains and penalties. Would our fellow citizens of the Protestant and Catholic faiths acquiesce in the position, not only within the reasoning of their own judges, that a day for suspension of work is set apart, not for worship, not for a holy day, not because its observance is required by divine precept, but as a civil regulation, adopted in accordance with the common judgment of mankind, that one day out of seven is necessary to health and happiness; but also that because the law had fixed Saturday as that day, a Christian farmer, a good neighbor, law abiding, peaceable, and just, might be punished for nuisance, as for an immoral, indecent, and disorderly act, for quietly tilling his field on Saturday instead of Sunday, his day for rest and worship?

In any view it is difficult to reconcile with the principles of good morals, of good order, and of public duty, any statute which prevents any citizen or member of the community from engaging in honest labor more than two days out of seven. If we go to divine precept we find a plain command, "Six days shalt thou labor."

Thiers, in his "*De la Propriete*," 3647, says: "The obligation to labor is a duty, a thing ordained of God, and which, if submitted to faithfully, secures a blessing to the human family."

Justice Field, in his dissenting opinion in the Slaughter House cases, 16 Wall., 116, quotes Adam Smith in his "*Wealth of Nations*," where he says:

"The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without

injury to his neighbor, is a plain violation of this most sacred property.”

The learned justice adds, in his own terse language:

“The right of free labor is one of the most sacred and inalienable rights of man.”

It is unnecessary to urge any other constitutional ground for the discharge of King. The record discloses a case savoring so strongly of religious persecution that the position could, in our opinion, be sustained, that King has been discriminated against because of his religious belief, and within the meaning of the Fourteenth Amendment has been “denied equal protection of the laws.”

#### Opinion of Judge Hammond

[August 1, 1891, the Circuit Court of the United States for the Western District of Tennessee rendered its decision in the King case, refusing to grant his petition for relief, under habeas corpus proceedings, from enforced Sunday observance. In rendering the decision, Judge Hammond admitted that but for his allegiance to the principle that, as a matter of evidence, the verdict against Mr. King was conclusive, he would “have no difficulty in thinking that King had been *wrongfully convicted*.” He also tacitly admitted a practical union of church and state in Tennessee, by alluding, by way of contrast with the Seventh-day Adventists, to the fact of “*other sects having control of legislation in the matter of Sunday observance*.” That Sunday laws are virtually church affairs he further showed by disclaiming the right of Mr. King, as a Seventh-day Adventist, or some other as a Jew, to “disregard *laws made in aid, if you choose to say so, of the religion of other sects*.” And while denying that the fourth commandment is a part of our common law, he said:]

Nevertheless, by a sort of factitious advantage, the observers of Sunday have secured the aid of the civil law, and adhere to that advantage with great tenacity, in spite of the clamor for religious freedom and the progress that has been made in the absolute separation of church and state, and in spite of the strong and merciless attack that has always been ready, in the field of controversial theology, to be made, as it has been made here, upon the claim for divine authority for the change from the seventh to the first

day of the week. Volumes have been written upon that subject, and it is not useful to attempt to add anything to it here. We have no tribunals for its decision, and the efforts to extirpate the advantage above mentioned by judicial decision in favor of a civil right to disregard the change seems to me quite useless. The proper appeal is to the legislature. For the courts cannot change that which has been done, however done, by the civil law *in favor of the Sunday observers*.

[This decision also, in a way, upheld the right of a Sunday-keeping majority to engage in "persecutions" against observers of another day under certain circumstances, in the following language:]

If the human impulse to rest on as many days as one can have for rest from toil is not adequate, as it usually is, to secure abstinence from vocations on Sunday, one may, and many thousands do, work on that day without complaint from any source; but if one ostentatiously labors for the purpose of emphasizing his distaste for or his disbelief in the custom, he may be made to suffer for his defiance *by persecutions*, if you call them so, on the part of the great majority, who will *compel him to rest when they rest*.

[That a new turn had been taken in interpreting the State Sunday law, in its late applications to observers of the seventh day, in such a way that the violation of a law with only a three-dollar penalty became a very serious offense, punishable by heavy fines and long imprisonments, is noted in the concluding paragraph of the decision, in the following words:]

Whatever plenary power may exist in the State to declare repeated violations of its laws and the usages of its people a nuisance and criminal, until the case of *Parker v. State*, *supra*, and until this case of King [both Seventh-day Adventists], to which we yield our judicial obedience, there seems not to have been any law, statute or common, declaring the violation of the statutes against working on Sunday a common nuisance. . . . In this sense it may be said that King was wrongfully convicted, the *State v. Lorry* wrongfully overruled, and *Parker v. State* wrongfully decided; but it does not belong to this court to overrule these decisions, and it does belong to the State court to make them, and

King's conviction under them is "due process of law." Remand the prisoner.—*The Federal Reporter*, vol. 44, pp. 905-916.<sup>7</sup>

## DISCUSSION

### Arkansas Persecutes Sabbath Observers (P. 459)

<sup>1</sup> Under these constitutional provisions, the State Sunday law should have been declared void; but instead of this, March 3, 1885, section 1886 of the Sunday law, exempting observers of another day—the only redeeming or tolerant feature of the law—was repealed. The alleged object of those who secured its repeal was to close the saloons. It was claimed that under cover of this section, certain Jews who kept saloons in Little Rock, had successfully defied the law against Sunday saloons, and that there was no way of securing the proper enforcement of the law except by the repeal of that section. Believing these representations, the legislators repealed the section.

But after its repeal, not a saloon in Little Rock was closed on Sunday, nor was there any attempt made to close one. Not a saloon-keeper was prosecuted. In its modified form, the law was used for no other purpose than to punish peaceable citizens who observed the seventh day as the Sabbath and, in the exercise of their God-given right, worked on the other six days of the week, including Sunday. That the law was thus used is apparent from what follows.

#### CASE OF J. W. SCOLES

D. A. Wellman and J. W. Scoles, two Seventh-day Adventist ministers, held meetings at Springdale, Arkansas, in the summer of 1884. As a result, a church of this faith was organized there the following year, and a church building was erected. In addition to his subscription to the enterprise, Mr. Scoles agreed to paint the building. Concerning this he says:

"I worked at the church at odd times, sometimes half a day and sometimes more, as I could spare the time. The last Sunday in April, 1885, in order to finish the work so that I could be free to leave the next day for the summer's labor with the tent, I went to the church, and finished a small strip of painting on the south side of the house, clear out of sight of all public roads; here I quietly worked for perhaps two hours, in which time I finished it, and then went home. It was for this offense that I was indicted."

At the fall term of the circuit court held at Fayetteville, Mr. J. A. Armstrong, of Springdale, a member of the newly organized church, was summoned before the grand jury. He was asked if he knew of any violations of the Sunday law. He said he did.

GRAND JURY: Who are they?

ARMSTRONG: The 'Frisco railroad is running trains every Sunday.

G. J.: Do you know of any others?

A.: Yes; the hotels of this place are open, and do a full run of business on Sunday, as on other days.

G. J.: Do you know of any others?

A.: Yes, sir; the drugstores and barbershops all keep open, and do business every Sunday.

G. J.: Do you know of any others?

A.: Yes; the livery-stables do more business on Sunday than on any other day of the week.

After several repetitions of this form of questions and answers, this question was asked:

G. J.: Do you know of any Seventh-day Adventists who ever work on Sunday?

A.: Yes, sir.

After obtaining from the witness the names of his brethren, indictments were found against five of them, himself and Mr. Scoles being of the number. The indictment against Mr. Scoles read as follows:

"STATE OF ARKANSAS <i>v.</i> J. W. SCOLES.	}	Indictment.
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"The Grand Jury of Washington County, in the name and by the authority of the State of Arkansas, accuse J. W. Scoles of the crime of Sabbathbreaking, committed as follows; viz., the said J. W. Scoles, on Sunday, the twenty-sixth day of April, 1885, in the county and State aforesaid, did unlawfully perform labor other than customary household duties of daily necessity, comfort, or charity, against the peace and dignity of the State of Arkansas.

"J. P. HENDERSON, Prosecuting Attorney."

Upon trial, Mr. Scoles was convicted. An appeal was taken to the supreme court of the State. October 30, 1886, the judgment of the circuit court was affirmed by the Supreme court, whereupon about twenty cases essentially the same as that of Mr. Scoles, which had been held over in the different circuit courts of the State awaiting the de-

cision of supreme court, came up for trial. The leading facts concerning several of the most typical of these cases follow:

JAMES A. ARMSTRONG

Mr. Armstrong, a member of the Seventh-day Adventist church at Springdale, was indicted in November, 1885, for Sabbath-breaking, on the charge of digging potatoes in his field on Sunday. February 13, 1886, he was arrested and held under two hundred fifty dollar bonds for appearance at the May term of the circuit court. At the time of the alleged offense, Mr. Armstrong had a contract for building a schoolhouse at Springdale. A Mr. Millard Courtney, with a friend, went to Mr. Armstrong's house on Sunday, to negotiate a contract for putting the tin roof on the schoolhouse. They found Mr. Armstrong in his field digging potatoes. There the business was all talked over, and the contract for putting on the tin roof secured. Then this same Mr. Courtney became prosecuting witness against Mr. Armstrong for working on Sunday. At his trial at Fayetteville, Mr. Armstrong was convicted, his fine and costs, amounting to \$26.50, were paid, and he was released.

JAMES A. ARMSTRONG, THE SECOND TIME

July 9, 1886, Mr. Armstrong was arrested the second time at Springdale, for working on Sunday, June 27, and was taken before Mayor S. L. Staples for trial. Mr. Armstrong called for the affidavit on which the writ was issued. The mayor stated that he himself had seen Mr. Armstrong at work in his garden on Sunday, a Mr. A. J. Vaughn having called his attention to Mr. Armstrong while he was at work, and said, "Now see that you do your duty." This, the mayor said, made an affidavit unnecessary. Mr. Armstrong was fined one dollar and costs, amounting to \$4.65. In default of payment, the mayor ordered him sent to the county jail, allowing him one dollar a day until the fine and costs were paid. Within four hours from the time of his arrest, Mr. Armstrong, in charge of the marshal, was on his way to jail at Fayetteville. He was locked up with another prisoner, with nothing but a little straw and a dirty blanket about thirty inches wide for a bed for both. The next night, he was allowed to lie in the corridor on the brick floor, with his alpaca coat for a bed, and his Bible for a pillow. The third night, a friend in town furnished him a quilt and a pillow. On the fourth night, his friend brought him another quilt, and thus he was made comfortable. On the fifth day, at noon, he was released. Upon his return to Springdale, the mayor notified Mr. Armstrong that his fine and costs were not satisfied, and that unless they

were paid within ten days, an execution would be issued and his property sold. Mr. Armstrong filed an appeal to the circuit court. The appeal was sustained, and Mr. Armstrong was released from further penalty.

WILLIAM L. GENTRY

Mr. Gentry, of Star of the West, and a citizen of Arkansas since 1849, had served as justice of the peace for eight years and as associate justice of the county court for two years. He had been an observer of the seventh day since 1877. January, 1886, he was indicted for Sabbathbreaking on the charge of plowing on his farm on Sunday, July 2, 1885. He was arrested and held under five hundred dollar bond. In January, 1887, his case was called for final trial, the supreme court of the State having rendered its decision in the Scoles case. Mr. Gentry was convicted, his fine and costs amounting to \$28.80. He confessed judgment, but did not have the money to pay the fine and costs imposed. Judge Herne, before whom he was tried, ordered him kept in custody until these were paid. Having the confidence of the sheriff, Mr. Gentry was allowed the freedom of the town; but on the last day of court, he was notified by the sheriff that unless the fine and costs were paid he would be hired out, the laws of the State providing that in cases where parties fail to satisfy the demands of the law, they shall be put up by the sheriff and sold to the highest bidder, the bids being for the amount of wages to be paid per day. They are then worked under the same rules and regulations as convicts in the penitentiaries. Mr. Gentry, being sixty-five years old, and not wishing to submit to such barbarous treatment, paid two dollars, all the money he had, and gave his note for the remainder.

JOHN A. MEEKS

John A. Meeks, of Star of the West, fourteen years of age, son of Edward L. Meeks, was indicted January, 1886, for Sabbathbreaking, the offense charged being that of shooting squirrels on Sunday. The place where the squirrels were shot was in a mountainous district entirely away from any public road or place of public worship. He was reported by Mr. M. Reeves. The sons of the latter were hauling wood with a team on that same Sunday, and were present with the Meeks boy in the woods, and scared the squirrels around the trees for the Meeks boy to shoot. When the sport was over, the Meeks boy divided the game with the Reeves boys. Then the father of the latter reported the Meeks boy, and he was indicted. At his trial in January, 1887, he

was fined five dollars and costs, amounting in all to twenty-two dollars. The fine was paid, and the boy was released.

J. L. JAMES

Mr. James, of Star of the West, an observer of the seventh day, was indicted January, 1886, for Sabbath-breaking, on the charge of doing carpenter work on Sunday. The indictment was founded upon the testimony of a Reverend Mr. Powers, a minister of the Missionary Baptist Church. Mr. James was working on a house for a widow, who was a member of the Methodist Church, and without any expectation of receiving payment, but wholly as a charitable act. He did the work in the rain, because the widow was about to be thrown out of the house in which she lived, and had no place to shelter herself and family. Mr. Powers, the informer, lived about six hundred yards from where the work was done, and on that very Sunday had carried wood from within seven rods of where Mr. James was at work, and chopped up the wood in sight of Mr. James. February, 1887, Mr. James was convicted, the usual fine and costs being imposed. These were paid by some of Mr. James's friends.

J. L. SHOCKEY

In August, 1886, Mr. P. C. Hammond, a member of the Baptist Church, appeared before the grand jury in Hot Springs County and charged Mr. Shockey with hauling rails and clearing land on Sunday, July 11, 1886. He was indicted and on December 14, arrested and taken to Malvern, and locked up until the next day, when he gave bonds and was released. On the day when the work complained of was performed, Mr. Hammond, the informer, passed by; after having gone some distance, he returned and spoke to Mr. Shockey about buying from him a Plymouth Rock rooster. The bargain was then made, Mr. Hammond agreeing to pay fifty cents for the rooster.

Previous to the time set for Mr. Shockey's trial, Mr. Dan T. Jones, president of the Missouri Conference of Seventh-day Adventists, had an interview with the prosecuting attorney, Mr. J. P. Henderson, and explained the nature of all these cases, and showed him that the men complained of were faithful, law-abiding citizens in every respect except in this matter of working on Sunday, which they considered no crime; that the defendants were all poor men, some of whom were utterly unable to pay any fines and costs and consequently would have to go to jail; and asked Mr. Henderson if he would be willing to remit a portion of his fees, which were ten dollars in each case, provided the remainder was raised by donations by Mr. Jones and his

people. Mr. Henderson replied that if these cases were of the nature of religious persecution, he would not feel justified in taking any fees. He said he would not be a party to any such action, but wished a little time to investigate the cases to satisfy himself as to their true nature. Upon investigation, he became fully convinced that these prosecutions were simply of the nature of religious persecutions, and generously refused to take any fees in any of the cases. The county clerk reduced his fees about one half, and the sheriff one half of his; all of which quite materially lessened the total expenses. The remainder was raised by contributions supplied by friends of those prosecuted.

JOE MCCOY

Mr. McCoy, of Magnet Cove, moved from Louisville, Kentucky, to Arkansas, in 1873. He served as constable seven years, and two terms as justice of the peace, in Hot Springs County. In 1884 he became a Seventh-day Adventist. August, 1885, he was indicted for Sabbath-breaking, the particular charge against him being plowing on Sunday. The witness against him was a Mr. Weatherford, a member of the Methodist Church, who went into the field where Mr. McCoy was plowing, and spent several hours with him, walking around as he plowed. The work was done half a mile from any public road and entirely away from any place of public worship. In September Mr. McCoy was arrested and placed under bonds. Fearing that not only his small farm but his personal property would soon be consumed in paying fines and costs, he at first decided to leave the country; but a portion of his costs having been remitted after his trial, and having received some assistance from friends, he concluded to remain. With tears in his eyes, he said to a friend that while he was reckless and wicked, he was not molested; but that as soon as he turned and began to live a religious life, he was prosecuted and fined for it.

JOHN NEUSCH

February, 1886, Mr. Neusch, of Magnet Cove, a fruit raiser, was indicted for gathering early peaches which were overripe and were in danger of spoiling, on Sunday, June 21, 1885. He was half a mile from any public road and some distance from any place of public worship, and not in sight of either. The only ones who saw him gathering the fruit were a brother and a man who came to see him in settlement for some peaches which had been stolen by a young man from Mr. Neusch's orchard on the preceding Sunday, and to ask that the young man not be prosecuted. Mr. Neusch refused to take pay

for the peaches, and promised to say nothing about the offense on condition that it was not repeated. Following the decision of the supreme court in the Scoles case, Mr. Neusch confessed judgment, and paid fine and costs, amounting to twenty-five dollars. Mr. Neusch was an observer of the seventh day.

### Savors of Religious Persecution

Commenting on this Sunday-enforcement crusade in Arkansas, and the character of the people being prosecuted, an article in the *St. Louis Globe-Democrat* of November 30, 1885, said:

"They have been from the first apparently an industrious and God-fearing people, the chief difference between them and other Christian bodies being that they observe the seventh day as the Sabbath, according to the commandment. But it seems that sectionalism cannot lay down its arms even when the sacred precincts of religion are entered; so *among the first things performed by the legislature* at its session last winter, *less than a year* after these people had come into the State, *was the repeal of the clause which gave them the liberty to keep the day of their choice.* . . . It is a little singular that *no one else has been troubled on account of the law*, with perhaps one minor exception, *while members of the above denomination are being arrested over the whole State.* *It savors just a trifle of the religious persecution which characterized the Dark Ages.*"

The following statements of some of the foremost lawyers and other prominent citizens of Arkansas, relative to the operation of the Sunday law of that State, were received by Mr. D. T. Jones. The first is from Judge S. W. Williams of Little Rock, formerly a judge of the Supreme Court of the State of Arkansas:

After the election of 1884, the newly elected prosecuting attorney of that district, commenced a rigid enforcement of the law. A few Jewish saloonkeepers successfully defied it during the session of the legislature. This led to the total and unqualified repeal of the conscience proviso for the seventh day in the old law. This was used oppressively upon the seventh-day Sabbath Christians, to an extent that shocked the bar of the whole State. A test case was brought from Washington County. Our supreme court could not see its way clear to hold the law unconstitutional, but the judges, as men and lawyers, abhorred it."

The next is from Judge Rose of Little Rock, a prominent lawyer, and one of the committee on law reform of the State Bar Association:

"You ask me to express my opinion as to the propriety of such

legislation as that contained in the repealed act. Nothing can exceed my abhorrence for any kind of legislation that has for its object the restraint of any class of men in the exercise of their own religious opinions. It is the fundamental basis of our government that every man shall be allowed to worship God according to the dictates of his own conscience. It was certainly not a little singular that while in our churches the command was regularly read at stated times, requiring all men to keep the Sabbath, which, amongst the Jews to whom the command was addressed, was the seventh day of the week, men should be prosecuted and convicted in the courts for doing so."

Mr. E. Stinson, a public school teacher in Hot Springs County, writes concerning the nature of the Sunday prosecutions as follows:

"I believe the prosecutions to be more for religious persecution than for the purpose of guarding the Sunday from desecration. The men who have been indicted are all good moral men and law-abiding citizens, to the best of my knowledge. The indictments, to the best of my belief, were malicious in their character, and without provocation. I believe the unmodified Sunday law to be unjust in its nature, and that it makes an unjust discrimination against a small but worthy class of our citizens."

### Tennessee Prosecutions (P. 465)

<sup>a</sup> In contravention of this plain declaration of rights in the Constitution, the 1803 Sunday law of this State forbade "any merchant, artificer, tradesman, farmer, or any other person . . . doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his . . . children or servants (acts of real necessity or charity excepted) on" Sunday. It also provided that any person who should hunt, fish, or play at any game of sport, or be drunk on Sunday should be subject to the same proceedings and liable to the same penalties as those who worked on Sundays.

From its enactment in 1803 this law remained practically a dead letter until about the year 1885, when a number of citizens of Henry County, becoming convinced that the seventh day is the Sabbath, organized a small church of Seventh-day Adventists in the community. This appears to have led to the resurrection of the Tennessee Sunday law, which made no exemption in favor of those who conscientiously observed another day, and a number of members of the church referred to were prosecuted under it.

## W. H. PARKER

Mr. Parker, of Springville, Tennessee, a man thirty-six years of age, and a member of the Seventh-day Adventist Church, was arrested and tried September 29, 1885, on the charge of maintaining a nuisance by working on Sunday. He was convicted, and fined twenty-five dollars and costs. His case was appealed to the supreme court of the State, and notwithstanding the fact that the statute against Sunday labor in Tennessee does not make such labor an indictable offense, but subjects the offender to a fine of only three dollars, recoverable before a justice of the peace, it was decided that "a succession of such acts becomes a nuisance, and is indictable." The decision of the lower court was affirmed, the total fine and costs now amounting to \$69.81. This Mr. Parker refused to pay, and was consequently required to serve out the amount in jail, at twenty-five cents per day. Taken from his wife, who at the time was in a delicate condition, and from a child who was under the doctor's care, he was committed to jail, where he contracted malarial fever. Previous to this time he had been in reasonably good health. On account of his sickness he was released, after being in jail fifty-nine days, upon giving bonds to return when he got well. In two months he returned, and worked out the remainder of his sentence, amounting in all to two hundred eighty days, or to over nine months. He died September 18, 1890.

## JAMES STEM AND WILLIAM DORTCH

James Stem and William Dortch were arrested, tried, and convicted for Sunday work at the same time as Mr. Parker. Mr. Stem was fifty-six years old, and Mr. Dortch sixty-four, when they were confined in jail, together with Mr. Parker. Mr. Dortch had a wife, a daughter, and a son to support; and Mr. Stem, a wife, a daughter, and an invalid son. The fines imposed were first placed at ten dollars, while Mr. Parker's was twenty dollars; but when the supreme court sustained the decision of the lower court, it placed the fine of each at twenty dollars. Having refused to pay their fines, these men were sent to jail, where they remained about sixty days.

## W. S. LOWRY, J. MOON, J. H. DORTCH, AND JAMES STEM

These four men, all members of the Seventh-day Adventist church at Springville, were tried at Paris, Tennessee, May 27, 1892, before Judge Swiggart, on the charge of doing work on Sunday. Six witnesses were introduced by the prosecution, each of whom testified that he was not disturbed by the labor performed on Sunday by the defendants. The testimony proved that Mr. Lowry had been seen at

one time cutting firewood, and at another, loading wood on a wagon, on Sunday; that Mr. Moon had been cutting sprouts in his field on Sunday; that Mr. Dortch had been seen plowing in a strawberry field on Sunday, and that Mr. Stem had followed his ordinary and common vocation on Sunday, no definite work on any definite Sunday being proved against him. This was the second time Mr. Stem was placed behind the prison bars for conscience' sake. For the most part, their fields were not along any public road, and consequently work in them could not easily be seen.

None of the accused employed counsel, but simply made a short statement of his position and submitted his case to the jury. As an illustration of these, the following statement made by Mr. Lowry is here given:

"I would like to say to the jury that, as has been stated, I am a Seventh-day Adventist. I observe the seventh day of the week as the Sabbath. I read my Bible, and my convictions on the Bible are that the seventh day of the week is the Sabbath, which comes on Saturday. I observe that day the best I know how. Then I claim the God-given right to six days of labor. I have a wife and four children, and it takes my labor six days to make a living. I go about my work quietly, do not make any unnecessary noise, but do my work as quietly as possible. It has been proved by the testimony of Mr. Fitch and Mr. Cox, who live around me, that they were not disturbed. Here I am before the court to answer for this right that I claim as a Christian. I am a law-abiding citizen, believing that we should obey the laws of the State; but whenever they conflict with my religious convictions and the Bible, I stand and choose to serve the law of my God rather than the laws of the State. I do not desire to cast any reflection upon the State, nor the officers and authorities executing the law. I leave the case with you."

The defendants were convicted, the fine and costs assessed amounting to about twenty-five dollars in each case. Refusing to pay these, the four men were lodged in jail, June 3, to work out their fines at twenty-five cents a day. They were imprisoned from forty-five to fifty-three days each. The sheriff, Mr. Blackmore, a kindhearted man, was loath to take them to jail, and remarked to the judge that the convicted were conscientious in the matter, to which the judge replied, "Let them educate their consciences by the laws of Tennessee." This statement seemed strangely out of harmony with the constitution of Tennessee, which declares that "no human authority can in any case whatever control or interfere with the rights of conscience," and that

“no preference shall ever be given by law to any religious establishment or mode of worship.”

Not satisfied with this punishment, the prosecution, after a diligent search among obsolete statutes and decisions, finally arrived at the conclusion that the county jail was the county workhouse, and consequently, on the morning of July 18, three of these men were marched through the streets of Paris, in company with criminals of the chain gang, and compelled to labor at shoveling on the streets. The chain gang was composed of three honest, sober, industrious Christian farmers, whose only crime was that of doing farm labor on the first day of the week, and three men who had been convicted of drunkenness, discharging of firearms on the streets, fighting, and shooting at the city marshal.

### Wholesale Prosecutions Attempted

Following the prosecution and imprisonment of the four men named in the preceding account, an attempt was made to prosecute every male member of the Seventh-day Adventist church at Springville, a large number being indicted, which plainly revealed the persecuting character of the whole proceedings.

The facts coming to the knowledge of Mr. James T. Ringgold, of the Baltimore bar, that gentleman volunteered to defend the defendants free of charge if they would accept his services. The kind offer was accepted. Mr. W. L. Carter, a local attorney, was associated with Mr. Ringgold, and ex-Governor Porter brought in as volunteer counsel. Upon motion of these attorneys, all the indictments were quashed, the judge holding to some irregularity in their execution.

#### W. B. CAPPS

June 26, 1894, W. B. Capps was locked up in the county jail at Dresden, Weakley County, Tennessee, for performing common labor on his farm on Sunday. At his trial, June 27, 1893, he was fined ten dollars and costs, amounting to \$56.65. His case was appealed to the Supreme Court of Tennessee, which affirmed the judgment of the lower court, May 15, 1894, increasing the costs \$15.60, making a total of \$72.25, to be served out in jail at the paltry rate of twenty-five cents a day, entailing an imprisonment of 289 days, or over nine months.

Mr. Capps had a wife and four children dependent upon him. Being a poor man, he was unable to support them during his confinement. Some of the newspapers of the country became interested in the case, and advocated raising money to pay Mr. Capps' fine. The *American Hebrew*, of New York, went so far as to raise and send the

necessary amount directly to the authorities, whereupon Mr. Capps was released, October 1, after an imprisonment of ninety-seven days.

DAVIS CRUZE

Davis Cruze, a Seventh-day Adventist, living on Copper Ridge, near Byington, Tennessee, was arrested in May, 1909, for chopping wood on Sunday. At his trial it was shown that he had worked hard all week as a farm hand, and that it was necessary for him to cut the wood to cook the dinner. The prosecuting witness, a neighbor living across the road, with some other friends, found fault with Mr. Cruze on account of his religion, and determined to make it hard for him. The judge charged the jury that Cruze's observance of the seventh day was no excuse for his violating the Sunday laws. This being his only offense, and the witness showing animus and prejudice against the accused, the jury, after a two minutes' deliberation, returned a verdict of acquittal, much to the relief of Mr. Cruze, as he was a poor man with a large family, and the costs, \$75 perhaps, he would doubtless have had to pay at the rate of fifty cents a day in the chain gang.

R. M. KING (P. 465)

<sup>a</sup> Perhaps the most outstanding case in these early Tennessee persecutions was that of R. M. King, a member of the Seventh-day Adventist Church.

The presence of this new but small organization of Sabbatarians in the State of Tennessee seems not to have been agreeable to certain citizens of other religious belief. They told Mr. King that if he wished to keep the seventh day, and do as he had done, he must move out of the country. He replied that this is a free country; that a man is allowed here to worship God as he understands the Scriptures to teach. But they insisted that he must keep Sunday, and not teach their children by his example that the seventh day is the Sabbath; and if he did not comply with their wishes, he would be prosecuted. He cited to them the past history of the community, wherein Sunday had not been observed, and yet they had not prosecuted anyone for its violation. Their answer indicated that all parties would be compelled to keep it from that time on, whether they kept any other day or not. He argued that if he conscientiously observed the day which he believed God required, they should not then compel him to keep a day in which he did not believe, as that would be tyrannical. He also stated to them that he was a poor man, and could not afford to lose one sixth of his time from the support of his family. But they would accept nothing short of submission.

Not being able to convince him that he was in error, nor to dissuade him from his course, they immediately set about to compass their ends by other means. The Sunday law of the State would accomplish their purpose. Accordingly, a league was formed for the enforcement of the law. The following is a copy of the pledge taken by this league when it was organized:

"NOTICE

"TO WHOM IT MAY CONCERN: That the undersigned citizens of —, being desirous of the welfare of our community, and that peace and harmony may prevail, and that the morals of ourselves and our children may not be insulted and trampled upon by a willful violation of the Sunday laws of our land; do this day pledge our word and honor, that we will individually and collectively prosecute each and every violation of the Sunday law of our State that may come under our observation.

"December 10, 1888."

Previous to this, the Sunday law had long been violated by the people of this neighborhood. Scores of men had made Sunday a day for hunting and fishing, and church members of different denominations, as well as nonprofessors, had made it a rule, if business was urgent, to do common labor upon that day. Now it would be supposed that after the organization of the league, all this would cease, or that every offender would be promptly complained of, and summoned to appear before the court. But what was the result? After the league was organized, the Sunday gaming and shooting went on the same as before. Others besides those who keep the seventh day worked upon their farms on Sunday in a more public and noisy manner than those who observed the seventh day. But not one word of complaint was made about them. When Mr. King, however, went out into his field one Sunday in June, quietly to cultivate his corn, which was so tall at the time as nearly to hide him from sight, he was promptly arrested, brought before Justice J. A. Barker, of Obion County, July 6, 1889, tried, and assessed fines and costs, amounting to twelve dollars and eighty-five cents.

All this having failed to accomplish the desired result, Mr. King and two of his brethren, Mr. Callicott and Mr. Stem, who lived across the line in Dyer County, soon learned that they had been complained of before the grand juries of their respective counties, and indictments found against them for laboring on Sunday. Their cases were to be tried in November. Mr. King's trial, which was to be held at Troy,

Obion County, was postponed until the spring term of court. The trial of the other two occurred at Dyersburg, Dyer County, November 25, 26, the two cases being tried as one. The jury brought in a verdict of guilty in one case, and disagreed in the other. Judge Flippin sent them back to try again, which only resulted in a like disagreement. The judge then dismissed them, stating that the evidence would not sustain the verdict rendered in the case of the one they pronounced guilty, and granted a new trial.

March 6, 1890, Mr. King's trial came up in court again at Troy, before Judge Swiggart, Attorney General Bond appearing for the State, and Colonel Richardson for the defendant. The indictment against Mr. King was based on the following charges: "Plowing on Sunday, and doing various other kinds of work on that day [June 23] and on Sundays before that day without regard to said Sabbath days." In this it was claimed that this was "a disturbance to the community in which done, was offensive to the moral sense of the public, and was and is a common nuisance."

Six witnesses were examined: five for the prosecution—Robert Cole, W. W. Dobbins, Alexander Wright, William Oaks, and J. T. Marshall; and one for the defense—Squire J. A. Barker. All testified to the good character of the defendant, Mr. King, as a quiet, peaceable, law-abiding citizen, with the one exception of working on Sunday. The defendant offered to show that he had been brought before Squire Barker, and fined for the principal offense charged in the indictment (working on June 23), and that he had paid his fine; but the court would not permit him to prove it. The examination of the witnesses showed that two of them, members of a popular church, belonged to the organization the members of which had bound themselves together by a written agreement to prosecute every violation of the Sunday laws. Colonel Richardson then offered to prove that men in the same neighborhood where Mr. King lives had cut wheat with a self-binder, rafted logs, and done other work on Sunday, for which they had never been called in question; but the court would not admit the evidence.

Justice Barker was then put upon the stand for the defense, and testified that he had known Mr. King for about twenty-five years, and that his general reputation, with the exception of the Sabbath part of it, was as good as anybody's in the community. But the court refused to allow him to testify to the fact that on the affidavit of Mr. Dobbins he issued a warrant against Mr. King for working on Sunday, June 23; that Mr. King was arrested, brought before him, and fined for this; that Mr. Barker issued a mittimus committing him to jail;

and that fine and costs were collected of him. This closed the testimony in the case.

The jury was out only about half an hour, when they returned a verdict of guilty, and assessed the fine at seventy-five dollars. The counsel for the defendant took exception to the rulings of the court, and the charge given to the jury, and moved a new trial. In refusing to grant a new trial, the judge said:

"The law is clear. I charged it properly. The fine is a reasonable one, and one well warranted. The laws are made to be obeyed; and Mr. King and all other men should and must obey them, or leave the country. I make these remarks that they may know that I intend to have the laws strictly enforced in the future. Mr. King and his brethren have a right to keep another day if they choose, but as Christian men, it is their duty to obey the laws of the State, and they must do it."

The whole trial from beginning to end is a clear case of religious persecution, gendered wholly by denominational spite and sectarian animosity. While the prosecution claimed that it was not a question of religion, the vindictive speech of Attorney General Bond, as well as the rulings of the court and the testimony of the witnesses, shows that it was incited by denominational prejudice throughout.

An appeal was taken to the supreme court of the State, which simply affirmed the decision of the lower court without rendering an opinion. The case was then carried to the circuit court of the United States for the district, but without relief.

### What Is a Nuisance? (P. 467)

<sup>4</sup> On this point, Colonel Richardson, on pages 2 and 3 of his brief, said:

"The acts complained of and proven, do not constitute a nuisance, as defined by this court in *State v. Lorry*, 7 Baxter, 95. A nuisance is something that injuriously affects the comfort, or welfare, or enjoyment of human existence, and must affect all alike who come within its influence. It must be something more than a mere spiritual discomfort. . . . In determining as to a nuisance, the true rule seems to be that the act or things complained of affects all alike who come within its influence. It is not a nuisance to one of peculiar sentiments, feelings, or tastes, if it would not affect others or all tastes; not to a sectarian, if it would not be so to one belonging to no church. It must be something about the effects of which all agree. See *Sparhawk v. Union Pass Railroad Co.*, Pennsylvania State, 51, P. F. Smith, Vol. IX, p. 427. The proof shows that the work charged in the in-

dictment was done by King in his own private field, in the country, remote from any town; that it was not in a public place; that no crowd or assemblage was there; that the people had no right or occasion to meet or assemble there; and that the persons who claimed to be disturbed were disturbed or excited only because of their religious views."

John Stuart Mill presents this kind of intolerance in its true light. He says:

"There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse. . . .

"The evil here pointed out is not one which exists only in theory; and it may perhaps be expected that I should specify the instances in which the public of this age and country improperly invests its own preferences with the character of moral laws. I am not writing an essay on the aberrations of existing moral feeling. That is too weighty a subject to be discussed parenthetically and by way of illustration. Yet examples are necessary to show that the principle I maintain is of serious and practical moment, and that I am not endeavoring to erect a barrier against imaginary evils. And it is not difficult to show, by abundant instances, that to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities.

"As a first instance, consider the antipathies which men cherish on no better grounds than that persons whose religious opinions are different from theirs, do not practice their religious observances, especially their religious abstinences. To cite a rather trivial example, nothing in the creed or practice of Christians does more to envenom the hatred of Mahomedans against them, than the fact of their eating pork. There are few facts which Christians and Europeans regard with more unaffected disgust than Mussulmans regard this particular mode of satisfying hunger. It is, in the first place, an offense against their religion; but this circumstance by no means explains either the degree or the kind of their repugnance; for wine also is forbidden by

their religion, and to partake of it is by all Mussulmans accounted wrong, but not disgusting. Their aversion to the flesh of the 'unclean beast' is, on the contrary, of that peculiar character, resembling an instinctive antipathy, which the idea of uncleanness, when once it thoroughly sinks into the feelings, seems always to excite even in those whose personal habits are anything but scrupulously cleanly, and of which the sentiment of religious impurity, so intense in the Hindoos, is a remarkable example. Suppose now that in a people, of whom the majority were Mussulmans, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in the Mahomedan countries. Would it be a legitimate exercise of the moral authority of public opinion? and if not, why not? The practice is really revolting to such a public. They also sincerely think that it is forbidden and abhorred by the Deity. Neither could the prohibition be censured as religious persecution. It might be religious in its origin, but it would not be persecution for religion, since nobody's religion makes it a duty to eat pork. The only tenable ground of condemnation would be that with the personal tastes and self-regarding concerns of individuals the public has no business to interfere.

"To come somewhat nearer home: the majority of Spaniards consider it a gross impiety, offensive in the highest degree to the Supreme Being, to worship Him in any other manner than the Roman Catholic; and no other public worship is lawful on Spanish soil. The people of all Southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics? Yet, if mankind are justified in interfering with each other's liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases? or who can blame people for desiring to suppress what they regard as a scandal in the sight of God and man? No stronger case can be shown for prohibiting anything which is regarded as a personal immorality, than is made out for suppressing these practices in the eyes of those who regard them as impieties; and unless we are willing to adopt the logic of persecutors, and to say that we may persecute others because we are right, and that they must not persecute us because they are wrong, we must beware of admitting a principle of which we should resent as a gross injustice the application to ourselves."—*On Liberty*, pp. 124-128.

Related to the charge of "nuisance" applied to those who work

on Sunday, is the accusation that they are disturbers of the peace. "Disturbing the peace" will prove as convenient (though on account of the penalties' being so much less severe, will not prove as effectual) a charge on which to arrest persons whose opinions are troublesome, as the charge of treason formerly did in England.

In many of the State Sunday laws, provision is made for the exemption of "conscientious" Sabbatarians from the penalties of the law for labor upon Sunday, "provided such labor be not done to the disturbance of others." The worthlessness of any such provision as this, however, is manifest; for some people are "disturbed" even when they hear of a Sabbatarian working upon the day which they regard as holy, though such person be plowing or hoeing—and that, too, miles away from any place of meeting.

#### Exorbitant Fines (P. 469)

<sup>5</sup>As severely as these Sunday laws are found to operate on the laboring man, many of the petitions and arguments for Sunday legislation present the plea that the "poor, overworked laboring man" suffers where we do not have the Sunday law to protect his interests. But the absurdity of such pleas are manifest; for *laboring men are the very men who are made to suffer by these Sunday laws*—Messrs. King and Parker, of Tennessee, and their brethren, for example. Sunday laws are intended to enforce regard for the day the majority consider as sacred—not to protect the laboring man. "The 'American' Sabbath must be protected!" is their watchword; and they are resolved to protect Sunday—by law, too—whether the laboring man, or any other man, is benefited or oppressed. The laboring classes do not, as a whole, wish all means of enjoyment and recreation prohibited on Sunday; they do not wish libraries, museums, and art galleries closed, nor excursion trains, picnics, and driving stopped. On the contrary, they frequently plead the need of the benefits of these various means of physical rest and mental culture which they say they can obtain only on the first day of the week. They even raise their voices against these oppressive ecclesiastical laws.

#### Church and State (P. 469)

<sup>6</sup>Treating of the absurdity of government's dealing with questions entirely foreign to its sphere, Minot J. Savage, in the *Forum* of September, 1890, pages 115, 116, said truly:

"One of the most needed, as it is one of the most difficult, of all reforms is that which aims at having the state mind its own business. This includes two things—letting alone what is not its business, and

really minding what is. In the light of legal history, one of the most curious things is the still-surviving popular faith in mere laws as means for preventing evil and accomplishing good. The statute books of even our young country are chiefly old lumber rooms. But, beyond this, and more mischievous still, is the fact that the state is continually legislating concerning things that are beyond the limits not only of its rightful, but even of its possible, jurisdiction. Many of its attempts are as impracticable as would be a legal interference with the force of gravity. Should Congress enact laws concerning things in India, all the world would smile. But not our country only, nearly all countries, are still passing laws that imply a claim of jurisdiction over other worlds and other states of existence. They are passing laws that attempt to deal with inner conditions of consciousness—with metaphysical subtleties, over which philosophers and ecclesiastics are still wrangling. People want laws passed not only for the protection of life and property and for securing good conduct here and now, but they want laws the causes of which are supposed to come from other worlds, and for ends which issue only in other worlds. In brief, they are continually confounding the functions of the priest, the preacher, the philosopher, or the metaphysician with those of the legislator.

“Unreasonable as this may be, the causes of it are easily traced. Originally, all governments were theocracies. The gods were but supernatural chiefs, clothed by superstitious imaginations with unknown and therefore awful powers. Whether their representative were priest or king, their supposed will superseded all other considerations. Even now, it is only here and there, and very slowly, that any of the nations are beginning to put considerations of human well-being in place of barbaric traditions of assumed authorities. Perhaps the larger part of all the government of the past has been dictated by considerations supposed to emanate from other worlds and issue in them. And precisely this part of all government has always been the most cruel and the most unjust.

“We are slowly reaching a point at last where the most civilized peoples are beginning to see, with at least partial clearness, that the functions of the state should be limited to the practical matters of conduct in this life, and to their bearing on the liberties and rights of men as citizens. The philosophers may reason of ethical origins and principles and of supersensual sanctions. The metaphysicians may speculate as to transcendental causes and results. Theologians may theorize as to what was in ‘the mind of God,’ of which actual facts are

only a partial expression. For my present purpose, I question neither the right nor the wisdom of these things. But the point I wish to make is this, that, whether false or true, these things do not concern the state as such."

### Christians Persecuting Christians in Tennessee (P. 477)

EXCERPT FROM AN ARTICLE IN *The Arena* (BOSTON)

On the 18th of last July, a moral crime was committed in the State of Tennessee; a crime which should fire with indignation every patriot in the land; a crime over which bigotry gloats and fanaticism exults; a crime so heinous in its character and so vital in the far-reaching principles involved, that any man acquainted with the facts is recreant to his manhood if he remains silent; a crime which reveals in a startling manner the presence and power in our midst, of that spirit of intolerance which almost two thousand years ago pursued to the cross, nay, further, taunted in the throes of death's agony, a great, serene, God-illumined soul. The great Prophet of Nazareth had asserted the rights of man and had declared that man was to be judged by the fruits shown in life, and not by observances of rights, forms, or dogmas. He had declared that the Sabbath was made for man, and not man for the Sabbath. He had given as the supreme rule of life for all true disciples a simple but comprehensive law, "Whatsoever ye would that men should do to you, do ye even so to them." That was the sign by which in all ages His disciples should be known, and none knew better than this pure and tender soul that that rule carried out would forever crush the spirit of persecution and intolerance, which from the dawn of time had fettered thought and slain the noblest children of men.

The crime committed in Tennessee was very similar to the crime committed in Jerusalem more than eighteen hundred years ago. The animating spirit was precisely the same. The crime committed in Tennessee was, moreover, exactly similar in nature; that is, it involved precisely the same principles as those crimes against which enlightened thought today recoils, and which lit up the long night of the Dark Ages with human bonfires, and drove to death for conscience' sake the noblest hearts and purest lives of Europe, because the victims could not conscientiously conform to the dogmas which the vast majority believed to be the will of God. Strange, indeed, that the closing years of the nineteenth century should witness, flaming forth, the same spirit of insane fanaticism against which the Reformation made such an eloquent and, for a time, successful protest. And in the present instance, as in the religious persecutions of the past, the crime has been

committed in the name of justice. Victor Hugo, in speaking of the social structure in France in 1760, said: "At the base was the people; above the people, religion represented by the clergy; by the side of religion, justice represented by the magistracy. And at that period of human society, what was the people?—It was ignorance. What was religion?—It was intolerance. And what was justice?—It was injustice." And so I think the historian of the future, from the noble heights of a golden-rule-permeated civilization, will point to such deeds as have recently been committed in Tennessee, as illustrating the cruel indifference of a pretended civilization which could tolerate such enormities without a universal protest.—B. O. FLOWER, December, 1892, pp. 120, 121.

### THE ENFORCEMENT OF SUNDAY LAWS IN OTHER STATES

Arkansas and Tennessee were by no means the only States where religious persecution was rife during the latter part of the nineteenth century. We give only a few representative cases among the many in various parts of the Union.

#### Georgia

The Georgia Sunday law makes the pursuit of one's business or ordinary calling on Sunday a misdemeanor (see page 391); while the constitution of the State declares that "no inhabitant of this State shall be molested in person or property . . . on account of his religious opinions." (See page 337.) Enforcement of the law, and disregard for the constitution, have led to a number of prosecutions in the State, which, in reality, have been simply persecutions.

#### SAMUEL MITCHEL

One of the earliest cases, if not the earliest case, in the United States of a Seventh-day Adventist's being arrested and imprisoned for laboring on Sunday, was that of Mr. Samuel Mitchel. It smacks as strongly of the persecuting spirit as do the more recent cases.

Mr. Mitchel was arrested in July, 1878, for plowing in his own field on Sunday, at Quitman, Brooks County, Georgia. For this he was sentenced to be confined in a loathsome prison cell for thirty days. Since he was in poor health, the confinement in a damp place taxed his physical powers beyond endurance; and after he had been in jail fifteen days, he was taken worse. The doctor who was summoned told him to pay his fine and come out, to save his life. He replied that he owed the county nothing, as he had committed no offense against his fellow citizens, and hence would not pay the fine. A gen-

tleman who later became a member of Congress, offered to pay his fine if he would promise not to work any more on Sunday. This Mr. Mitchel would not do, but served out his time. As a result, his physical powers were broken, and he died February 4, 1879, a martyr to Sunday enforcement.

#### DAY CONKLIN

In March, 1889, Day Conklin, of Bigcreek, Forsyth County, Georgia, was arrested, tried before a jury, and fined twenty-five dollars and costs, amounting in all to eighty-three dollars. The offense for which he was indicted was cutting wood near his own door on Sunday, November 18, 1888. He had no wood prepared for his stove at this time, and was chopping some to keep his family from suffering. He had conscientiously observed the seventh day as the Sabbath, believing it to be the day to be kept holy, as required by the fourth commandment.

In his plea before the jury in a similar case at Gainesville, Georgia, February 22, 1894, William F. Findley, prosecuting attorney, who was present at Mr. Conklin's trial, said regarding his case:

"One of these Seventh-day Adventists was tried over here in Forsyth County, and I think there never was a more unrighteous conviction. There was a man named Day Conklin, who was moving on Friday. He got his goods wet on Friday, and it turned off cold. On Saturday he went out and cut enough wood to keep his family from freezing. On Sunday he still hadn't his things dry, and it was still as cold as it had been on Saturday. He still cut enough wood to keep his family warm, and they convicted him for doing this. I say that that was an outrage, an unrighteous conviction, for he was doing the best he could. One of the jurymen told me *that they did not convict him for what he had done, but for what he said he had a right to do.* He said he had a right to work on Sunday.

That the prosecution in this case was simply the result of religious persecution is evident from the fact that others who did not observe the seventh day as the Sabbath, did the same kind of work on Sunday without being molested. One of the jurors who condemned Mr. Conklin, and one of the two witnesses against him, both chopped wood at their own homes on the very next Sunday after the trial, and some of the witnesses for the prosecution, both before and after the trial, traveled twenty-five miles with loads of farm produce on Sunday.

In charging the grand jury who found the indictment against Mr. Conklin, the judge said that if it were shown that women had been knitting on Sunday, a true bill should be found against them. When

the judge fixed Mr. Conklin's fine, the two lawyers employed as counsel for the defendant each handed him ten dollars toward the discharge of it.

W. A. MCCUTCHEN AND E. C. KECK

For completing preparations in a church building for a church school at Gainesville, Georgia, November 19, 1893, Mr. W. A. McCutchen, a Seventh-day Adventist minister, and Mr. Keck were arrested the same day, on the charge of "disorderly conduct." At their trial before the mayor's court, people living on the other side of the town testified that they had been disturbed by the work. Some of them said it was not the nature of the work that *disturbed* them, but that the doing of it *on Sunday* was the disturbing element. One acknowledged he was disturbed when he heard that they were working.

Both men were promptly fined by the mayor fifty dollars and costs, amounting to fifty-five dollars in each case, or ninety days' work on the public streets of the city. This they refused to pay, and were locked up in the city jail. After they had been in jail half a day, friends secured their release on bail, they being bound over to await trial in the county court, on the charge of "Sabbathbreaking."

The leading lawyers in the city stated that the mayor's action was a travesty on justice, since the mayor's court had absolutely no jurisdiction in the case—that whatever there was of it was a State offense, and not one against the city, as the city had no ordinance against Sunday labor; hence the charge of "disorderly conduct." The mayor was a leading member of the Methodist church of the place.

The county court threw the case back into the city court, where it was tried February 22, 1894, the jury, after considering it for seventeen hours, failing to agree.

On August 23, 1894, the case was brought up again for trial, when it was dismissed on the ground that the labor performed was not in violation of the statute, as it was not in the line of their "ordinary callings," one being a minister and the other a teacher.

### Maryland

Article 36 of the Maryland Bill of Rights declares:

"That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, *all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order,*

peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights." See p. 343.

In plain and direct conflict with this constitutional guaranty of religious freedom, the State of Maryland had the following law prohibiting labor on "the Lord's day"—a relic of the act of 1723, the first section of which made the third offense of speaking against the Trinity, or any person thereof, punishable by death, "without the benefit of the clergy." See p. 49.

"No person whatsoever shall work on or do any bodily labor on *the Lord's day*, commonly called Sunday, and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on *the Lord's day* (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane *the Lord's day* by gaming, fishing, fowling, hunting or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county."

Under this religious law, a number of prosecutions of conscientious observers of another day have taken place during recent years, which have been actuated evidently only by a spirit of religious persecution.

#### JOHN W. JUDEFIND

Mr. Judefind, a member of the Seventh-day Adventist church of Rock Hall, Maryland, was arrested in Kent County, November 20, 1892, on the charge of husking corn out of the shock on Sunday. The complaining witness was the Reverend Mr. Rowe, pastor of the Methodist Episcopal church, Rock Hall. The minister, who was passing along the road thirty or forty rods away, saw Mr. Judefind at work. Warrant was issued and served the same day (Sunday). The trial was set for the next day (Monday), and Mr. Judefind was convicted and sentenced to pay a fine of five dollars and costs. The case was appealed to the circuit court, and was tried at Chestertown, April 19, 1893, before Judge Stump and Judge Wicks. Mr. Ringgold, of the Baltimore bar, appeared as counsel for the defense. The justice of the peace who issued the warrant and tried the case, was a witness in this trial and testified that the warrant was not issued nor served on Sunday; but the defense proved by the constable who served it, that it was, which is contrary to law.

The court suspended judgment in the case at the time of trial, and Mr. Ringgold returned to Baltimore, expecting to be notified

when the court was ready to render judgment in the case. He had also given notice that appeal would be taken in case the judgment was against the defendant. At the end of a week, Judge Wicks, in the absence of the counsel for the defense, delivered the opinion of the court, and committed the defendant to jail for thirty days. When Mr. Ringgold received notice of this fact, he went to Chestertown and applied for a writ of release for the defendant, pending the appeal; but the judges refused to sign the release, and Mr. Judefind had to serve his time out before the case was heard in the court of appeals, January 23, 1894. This court affirmed the judgment of the court below.

ISAAC BAKER

Mr. Baker, an observer of the seventh day, was arrested April 11, 1893, and tried before Justice Phillips, of Queen Annes County, April 12, on the charge of plowing on Sunday. He was sentenced to pay a fine and cost amounting to eleven dollars. His case was appealed to the circuit court, and was tried at the October term. The judgment of the lower court was affirmed, and he was sent to jail, where he served forty-three days. Some of the voluntary witnesses against him were members of the Methodist Church, to which Mr. Baker had formerly belonged.

CHARLES O. FORD

Mr. Ford was arrested in Queen Annes County, June 5, 1893, and tried June 7, by Justice J. M. Aker, for labor done on Sunday, June 3. The defendant was fined five dollars and costs. The brother of the defendant, Mr. T. F. Ford, was the prosecuting witness, who had stated that he would prosecute the first Seventh-day Adventist he should see at work on Sunday; and this happened to be his brother. The case appealed, but the brothers of the defendant paid the fine and costs before the date of trial. The offense of Mr. Ford was hauling some window sashes for the new Seventh-day Adventist church, from the steamer dock on Sunday, to prevent their being destroyed, threats to that effect having been made, and his own brother, the agent, having refused to put them in the freight house, after promising to do so.

H. O. BULLEN AND A. J. HOWARD

Mr. Bullen and Mr. Howard were arrested on Monday, May 20, 1894, at Shady Side, charged with doing "bodily labor on the Lord's day, commonly called Sunday." The work done by Mr. Howard was that of picking up a few scattered stakes about a churchyard, in the morning before breakfast, the entire time occupied in doing this being

about two or three minutes. Mr. Bullen was out in his garden inspecting it on Sunday, the witness admitting that he did only about five minutes' work; but that was sufficient. At the same time axes were to be heard all around the neighborhood. Even their informants were caring for their boats, bailing out water, drying sails, etc., preparing to amuse themselves on the same "Lord's day, commonly called Sunday."

While on their way to the trial, the Methodist Sunday school superintendent met the defendants, and stated that he would give one hundred dollars to get them both in the penitentiary for life; and that if they got justice, there's where they would go. They waived examination before the justice, and gave bail in the sum of one hundred dollars each for their appearance at court, October 3, 1894, at Annapolis. On appeal, the cases were dismissed on the ground that the justice of the peace had exclusive jurisdiction in such cases, except on appeal.

A Watchman's Association was formed at Shady Side, to watch seventh-day observers on Sunday, with the avowed intention of getting them all in jail, or driving them from the country. Many threats were made, and warnings were given them to leave the country. The door and transom of their meetinghouse at this place were broken, and their worship was disturbed.

## South Carolina

### THE STRAWBERRY CASE

Sunday laws have demonstrated in numerous instances that they are more readily adaptable to the uses of the intolerant bigot than to the true service of the Redeemer's kingdom. A case in point occurred in Greenville, South Carolina, in 1909. A family of conscientious Christians who observed as the Sabbath the day specified in the fourth commandment, had moved from Montana to South Carolina and settled near Greenville. They had procured a few acres of land and through economy and diligent effort, were doing what they could to make a living by raising fruit for the market.

Though strictly observing the seventh day of the week, they endeavored to avoid annoying their neighbors, by refraining, as far as possible, from doing any noisy work on Sunday. Their Christian conduct won for them the confidence, friendship, and respect of all their neighbors except one, whose objection to them seemed to be based more upon their strict observance of the Bible Sabbath than upon their Sunday work, inasmuch as he had made no complaint of his other neighbors who had occasionally worked on Sunday.

After hounding these Christians for some time, threatening them repeatedly with arrest, and spying upon them for the purpose of catching them at work on Sunday, this bigoted neighbor finally swore out a warrant for their arrest and for the arrest of several other members of the same faith, one at least of whom was not even on the place at the time specified in the warrant. The persons complained of were Mr. and Mrs. Sullivan Wareham, Benton Wareham, their fourteen-year-old son, Laura Darnell, Cannic Darnell, and four other seventh-day-keeping Christians, all of whom were accused of the crime (?) of picking strawberries on Sunday, May 2, 1909, "against the peace and dignity of the State of South Carolina."

The trial was set for August 3, at 9:30 A.M., and a crowded courtroom was the result of the publicity given the case, on account of the fact that peaceable men and women, conscientious Christians, were to go on trial for their faith, through the invoking of an unjust law by a prejudiced and bigoted neighbor. Since two of the accused were children not old enough to be liable under the Sunday law of South Carolina, they were excused by the magistrate.

The animus of the prosecution was demonstrated both in the demeanor of the plaintiff and in the testimony of the accusing witnesses. Several times the magistrate found it necessary to reprimand the plaintiff for the kind of language he employed. One of the parties whom the witnesses swore they saw picking berries was shown to have been more than one hundred fifty miles away at the time. One of the witnesses who swore he saw the accused picking berries was a quarter of a mile away, on the opposite side of a hill.

The magistrate took occasion to instruct those who were to make the pleas that they were not to discuss any theological or religious question to determine which day of the week is the Sabbath, stating that the law of the State had decided which day was to be observed; and yet, as pointed out by Mr. K. C. Russell, who made the plea for the accused, the whole case was based upon religion. If religion had not been involved in it, there would have been no case to try. The "crime" with which the defendants were charged was "Sabbathbreaking," and there is no legitimate authority for Sabbathkeeping save the word of God, the great fountain of religion. In his plea, Mr. Russell showed that the enforcement of Sunday laws upon those who observe the seventh day of the week was entirely out of harmony with the fourteenth amendment to the United States Constitution, which says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It was further

shown that the enforcement of Sunday laws upon Christians who observe another day of the week placed upon them a tax of one sixth of their earning capacity, not for the support of their own religion, nor for the support of any legitimate function of government, but for the purpose of having them show deference to the religious customs or practices of others, for which taxation they could receive no possible adequate recompense. This was a palpable injustice, and all legislation making it possible was, beyond question, class legislation, the pernicious influence of which is frequently demonstrated, as in this case, through prejudice or tyrannical zeal. Religious legislation invariably puts a dangerous weapon into the hands of bigots, from whose blows better men and women suffer.

After the plea, the magistrate read a short charge to the jury, who, after being out for half an hour, returned a verdict of *not guilty*, which met with general approval on the part of the townspeople. The case is valuable as a demonstration of the dangerous nature of all such laws. The work complained of was of the most inoffensive character, and the people accused of doing it were admitted to be, in every sense, most exemplary citizens. But this Sunday law made it possible for a prejudiced individual to hale into court those who were guilty of no real wrong, and, in case the jury had found for the plaintiff, he could have numbered among the criminal class the most unblemished members of the community, and doubtless kept up his nefarious work. One such case as this ought to be sufficient to demonstrate the iniquity of all Sunday legislation.

Commenting on this case under the caption, "A Matter of Conscience," the *Washington Post* of August 19, 1909, said, editorially:

"A few days ago a thoroughly orthodox Christian in one of the Southern States found five members of the Adventist faith working in the field a Sunday. Deeply imbued with the gloomy faith of a John Balfour of Burley, this excellent and exemplary man, just from the sanctuary, where he worshiped in the name of Him who sat at meat with publicans and sinners and plucked green corn a Sunday—this child of orthodoxy and cruelty swore out a warrant, and had the five arrested for breaking the Sabbath.

"The jury was composed of enlightened men, and the accused were acquitted on the plea that they kept one day of the week holy, a Saturday. And such is orthodoxy, that argues by the stake, the fagot, and the torch. This paper is not a sectarian, though it is a Christian, and as an observer of men, things, and events, it is ready to say that as

few criminals, male and female, are recruited from the Adventists as from any other sect, numbers computed.

"They work Sundays, but they keep Saturdays, and that fulfills the law of God as it should of man. These folk are earnest, sincere Christian men, women, and children. They may be wrong in faith, desperately wrong. That is a matter of conscience; but their consciences are about as likely to be right as yours or ours.

'Leave thought unfettered every creed to scan.'

And take care of your own conscience. That will keep you busy without meddling with the consciences of other people."

## Virginia

### PREJUDICE NULLIFIES AN EXEMPTION CLAUSE

The Sunday law of Virginia, while imposing a fine of "not less than five dollars" upon anyone "found laboring at any trade or calling" "on a Sunday," contains a very plainly worded exemption for observers of the seventh day. Section 4571 of the code provides that "any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day," shall not be liable to the penalties prescribed in the preceding section imposing the fine.

Such a provision, it would seem, ought to guarantee any conscientious observer of the seventh day against molestation for doing ordinary labor on Sunday, if such guaranty can exist where Sunday laws exist; but that it does not always do so was strikingly illustrated by an incident which occurred at Colonial Beach, in October, 1910.

Mr. Eugene Ford, a Christian observer of the seventh day, was requested by his employer, an observer of Sunday, to do a small piece of work for him on Sunday, October 10—repairing some dredging machines which had been left at his shop for that purpose. The owners of the machines called for them on Sunday; but little work was required to complete the repairs, and Mr. Ford was asked to do it, notwithstanding the fact that it was Sunday. He did the work, and the machines were taken away. There were involved in the transaction the owners of the machines, the driver of the dray, the employer (Mr. Staples), and Mr. Ford. All were nominal observers of Sunday except the last named, who having conscientiously observed as Sabbath the previous day, considered himself at liberty to work on Sunday.

Living in the place, however, was one whose ideas of liberty and justice seemed tinctured with religious prejudice. This man, though

a professed observer of Sunday and a teacher in a Methodist Sunday school, had, during the summer, it was alleged by neighbors, sold and delivered crab meat and gasoline on Sunday. Nevertheless, having learned that Mr. Ford had been working on Sunday, he swore out a warrant for his arrest for violation of the Sunday law. The latter was tried before the mayor of the town and was fined two dollars and costs, the amount prescribed by the law previous to its amendment in 1908. Refusing to pay this, Mr. Ford appealed to the county court. His employer, however, came forward and paid the fine, and the case was dismissed.

It should be noted that, although several others were involved in this transaction, no one was arrested save this observer of the seventh day; that the prosecutor himself (a Mr. Ernest Ford, though no relative) had violated the law earlier in the season, and this without any warrant of an exemption to cover his case; that the same law imposing the fine, exempted observers of another day; and lastly, that the prosecutor admitted that he would not cause the arrest of anyone for Sunday work except an observer of the seventh day—all of which demonstrates anew the fact that religious liberty cannot be guaranteed in any land where religion or religious observances are made matters of law. All such laws should be repealed.

### The Record for Two Years

During 1895 and 1896, no less than seventy-six Seventh-day Adventists were prosecuted in the United States and Canada under existing Sunday laws. Of these, twenty-eight served terms of various lengths in jails, chain gangs, etc., aggregating 1,144 days, or nearly three and one-half years for a single person.

Others were fined, while a few were acquitted or had the good fortune of having their cases dismissed. A number of those in Tennessee, after being in jail for thirty-four days, were pardoned by the governor.

### SUNDAY-REST ENFORCEMENT WAS NOT CONFINED TO THE EIGHTIES AND NINETIES OF THE LAST CENTURY

It may be said by some that the foregoing cases cited were all "away back there," and that we do not have such persecutions in our day. The fact is that most of these Sunday laws are still on the statute books of the States. They are often invoked and enforced, and that right down to the present day. Furthermore, the prospects are that these persecutions will increase from now on, rather than diminish.

To show that these Sunday-law prosecutions and persecutions are not confined to the old days, nor to a certain section of the country, such as the South or the so-called "Bible Belt," nor entirely to any one sect or class, note the following as typifying many scores of cases that might be cited:

#### Alabama

1928—Major Hudgins was convicted for giving his children permission to work on Sunday, after they had observed the seventh day of the week as their Sabbath.

#### California

1927—Though the State had no Sunday law, city and town municipalities enact Sunday ordinances. One Nello Bocci, a monument maker in Lawndale, was arrested for selling a gravestone on Sunday.

#### District of Columbia

1933—The Commissioners of the District forbade vendors' selling fruit on Sunday, though beer is sold, and baseball, motion pictures, and stores operate freely.

#### Georgia

1930—The police of Clayton County protected and helped a traveling circus to land in town and put on a show; they also co-operated with airplanes which took people for rides and made much money; yet they arrested a Bible colporteur for delivering a book explaining the Bible, on Sunday, since the person who ordered the book requested that the book be delivered then because it was the only day he was at home.

1932—The director of the Emergency Relief Committee attempted to give a motion-picture show on Sunday, the proceeds to go to the unemployed in Atlanta; he was arrested for breaking the State Sunday-closing law.

#### Indiana

1932—A farmer near Berne was fined \$12.95 for sowing wheat on Sunday.

#### Maryland

1918—Mr. Grant Franklin and his son-in-law, of Glen Burnie, were arrested for digging potatoes on Sunday; though they were not molested when they worked for the Government on Sunday at Camp Meade.

1922—Three men were fined in a Baltimore police court for Sunday work; one for pressing clothes, another for repairing loose tiles, and the third for painting his front steps.

1923—Members of a Jewish dancing club were arrested for dancing on Sunday in Walbrook, a suburb of Baltimore.

1926—Sunday-law spies in Baltimore peeked into a man's home and saw him pressing his trousers on Sunday. He was reported, arrested, and fined for breaking Sunday. J. D. Coffman, a Seventh-day Adventist, was indicted for plowing his field on Sunday, near Hagerstown.

1929—Under the State law, which says, "No person whatsoever shall . . . profane the Lord's day," six merchants were arrested for "illegal selling on the Sabbath."

1931—A Sunday-closing campaign in Baltimore caused a national sensation. One delicatessen proprietor was fined \$360 for selling perishable goods. Food and drug stores were allowed to sell "necessities" like tobacco and cigarettes, but the sale of foods was banned.

1935—A Baltimore man was resting in front of his son's shoestore on Sunday. Three colored men demanded that he sell them a pair of shoes. Because there had been three robberies of the store recently, he sold the shoes for a dollar less than their price, to rid himself of the men quickly. For this he was arrested and fined by the court.

### Massachusetts

1923—Three Seventh-day Adventists were arrested and fined for painting the interior of a house on Sunday in order to get it ready for occupancy the next day. They had kept Saturday, and there was an exemption clause in the law that covered their cases.

1924—Carl Johnson, of Worcester, was fined \$10 for transporting a hog on Sunday; and Robert Jorgorian, of the same city, was fined \$5 for shining shoes on that day.

1938—A storekeeper was arrested and fined for selling fresh eggs on Sunday; yet it was legal to buy cooked eggs, beer, and liquor, and to attend commercialized baseball and the movies.

### Michigan

1915—A jury in Saginaw acquitted Sunday-law violators.

### Mississippi

1924—Two Seventh-day Adventists, F. E. McKee and Thomas Coble, of Talawah, were arrested for Sunday work.

### Nebraska

1921—Eight boys caught pitching horseshoes on Sunday on a vacant lot near Lincoln were fined \$5 and costs each.

1924—Eight Lincoln merchants were fined for selling “cans of pork and beans and packages of crackers” on Sunday, though not for selling fruit and vegetables.

### New Jersey

1923—The borough council of Linden brought indictments against a Jewish congregation for conducting a religious procession through the streets of the town on Sunday; against a Jewish butcher for delivering meat on Sunday; and against a woman past sixty years of age for carrying seven apples from a neighbor’s home to her own on Sunday morning.

1924—Invoking a 1798 Sunday blue law, Supreme Court Justice Minturn ruled that playing a phonograph or listening to the radio on Sunday is illegal. “Any music for the sake of merriment” was banned by this law.

1927—Twenty-six violators in Orange, and over a hundred in Irvington, were arrested for desecrating the “Christian Sunday.”

1930—Under “the most drastic blue laws in the Union,” which forbid all “diversion” and even travel on Sunday, except to and from church, a football game was stopped, and two workmen were arrested for plying their vocations.

### New York

1922—A Jewish baker in New York City was charged with violating the Sabbath law because he sold rolls on Sunday, though he had observed the previous day as his Sabbath.

1923—Harold F. Albert, recreational director of the Endicott-Johnson Corporation, was arrested at Binghamton for staging a concert by the John Philip Sousa band on Sunday.

1937—Twenty-five storekeepers were fined \$5 and costs for sales of necessities on Sunday in New York City.

### North Carolina

1920—Mrs. Della Post was arrested and haled before the courts for driving a wagon with two armloads of wood in it, on Sunday. She was a Seventh-day Adventist. Many others with loads on the same road were not molested. She was acquitted.

1923—Paul Swinson, a Seventh-day Adventist of Goldsboro, was fined for operating a gasoline filling station on Sunday.

1926—Jack O. Temple, a druggist, of Kinston, was arrested and tried for selling a healing lotion on Sunday to a person who was suffering from a severe sunburn.

### North Dakota

1932—Ted Nuens, a Seventh-day Adventist of Valley City, was fined \$10 and costs for keeping his place of business open on Sunday.

### Ohio

1929—The town of Martins Ferry was made the victim of complete Sunday closing by its mayor.

1929—The mayor of New Straitsville clamped the Sunday-law lid down tight in order to make the prohibition law obnoxious.

1935—A man in Perrysburg was jailed for greasing his truck at home on Sunday.

### Pennsylvania

1915—At Emmaus W. C. T. U. members trapped storekeepers to sell goods on Sunday, by themselves buying, and then had them arrested.

1924—A man and his wife were fined \$25 and costs for selling Sunday newspapers at Carnegie. A city ordinance allowed only drugstores and restaurants to open on Sunday.

1929—Gospel ministers in Altoona stopped 4,000 people from listening to a broadcast of a Sunday baseball game, while in another State it was perfectly lawful for the game to be played and for 40,000 spectators to see it.

1929—The Pittsburgh Sabbath Association had the members of the Pittsburgh Symphony Society arrested for furnishing music to the public on Sunday; and it warned that it would prosecute all efforts to furnish music outside the churches to the public on Sunday.

1931—In a suburb of Philadelphia a policeman arrested a boy for refusing to stop kicking a football on Sunday. In the resulting altercation, the policeman shot and killed the boy's father.

### South' Carolina

1924—A great Sunday-law-enforcement crusade was put on all over the State, and many dealers were arrested for selling gasoline and soft drinks.

### Tennessee

1914—J. S. Rooker, a Seventh-day Adventist, was found guilty and fined for hoeing corn on Sunday three miles from the public road and a mile and a half from any house.

1916—Five Sabbatarians were indicted at Gallatin for such Sunday labor as digging potatoes for dinner. The judge refused to sustain three of the indictments, and the other two resulted in a mistrial be-

cause two jurors, strongly prejudiced religiously, would not agree with the other ten.

1935—All gasoline filling stations were closed on Sunday in Nashville.

### Texas

1933—In a heated campaign to force Sunday closing, many merchants were arrested and fined for selling goods on Sunday.

### Vermont

1918—Mr. Cantell, a Seventh-day Adventist barber of Enosburg Falls, was tried and condemned for Sunday work; he appealed his case to the supreme court of the State.

### Virginia

1932—A deputy sheriff of Washington County arrested two Seventh-day Adventists for Sunday work, one—a crippled mother who walks on crutches—for washing clothes on her own premises, and the other a man who donated and hauled a load of wood to a church to heat it for religious services.

1935—Judge Clements, of Petersburg, fined a man \$10 for loading a truck on Sunday.

### Washington

1931—Three respectable businessmen of Vancouver were fined \$25 each for selling goods on Sunday.

1937—The city of Wenatchee staged a memorable court trial over Sunday enforcement, a long list of merchants having been arrested for selling "uncooked food" on Sunday. Heavy fines were imposed and paid.

### Wisconsin

1930—Ministers of Richland Center prosecuted a motion picture owner for showing pictures on Sunday; the man was fined \$10 and costs.

## THE USE OF SUNDAY LAWS

Only a casual reading of the preceding pages, devoted to the operation of Sunday laws in the history of the nation, makes evident that they have been used chiefly as weapons in the hands of religious fanatics to bring others to their way of thinking, as a means of venting personal spite, as tools manipulated by certain nonreligious organizations to accomplish selfish ends, and, by their drastic enforcement, as a way of showing how obnoxious they really are. There is little or no sign of their accomplishing the ends for which their advocates worked

so ardently; namely, those of advancing morals, influencing people to be more religious, and causing everyone to worship on the same day of the week.

Religious legislation by civil authorities has always thus failed of its objectives, as has been abundantly attested in the pages of this book; and it has ever disappointed the hopes of even its most sanguine supporters. Pure and undefiled religion is simply not advanced in that way; and it cannot be. Then why have Sunday laws at all, since they are used and abused so shamefully? If they are kept on our lawbooks, they are certain to be clubs in the fists of bigots to coerce the conscience of mankind in the future as they have been so used in the past. Consistency, common sense, brotherly love, and expediency, all demand their repeal.

**PART XI**

**Various Aspects of Sunday Legislation**

**History and Public Opinion Testify Against  
Sunday Laws**



#### LATIN TEXT

IMPERATOR CONSTANTINUS AUG. HELPIDIO: OMNES  
JUDICES, URBANÆQUE PLEBES ET CUNCTARUM AR-  
TIUM OFFICIA VENERABILI DIE SOLIS QUIESCANT.  
RURI TAMEN POSITI AGRORUM CULTURÆ LIBERE  
LICENTERQUE INSERVIANT, QUONIAM FREQUENTER  
EVENTIT, UT NON APTIUS ALIO DIE FRUMENTA SULCIS  
AUT VINÆ SCROBIBUS MANDENTUR, NE OCCASIONE  
MOMENTI PEREAT COMMODITAS CÆLESTI PROVI-  
SIONE CONCESSA.

#### TRANSLATION

CONSTANTINE, EMPEROR AUGUSTUS, TO HELPIDIUS:  
ON THE VENERABLE DAY OF THE SUN LET THE  
MAGISTRATES AND PEOPLE RESIDING IN CITIES REST,  
AND LET ALL WORKSHOPS BE CLOSED. IN THE COUN-  
TRY, HOWEVER, PERSONS ENGAGED IN AGRICULTURE  
MAY FREELY AND LAWFULLY CONTINUE THEIR PUR-  
SUITS; BECAUSE IT OFTEN HAPPENS THAT ANOTHER  
DAY IS NOT SO SUITABLE FOR GRAIN SOWING OR FOR  
VINE PLANTING; LEST BY NEGLECTING THE PROPER  
MOMENT FOR SUCH OPERATIONS, THE BOUNTY OF  
HEAVEN SHOULD BE LOST.

Latin text and translation from Schaff's "History of the  
Christian Church," Vol. III, sec. 75, par. 5, note 1.

Text of Constantine's Sunday Law, the First Legal Enactment in  
Favor of a Christian Day of Worship

## Before the Bar of Reason

**I**N order to get before the reader certain important aspects of Sunday legislation, not sufficiently covered in the preceding pages, we depart herewith from the general plan of other parts of this book, and present sundry subjects which bear on the main theme.

Throughout the long period of struggle over religious legislation, in connection with the scores of court cases in the various States, many and varied arguments have been used, approaches made, and angles taken by the proponents of Sunday laws. The history of religious enactments and enforcements by civil authority is a long and checkered one. It is well to check up on it from the beginning.

The answers to these claims of the Sundayists are here given, both in our own words and in the words of eminent men. Here Sunday laws are brought before the bar of reason. It will be seen that many of the reasons given for churchly enactments are specious, and require careful thought for their refutation.

### A HISTORICAL SUMMARY OF SUNDAY LEGISLATION \*

BY DR. A. H. LEWIS

“The first Sunday legislation was the product of that pagan conception, so fully developed by the Romans, which made religion a department of the state. This was diametrically opposed to the genius of New Testament Christianity. It did not find favor in the Church

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\* This interesting summary of the history of Sunday laws here presented throws light upon the Sunday laws of the United States found in the preceding pages. It is from the preface and chapters 1, 2, 4, and 5 of Dr. A. H. Lewis's *Critical History of Sunday Legislation From 321 to 1888 A.D.* (New York, D. Appleton & Company, 1888), a valuable addition to our literature upon the Sunday problem. The act of the twenty-ninth year of Charles II is inserted to show the direct connection which our Sunday laws have with the church and state laws of England, and through them with the ecclesiastical domination of the Dark Ages. The connection is direct, and the evidence as to the religious nature of Sunday laws is conclusive.

until Christianity had been deeply corrupted through the influence of Gnosticism and kindred pagan errors. The emperor Constantine, while still a heathen—if indeed he was ever otherwise—issued the first Sunday edict by virtue of his power as Pontifex Maximus in all matters of religion, especially in the appointment of sacred days. This law was pagan in every particular.

“Sunday legislation between the time of Constantine and the fall of the empire was a combination of the pagan, Christian, and Jewish cults. Many other holidays—mostly pagan festivals baptized with new names and slightly modified—were associated, in the same laws, with the Sunday.

“During the Middle Ages, Sunday legislation took on a more Judaistic type, under the plea of analogy, whereby civil authorities claimed the right to legislate in religious matters, after the manner of the Jewish Theocracy.

“The Continental Reformation made little change in the civil legislation concerning Sunday. The English Reformation introduced a new theory, and developed a distinct type of legislation. Here we meet, for the first time, the doctrine of the transfer of the fourth Commandment to the first day of the week, and the consequent legislation growing out of that theory. The reader will find the laws of that period to be extended theological treatises, as well as civil enactments. The Sunday laws of the United States are the direct outgrowth of the Puritan legislation, notably, of the Cromwellian period. These have been much modified since the colonial times, and the latest tendency, in the few cases which come to direct trial under these laws, is to set forth laws of a wholly different character, through the decisions of the courts.

“In the Sunday legislation of the Roman Empire the religious element was subordinate to the civil. In the middle ages, under Cromwell, and during our colonial period, the church was practically supreme. Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries. Every Sunday law sprang from a religious sentiment. Under the pagan conception, the day was to be ‘venerated’ as a religious duty owed to the God of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ’s resurrection. In the Middle-age period, sacredness was claimed for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under

the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from a religious standpoint. There can be no 'worldly business' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on nonreligious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."—*Critical History of Sunday Legislation*, pp. vi-ix.

"The original character of laws and institutions is not easily lost. History is a process of evolution, whereby original germs, good or bad, are developed. In the process of development modifications take place, and methods of application change, but the properties of the original germ continue to appear. Neither legislation nor the influence of the Church have been able to prevent the development of holidayism and its associate evils in connection with Sunday."—*Ibid.*, p. 1.

"The preceding chapter [chapter I] shows that there was nothing new in the legislation by Constantine concerning the Sunday. It was as much a part of the pagan cultus, as the similar legislation concerning other days which had preceded it. Such legislation could not spring from Apostolic Christianity. Every element of that Christianity forbade such interference by the state. The pagan character of this first Sunday legislation is clearly shown, not only by the facts above stated, but by the nature and spirit of the law itself. Sunday is mentioned only by its pagan name, 'venerable day of the sun.' Nothing is said of any relation to Christianity. No trace of the resurrection-festival idea appears. No reference is made to the Fourth Commandment or the Sabbath, or anything connected with it. The law was made for all the empire. It applied to every subject alike. . . . [The fact that a short time before this he had issued another edict], ordering that the aruspices be consulted in case of public calamity, which was thoroughly pagan in every particular, shows the attitude of the emperor and the influences which controlled him.

"The following is the complete text of the laws just referred to. It will repay the reader for prolonged and careful study:

### First Sunday Edict

“Let all judges and all city people and all tradesmen rest upon the *venerable day of the sun*. But let those dwelling in the country freely and with full liberty attend to the culture of their fields; since it frequently happens that no other day is so fit for the sowing of grain, or the planting of vines; hence, the favorable time should not be allowed to pass, lest the provisions of heaven be lost.

“Given the seventh of March, Crispus and Constantine being consuls, each for the second time (321).’

“‘Codex Justin.,’ lib. iii, tit. xii, l. 3.

[See *Corpus Juris Civilis*, edited by J. L. G. Beck (Leipzig, 1837), vol. 2, *Iustiniani Codex*, p. 108.]

### Edict Concerning Aruspices

“*The August Emperor Constantine to Maximus:*

“If any part of the palace or other public works shall be struck by lightning, let the soothsayers, following old usages, inquire into the meaning of the portent, and let their written words, very carefully collected, be reported to our knowledge; and also let the liberty of making use of this custom be accorded to others, provided they abstain from private sacrifices, which are specially prohibited.

“Moreover, that declaration and exposition, written in respect to the amphitheater being struck by lightning, concerning which you had written to Heraclianus, the tribune, and master of offices, you may know has been reported to us.

“Dated the sixteenth before the calends of January, at Serdica (320).

Acc. the eighth before the Ides of March, in the consulship of Crispus II and Constantine III, Caesars Coss. (321).’

“‘Codex Theo.,’ lib. xvi, tit. x, l. 1.

[See *Codex Theodosianus*, edited by G. Haenel (Bonn, 1842), p. 1611.]

“It will be difficult for those who are accustomed to consider Constantine a ‘Christian emperor’ to understand how he could have put forth the above edicts. The facts which crowd the preceding century will fully answer this inquiry. The sun-worship cult had grown steadily in the Roman Empire for a long time. In the century which preceded Constantine’s time, specific efforts had been made to give it prominence over all other systems of religion. The efforts made under Heliogabalus (218-222 A. D.) marked the ripening influence of that cult, both as a power to control and an influence to degrade Roman life.”—*Ibid.*, pp. 18-20.

“All Sunday legislation is the product of pagan Rome. The Saxon

laws were the product of the Middle-age legislation of the 'Holy Roman Empire.' The English laws are an expansion of the Saxon, and the American are a transcript of the English. Our own laws were all inchoate in those [the Saxon laws]."—*Ibid.*, p. 70.

"The early Sunday laws in England were but the expansion of the Saxon laws. When compared with the Saxon laws, they show the successive links by which our Sunday laws have been developed from the original source. They are of great value, beyond their mere historic interest, in showing how the advance of civilization and of Christianity has left the original idea behind."—*Ibid.*, p. 81.

### The Sunday Law of Charles II

An act of the 29th year of Charles II (1676), chapter vii, was imitated by a number of the American colonies up to the time of the Revolution, and so became the basis of the American Sunday laws. It runs as follows:

"For the better observation and keeping holy the Lord's day, commonly called Sunday; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the Lords, spiritual and temporal, and of the Commons, in this present Parliament assembled, and by the authority of the same, that all the laws enacted and in force concerning the observation of the Lord's day, and repairing to the church thereon, be carefully put in execution; and that all and every person and persons whatsoever, shall on every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted;) and that every person being of the age of fourteen years or upwards, offending in the premises shall, for every such offense, forfeit the sum of five shillings; and that no person or persons whatsoever, shall publicly cry, show forth, or expose to sale, any wares, merchandises, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending, shall forfeit the same goods so cried or showed forth, or exposed for sale.

"II. And it is further enacted that no drover, horse-courser, wagoner, butcher, higgler, their or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit

twenty shillings for every such offense; and that no person or persons shall use, employ, or travel upon the Lord's day with any boat, wherry, lighter, or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed, upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offense."

[The rest of this section assigns such cases to justices of the peace, orders the confiscation of goods cried or exposed, and the collection of fine by distraint if necessary. If the offender cannot pay the fines, he shall "be set publicly in the stocks, by the space of two hours."]

"III. Provided, That nothing in this act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cook shops or victualing houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon."

[Section four requires prosecution within ten days of the offense.

[Section five protects the district in which any traveler may be robbed on Sunday from action to recover the amount lost, but requires the inhabitants to pursue the robber after "hue and cry" has been made, under penalty of forfeiting to the crown the amount which might have been recovered.]

"VI. Provided, also, That no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, (except in cases of treason, felony, or breach of the peace), but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for the doing thereof, as if he or they had done the same, without any writ, process, warrant, order, judgement, or decree at all."—Great Britain, *The Statutes at Large* (London, 1786), vol. 3, p. 365.

## GENEALOGY OF SUNDAY LAWS

The following statements, in form of quotations, present in succinct form the facts regarding the origin and history of Sunday laws:

I. PROTESTANTISM IN AMERICA: "During nearly all our American history the churches have influenced the States to make and improve

Sabbath laws.”—REV. W. F. CRAFTS, in *Christian Statesman*, July 3, 1890, p. 5.

2. YOUNGER STATES OF AMERICA: In Sunday legislation we have followed the example of the older States.

3. OLDER STATES: In Sunday legislation and judicial decisions we have followed the example of the oldest States.

4. OLDEST STATES: In the matter of Sunday legislation we have followed the example of the original colonies.

5. ORIGINAL COLONIES: In the matter of Sunday legislation we followed the precedents and example of old England, which had an established religion and a church and state system.

6. OLD ENGLAND: Sunday laws and religious legislation are the relics of the Catholic Church, incorporated among us when that church was the established church of Christendom, retained when Henry VIII, about 1534 A. D., renounced allegiance to the pope and intensified by a state Protestantism under the Puritan “Christian Sabbath” theory.

7. CATHOLIC CHURCH: Sunday laws and religious legislation were incorporated in our system by the craft, flattery, and policy of Constantine and the ambitious bishops of his time, together with the decrees of popes and councils of later date, by which we transmuted the venerable day of the sun into the “Lord’s day” in honor of the resurrection.

8. PAGANISM: With us, Sunday observance originated in astrology and sun worship; in turning from the Creator to His works of creation, and worshiping the heavenly bodies; in dedicating each day to a planetary deity, making this day, the first in the Biblical week, sacred to the greatest, brightest, and most luminous visible object in the heavens, the sun. (See Rom. 1:21-25; Eze. 8:15, 16.)\*

9. SUNDAY: “So called because this day was anciently dedicated to the sun, or to its worship.”—Webster.

10. SUN WORSHIP: “The oldest of all forms of idolatry.” (See Job 31:26-28.)

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\* THE IMPOSSIBLE.—Any other day than the first might have been God’s rest day. Instead of creating the heavens and earth in six days and resting on the seventh, He might have created them in five, four, three, or two days, or even in one day, and rested the next; but He could not have created them on the first day and rested on that same day. This would have been impossible. Thus, in changing God’s rest day, men have chosen the impossible. This is the day the observance of which men, for sixteen hundred years, have been seeking to enforce upon their fellow men by law, and concerning which there is now in progress a worldwide movement for its compulsory observance. This, in subtle and refined form, is but the return to paganism and its methods under a Christian guise.

## WHAT EMINENT MEN HAVE SAID

## Church and State

GEORGE WASHINGTON: "Every man, conducting himself as a good citizen, and being accountable alone to God for his religious opinions, ought to be protected in worshiping the Deity according to the dictates of his own conscience."—Letter to the General Committee Representing the United Baptist Churches in Virginia, May, 1789, in *The Writings of George Washington*, edited by J. C. Fitzpatrick, vol. 3, p. 321.

THOMAS JEFFERSON: "Almighty God hath created the mind free; . . . all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His almighty power to do."—"An Act for Establishing Religious Freedom, passed in the assembly of Virginia," in *The Works of Thomas Jefferson*, edited by P. L. Ford (1904-05), vol. 2, pp. 438, 439.

BENJAMIN FRANKLIN: "When a religion is good, I conceive that it will support itself; and, when it cannot support itself, and God does not take care to support, so that its professors are obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."—Letter to Dr. Price, Oct. 9, 1780, in *The Writings of Benjamin Franklin*, edited by Albert Henry Smyth, vol. 8, p. 154.

JAMES MADISON: "Religion is essentially distinct from civil government and exempt from its cognizance; . . . a connection between them is injurious to both."—Letter to Edward Everett, March 19, 1823, in *Writings of James Madison*, edited by G. Hunt, vol. 9, p. 126.

U. S. GRANT: "Leave the matter of religion to the family altar, the church, and the private school supported entirely by private contributions. Keep the church and state forever separate."—Speech at the Annual Reunion of the Army of the Tennessee, at Des Moines, Iowa, Sept. 29, 1875, in *Words of Our Hero*, edited by Jeremiah Chaplin, p. 31.

THOMAS BABINGTON MACAULAY: "The whole history of the Christian religion shows that she is in far greater danger of being corrupted by the alliance of power than of being crushed by its opposition."—Essay on "Southey's Colloquies" in *Critical and Historical Essays*, (London, 1865), vol. 1, p. 115.

DR. PHILIP SCHAFF: "Secular power has proved a satanic gift to

the church, and ecclesiastical power has proved an engine of tyranny in the hands of the state.”—*Church and State in the United States* (1888), p. 11.

JOHN CLARK RIDPATH: “Proscription has no part nor lot in the modern government of the world. The stake, the gibbet, and the rack, thumbscrews, swords, and pillory, have no place among the machinery of civilization. Nature is diversified; so are human faculties, beliefs, and practices. Essential freedom is the right to *differ*, and that right must be sacredly respected.”—*History of the World*, vol. 3, p. 1354.

DECLARATION OF INDEPENDENCE: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.”

UNITED STATES CONSTITUTION: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.”—Amendments, Article 1.

THOMAS CLARKE: “There are many who do not seem to be sensible that all violence in religion is irreligious, and that, whoever is wrong, the persecutor cannot be right.”—*History of Intolerance* (1818), vol. 1, p. 3.

JOHN WESLEY: “Condemn no man for not thinking as you think: let everyone enjoy the full and free liberty of thinking for himself: let every man use his own judgment, since every man must give an account of himself to God. Abhor every approach, in any kind or degree, to the spirit of persecution. If you cannot reason or persuade a man into the truth, never attempt to force him into it. If love will not compel him to come, leave him to God, the Judge of all.”—“Advice to the People Called Methodists,” in *The Works of the Reverend John Wesley* (New York, 1831), vol. 5, p. 253.

ST. JOHN: “This is the message that ye heard from the beginning that we should love one another. Not as Cain, who was of that wicked one, and slew his brother. And wherefore slew he him? Because his own works were evil, and his brother’s righteous.” 1 John 3:11, 12.

### Majorities and Minorities

GOLDSMITH: “As ten millions of circles can never make one square, so the united voice of myriads cannot lend the smallest foundation to falsehood.”—*The Vicar of Wakefield*, vol. 2, chap. 8.

JOHN STUART MILL: “If all mankind, minus one, were of one opinion, and only one person were of the contrary opinion, mankind would

be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind."—*On Liberty*, p. 24.

ANDREW W. YOUNG: "Every person has the right to demand protection of the government. This protection is afforded by its police and other civil officers. So, also, if these are not sufficient the governor is bound to call out the militia, to protect even a single person."—*Government Class Book* (1889), p. 199.

MACAULAY: "Have not almost all the governments in the world always been in the wrong on religious subjects?"—Essay on "Gladstone on Church and State," in *Critical and Historical Essays* (London, 1865), vol. 2, p. 60.

PROTESTANT PRINCES OF GERMANY: "We cannot in such a matter give way to the majority. . . . In matters which concern God's honour and the salvation and eternal life of our souls, everyone must stand and give account before God for himself; and no one can excuse himself by the action or decision of another, whether less or more."—Protest at the Diet of Spires, 1529, (from the "Instrumentum Appellationis" of April 25th), in B. J. Kidd, *Documents Illustrative of the Continental Reformation* (Oxford, 1911), pp. 244, 245.

### Toleration

LORD STANHOPE: "The time was when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will spurned as an insult."—Speech in British Parliament, in 1827, quoted in Philip Schaff, *Church and State in the United States* (1888), p. 14.

STANLEY MATTHEWS: "Toleration—I hate that word. There is no such thing known in this country as toleration—but civil and religious equality, equality because it is right, and a right."—Quoted in *The Bible in the Public Schools* (Cincinnati, 1870), p. 221.

MACAULAY: "It has always been the trick of bigots to make their subjects miserable at home, and then to complain that they look for relief abroad; to divide society, and to wonder that it is not united; to govern as if a section of the state were the whole, and to censure the other sections of the state for their want of patriotic spirit." "The doctrine which, from the very first origin of religious dissensions, has been held by all bigots of all sects, when condensed into few words, and stripped of rhetorical disguise, is simply this: I am in the right, and you are in the wrong. When you are the stronger you ought to tolerate me; for it is your duty to tolerate truth. But when I am the

stronger, I shall persecute you; for it is my duty to persecute error."—Essays on "Civil Disabilities of the Jews" and "Sir James Mackintosh," in *Critical and Historical Essays*, vol. 1, pp. 143, 333-334.

### Lincoln's Warning

ABRAHAM LINCOLN: "What constitutes the bulwark of our own liberty and independence? It is not our frowning battlements, our bristling seacoasts, our Army and our Navy. These are not our reliance against tyranny. All of those may be turned against us without making us weaker for the struggle. Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prizes liberty as the heritage of all men, in all lands everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors. Familiarize yourself with the chains of bondage, and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you."—Speech at Edwardsville, Illinois, Sept. 13, 1858, *Complete Works of Abraham Lincoln*—(Nicolay and Hay, eds.), vol. 11, p. 110.

### WHAT IS THE EQUIVALENT?

Upon Anglo-Saxon principles of government, and unquestionably the perfect governmental principle of justice, no citizen can be required to surrender the personal exercise of any of his natural rights without an equivalent. By this principle in this government of the people, even in the case of war, when "the people" would be fighting in plain self-defense, no man is ever required to leave his home and his personal affairs of natural right without receiving a definite and regular recompense. By this principle, under the exercise of the governmental right of eminent domain, the state cannot take the property of any citizen without the recompense of a fair valuation.

But by Sunday laws, through enforced rest, the state deprives each citizen of one seventh of his time and effort. The right to acquire and to enjoy property, in itself, includes the right to the means and to the use of the means to acquire property. Time and effort, therefore, are property. By Sunday laws, the state, through enforced rest one whole day in seven, deprives each citizen of one seventh of his time and effort, and thus, in effect, of one seventh of his property.

And what is the equivalent?—Just nothing at all—or worse. For a day of enforced rest is nothing but a day of enforced idleness. What Sunday laws do, therefore, is, by governmental force to deprive every

citizen, for one whole day in each week, of his natural right of honest occupation; and the only shadow of equivalent given in return for this is the consequent enforced idleness.

But idleness is no equivalent at all for the time and effort of honest occupation. General idleness *voluntary* is only mischievous; general idleness *enforced* is far worse. Industry, honest occupation, not idleness, is the life of the state. And to put upon idleness the enormous premium of making honest industry a crime to be punished by fine and imprisonment, is nothing less than governmentally suicidal.

The originators and promoters of Sunday legislation know this. They know that this proposition is true; that enforced rest is enforced idleness, and therefore is mischievous. Accordingly, on that side, it has been said, and it stands in print as accepted doctrine with them, that "taking *religion* out of the day takes the *rest* out." This is profoundly true. And that truth fixes it that the obligations and sanctions of a day of rest can come only from God, the Fountain of religion; for He, and only He, can supply the religion, which is the only possible equivalent of a required day of rest.

From their true premise that "taking religion out of the day takes the rest out," that religion is the only possible equivalent of required rest, it follows inevitably that from some source there must be supplied the religion which shall make effective the rest which Sunday laws enforce.

But it being enforced rest, this essential religion cannot possibly come from God, for the government of God is not of force. Neither can it come from the state, for the state is not religious, and cannot supply what it has not. But, lo! here is the church, the church combine, that originated this legislation, and that for many years has been diligently pressing it upon Congress! *She* is fully ready to supply exactly the religion that is fitting to this enforced rest.

The situation, then, is this: Taking religion out of the rest day takes the rest out of the religious day. The church combine demands that the state shall enforce the rest, and *she* will supply the religion that is essential to the rest. And they will give you no rest until they do, you may be sure of that.

The sum of the whole matter, then, is simply this:

Upon their professed claim that it is merely and only to secure a rest day as a civic and economic measure, the legislation is economically and governmentally suicidal.

Through the operation of law enforcing a day of rest, the church crowds herself upon the state as the only means of supplying the

religion that is essential to required rest. Thus there is forced upon the state a union of church and state as the inevitable consequence of this legislation. And *that* can only sink the state.

Accordingly, both in its direct workings and in its consequences, Sunday legislation is evil, only evil, and that continually.—A. T. Jones, speech before House District Committee, March 8, 1910.

### DO SUNDAY LAWS PRESERVE A NATION?

The advocates of Sunday laws frequently make the claim that such laws are essential to the preservation and stability of civil government. The following are samples:

In his work, *The Sabbath for Man*, page 248, Rev. W. F. Crafts says:

“It is the conviction of this majority [church members] that the nation cannot be preserved without religion, nor religion without the Sabbath, nor the Sabbath without laws, therefore Sabbath laws are enacted by the right of self-preservation, not in violation of liberty, but for its protection.”

Dr. R. C. Wylie, in his *Sabbath Laws in the United States*, page 231, says:

“Our free government would be impossible without our Christian civilization; our civilization is produced and perpetuated by the Christian religion; the Christian religion cannot exist without the Christian church; the Christian church would languish and die without assemblies for public worship; assemblies for worship are impossible without a day of rest; a day of rest needs the protection of statute law.”

Even if it were admitted that religion and the Sabbath are essential to the preservation and stability of civil government, it would not follow that these should be enforced by civil law, or that that kind of religion or that kind of Sabbath which is enforced by civil law, or which needs the aid of civil law for its own preservation, can save the nation. The very fact that any religion or any Sabbath needs the aid of civil law for its own preservation is proof that there is no salvation in it. If it cannot stand without the help of the government, it surely cannot uphold or preserve the government. The fallacy in these arguments lies in the statements that the Sabbath cannot be preserved “without laws,” and that “a day of rest needs the protection of statute law.” Benjamin Franklin spoke wisely and truly on this point when he said: “When a religion is good, I conceive that it will support itself; and, when it cannot support itself, and God does not take care

to support, so that its professors are obliged to call for the help of the civil power, it is a sign, I apprehend, of its being a bad one."—Letter to Dr. Price, Oct. 9, 1780, in *The Writings of Benjamin Franklin*, edited by Albert Henry Smyth, vol. 8, p. 154.

At a mass meeting held in the New York Avenue Presbyterian church in Washington, D. C., February 26, 1908, in the interest of Sunday legislation, Justice Harlan, of the Supreme Court of the United States, who presided, said:

"I have always felt very keenly upon this subject of the Sabbath day, not that I have kept it as I ought to; but I firmly believe that next to the marriage relation the proper observance of the Sabbath day is at the very basis of our civilization. A nation without a Sabbath is a civilization that is rotten—rotten to the core. You cast your eye over the nations of today, and I think without an exception the nations that turn the Sabbath day into a holiday and a day of amusement are on the down grade."

It is quite proper for men to feel keenly over the subject of the Sabbath day, but it is quite another thing for them to become anxious for a Sabbath law. It may be true, and doubtless is true, that next to the marriage relation the proper observance of the Sabbath day lies at the very foundation of many of our greatest blessings; but because this is so, it no more follows that "the proper observance of the Sabbath day" can be secured by law, than that proper marriage relations can be secured by law; or that Sabbath observance should be made compulsory and enforced by law, any more than that marriage should be made compulsory and enforced by law. Both those who observe the Sabbath and those who marry, should receive the protection of law; but there should be compulsion in neither case. A nation without a Sabbath may be a civilization rotten to the core, but it does not follow that a nation should have a Sabbath law. The Roman Empire had Sabbath laws galore, but the Roman Empire is no more.

In a word, and to sum it all up, proper Sabbath observance never has been and never can be produced by human Sabbath law, and therefore, though the existence of the world itself depended upon such observance, it could not be preserved by such laws. The saving salt of true Sabbath observance is religion; the motive powers of genuine religion are faith and love; faith and love cannot be produced by force; therefore no human law, which is only of force, can ever produce true Sabbath observance.

## TESTIMONY OF JUDGE THOMAS BARLOW

"Christianity being of a kingdom not of this world, cannot be united with that of this world. This is too plain a proposition to be denied, and when the church descends to asking civil power or aid in its support there is something dangerously carnal in the purpose. . . .

"The observers of the first day of the week as the Sabbath can ask no more for their religious convictions than can those who observe the seventh day. If the Seventh day worshipers were to demand of government a forced observance of their day, those of the first day would look upon it as intolerant and presumption, and rightfully so, too, and so is the demand of the observers of the first day toward those of the seventh day, and a free government must so consider it. . . .

"The church has always been seeking power and never surrenders any without being compelled. The effort at Sunday laws at this time is but a steppingstone to that which would be still more oppressive. Look at the case of a Mr. King, of Tennessee, a worshiper of the seventh day school. He plowed a piece of land quietly on his own farm on Sunday, and Pharisees of the first day school prosecuted him and obtained a conviction for that act and a fine of \$75 imposed for it, and he was cast into prison. No one was molested by his work, but the old spirit of Puritanism indulged itself in that infamous proceeding. No man identified with the law allowing such a conviction, be he a priest or layman, juryman or judge, or legislator, is worthy the enjoyment of the privileges of a free civil government. It was hoped that Puritanism was dead in this country. But its spirit seems still to be among us seeking its gratification in the meanest manner possible. . . .

"If the church had the power, every unbeliever would be outlawed; no one could hold an office unless he was a church member, nor be allowed to teach a common school."—Rome, N. Y., *Daily Sentinel*, Jan. 27, 1891.

## THE PRINCIPLE APPLIED

Colonel Richard M. Johnson, who rendered those famous Sunday Mail Reports to Congress in 1829 and 1830, spoke truly when he said that the feeling that our "duty to God" is "superior to human enactments," and that man cannot rightfully "exercise authority" over the conscience, is "an inborn principle which nothing can eradicate." To confirm this he added: "The bigot, in the pride of his authority, may lose sight of it; but strip him of his power, prescribe a faith to him which his conscience rejects, threaten him in turn with the dungeon

and the fagot, and the spirit which God has implanted in him rises up in rebellion, and defies you." (See p. 221.)

The truthfulness of this observation is well illustrated in the following editorial, under the caption, "Church and State," in the Wichita, Kansas, *Catholic Advance*, of November 5, 1910:

"Bishop Hamilton of the Methodist church said that Kansas was the greatest Methodist state in the union. The preachers of that denomination seem to have things their own way in Kansas and the only thing the few other people who don't ride in Wesley's boat can do is, to watch and pray. We will let them preach the prohibition law until they pound their pulpits to pieces . . . but we are strenuously opposed to any legislation that will deprive our young people of health-giving outdoor sport on Sunday afternoon. The Sunday is a day of rest from servile work but is not a day of inactivity or laziness. The Catholic church established the Sunday anyhow and ought to know best how it is to be observed. She demands, under pain of sin, that all her faithful be present at the Holy Sacrifice of the Mass on Sundays and hear the word of God preached from the pulpits. She requires some considerable time for prayer. This obligation being satisfied she does not prohibit or interfere in any way with those innocent amusements which serve for rest or recreation on any day. If our Methodist brethren choose to make laws for a more restricted observance of the Sunday among their own people that is certainly within their right and it is no business of ours, but when the same Methodist brethren put their heads together and decide as a church that they will have the state enforce their own church laws upon other churches who do not believe with them, then this is time to call a halt. If they will have the state legislature to enact laws forbidding Methodist children from playing baseball on Sunday afternoons, well if they haven't religious spunk enough to keep them in the beaten Wesleyan track, we have no objection if they call in the policeman, but we won't allow them to send a policeman over to us, as we get along beautifully without."

Apply this doctrine to all who dissent from domination on the part of others in religious matters, and every church establishment and every Sunday law in the world would fall. And yet the doctrine is right. No one wishes the policeman sent to instruct him how he should conduct himself religiously. But this is the logic of every Sunday law ever enacted. The golden-rule test is sufficient to condemn them all.

## IN CONFLICT WITH INALIENABLE RIGHTS

All Sunday laws are religious, and are in conflict with constitutional and inalienable rights. It is a well-established American principle that the taking of money from an individual by way of taxation for the support of *an established religion*, is a denial of religious liberty. Exactly the same principle is involved in the taking of a portion of time from the weekly calendar of every man's time for the support, maintenance, or preservation of *an established religious rest day*. One is a tax in *money*, the other in *time*. The principle is the same in either case. Sunday legislation, therefore, is no more defensible than is any other form of taxation for the support of religion.

ALEXANDER CAMPBELL ON SUNDAY  
ENFORCEMENT

Alexander Campbell, founder of the Disciples of Christ, formerly popularly known as Campbellites, had this to say on Sunday laws:

"There is no precept or command in the New Testament to compel by civil law, any man who is not a Christian to pay any regard to the Lord's day, more than to any other day.

"Therefore to compel a man who is not a Christian to pay any regard to the Lord's day, more than any other day, is without authority in the Christian religion.

"The gospel commands no duty which can be performed without faith in the Son of God. 'Whatever is not of faith is sin.' But to compel men destitute of faith to observe any Christian institution, such as the Lord's day, is commanding duty to be performed without faith in God.

"Therefore, to command unbelievers or natural men to observe, in any sense, the Lord's day, is anti-evangelical or contrary to the gospel."  
—ROBERT RICHARDSON, *Memoirs of Alexander Campbell* (1868), vol. 1, p. 528.

## SHORT SUMMARY BY HON. WILLIAM F. VILAS\*

"My views upon this subject come from the teachings of Jefferson and Madison, and reflection and observation strengthen them continually. It must be accorded to be an inevitable deduction from all our history that humanity cannot be brought into accord on questions

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\* From letter to compiler of this work. Mr. Vilas was Postmaster General under President Cleveland, 1885-88.

of religion. No subject has ever been more prolific of fierce strife. No means of determining differences between different religions or different sects has been found. The truth of revelation is contested, and every sect or religion which believes in a special communication finds others who disbelieve as ardently.

“This short summary of a long and painful history shows amply the absolute necessity of entire freedom of opinion in respect to subjects which mankind must differ upon. The whole business of the state with religion is to protect all in their religious rights of religious opinion, undisturbed by others. The absolute independence of the church from the state and the state from the church, meaning by ‘the church’ every form or fashion of religious belief, is a doctrine which must be insisted upon continually as absolutely essential to the peace and concord of the country.”

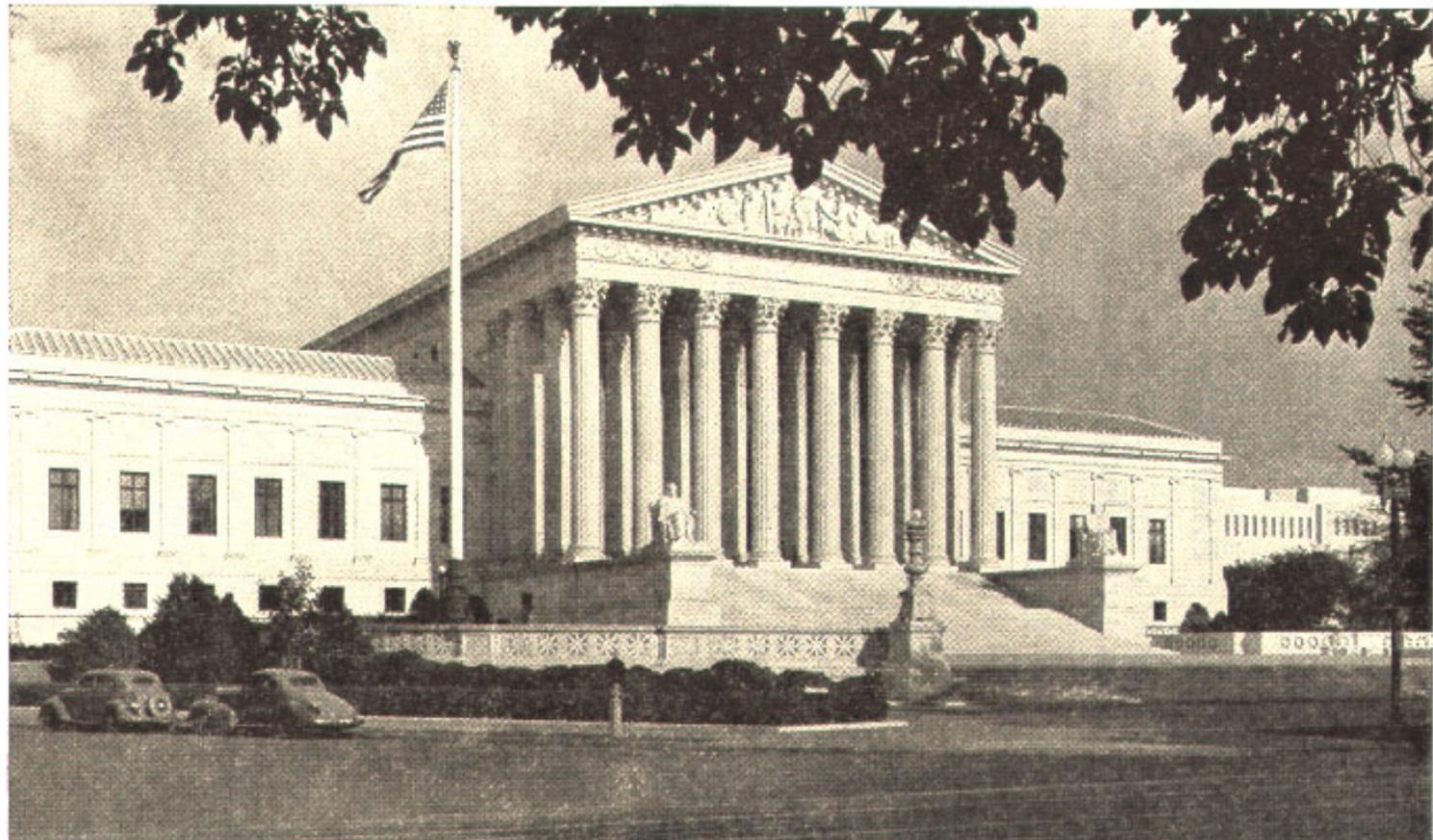
#### NO DISCRIMINATION BECAUSE OF RELIGION

“No man in religious matters is to be discriminated against by the law, or subjected to the censorship of the state or of any public authority; and the state is not to inquire into or take notice of religious belief or expression so long as the citizen performs his duty to the state and to his fellows, and is guilty of no breach of public morals or public decorum.”—JUDGE COOLEY, *General Principles of Constitutional Law* (3d ed.), p. 226. See also COOLEY, *Constitutional Limitations*, chap. 13.

*PART XII*

Court Decisions—1

Liberty at the Bar



T. K. MARTIN

The United States Supreme Court Building

## The Principles of Liberty as Interpreted by Courts of Justice

**N**OWHERE have the principles of liberty in practice been scrutinized, analyzed, and explained more closely than in the courts. Judges, especially those of the higher courts, are appointed because of their keen intellects, judicial minds, and long experience in dealing with human rights and privileges. Courts do not make or change constitutions; they interpret them and magnify their concise statements to meet particular cases of behavior and procedure among the people. Court decisions constitute the applied science of law and liberty.

In a democracy such as the American Government, court decisions cannot be infallible, else the people would cease to rule. But usually they are an excellent guide to sane conclusions in the thinking of the ordinary person. Care must be taken to note the premise upon which a court decision is based.

### PRINCIPLE v. PRECEDENT

Court decisions may be classed under two general heads, those based on principle, and those on precedent.

A principle is a fundamental truth; a comprehensive law or doctrine; a settled rule of action; a governing law of conduct. A precedent is an authoritative example for similar subsequent acts or decisions.

No one need fear ever being led astray by adhering to a true principle. From the very nature of the case it cannot lead astray. The only danger lies in departing from it. A false premise, however logical subsequent reasoning, must necessarily lead to false conclusions.

Augustine furnishes an example of one who forsook a correct principle to follow blind and deceptive precedents. Here is his own explanation for it:

“Originally my opinion was, that no one should be coerced into the unity of Christ, that we must act only by words, fight only by arguments, and prevail by force of reason, lest we should have those whom we knew as avowed heretics feigning themselves to be Catholics. But this opinion of mine was overcome not by the words of those who controverted it, but by the conclusive instances to which they could point. For, in the first place, there was set over against my opinion my own town, which, although it was once wholly on the side of Donatus, was brought over to the Catholic unity by fear of the imperial edicts.”—Letter 93 (to Vicentius), chap. 17, in *A Select Library of the Nicene and Post-Nicene Fathers*, 1st series, vol. 1, p. 388.

But Augustine would better have adhered to his former opinion, based on good reasons, and ignored the precedents which infringed the principle. Had he done so, his name would not have come down to us as the founder of that theory which, Neander says, “contained the germ of that whole system of spiritual despotism, intolerance, and persecution, which ended in the tribunals of the Inquisition.”—*General History of the Christian Religion and Church*, Torrey’s translation (15th American ed.), vol. 2, p. 252.

On the following pages the text of a number of United States Supreme Court and State and lower court cases are given, all of which illustrate the question of principles and precedents. But, of more importance, they show the trend of judicial opinion on the subject of freedom in religion.

LIMITATIONS OF STATE AND NATIONAL  
LEGISLATIVE POWER

Circuit Court of the United States Pennsylvania District

Vanhorne's Lessee v. Dorrance

[DECIDED 1795]

2 Dallas (U.S.), 308-312

Mr. Justice Paterson delivered the opinion of the court.

Whatever may be the case in other countries, yet in this there can be no doubt, that every act of the Legislature, repugnant to the Constitution, is absolutely void. . . . I take it to be a clear position; that if a legislative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that, in such case, it will be the duty of the court to adhere to the Constitution, and to declare the act null and void. The Constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the judiciary in this country is not a subordinate, but co-ordinate branch, of the government.

The Constitution is the origin and measure of legislative authority. It says to legislators, Thus far ye shall go and no further. Not a particle of it should be shaken; not a pebble of it should be removed. Innovation is dangerous; one encroachment leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical principles are generally broken in upon, and the Constitution eventually destroyed. . . .

It is infinitely wiser and safer to risk some possible mischiefs, than to vest in the legislature so unnecessary, dangerous, and enormous a power as that which has been exercised on the present occasion; a power that, according to the full extent of the argument, is boundless and omnipotent.

LIMITATIONS OF STATE AND NATIONAL  
LEGISLATIVE POWER

## Supreme Court of the United States

Calder and Wife v. Bull and Wife

[DECIDED AUGUST, 1798]

2 Dallas (U.S.), 387-389

Mr. Justice Chase delivered the opinion of the court.

I cannot subscribe to the omnipotence of a State legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution, or fundamental law, of the State. The people of the United States erected their constitutions, or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty, and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it. *The nature and ends of legislative power will limit the exercise of it.*

This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit. There are acts which the Federal or State legislature cannot do without exceeding their authority. There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. *An act of the legislature (for I cannot call it law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority.* The obligation of a law, in governments established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded.

A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act which, when done, was in violation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man judge in his own cause; or a law that takes property from A and gives it to B: it is against all reason and justice for a people to entrust a legislature with such powers; and therefore it cannot be presumed that they have done it. The genius, the nature, and the spirit of our State governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. The legislature may enjoin, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our Federal or State legislature possesses such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments.

## LIMITATIONS OF STATE AND NATIONAL LEGISLATIVE POWER <sup>1</sup>

Supreme Court of the United States

OCTOBER TERM, 1874

Loan Association of Cleveland v. Topeka

87 U.S. (20 Wall.), 655-663

There is no such thing in the theory of our governments, State and National, as unlimited power in any of their branches. The executive, the legislative, and the judicial departments are all of limited and defined powers.

There are limitations of such powers which arise out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

Mr. Justice Miller delivered the opinion of the court. . . . It

must be conceded that there are such rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments, are all of limited and defined powers.

There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B.

## LIMITS OF CIVIL COURTS IN CHURCH CONTROVERSIES

Supreme Court of the United States

DECEMBER TERM, 1871

Watson v. Jones

80 U.S., 679-738

[The opinion clearly defined the limitations binding civil courts with respect to and jurisdiction in church controversies. The case

came as an appeal from a decree of the United States Circuit Court from the District of Kentucky, handed down on May 11, 1869, which concerned a schism in the Walnut Street Presbyterian Church of Louisville, Kentucky, affecting the ownership of certain property. After noticing the conflicting elements involved, the Court said:]

This case belongs to a class, happily rare in our courts, in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the State for the maintenance of rights which the church has refused to acknowledge, or found itself unable to protect. Much as such dissensions among the members of a religious society should be regretted, . . . the courts when so called on must perform their functions as in other cases.

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, . . . we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us. . . .

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of the church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

We concede at the outset that the doctrine of the English courts is otherwise. . . .

In this country the full and free right to entertain any reli-

gious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. . . .

[After referring to the case of *Shannon v. Frost*, decided in the court of appeals in Kentucky, the Court quotes with approval the words of the chief justice of the Kentucky court:]

“This court, having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline. Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.”

[Again the Court quotes with approval the decision of the court of appeals of South Carolina in the case of *Harmon v. Dreher*. Among other things Chancellor Johnson, who delivered that opinion, said:]

“It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil

authority. The judgments, therefore, of religious associations, bearing on their own members, are not examinable here. . . . When a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them."

[Mr. Justice Miller then continued in his own words thus:]

There is, perhaps, no word in legal terminology so frequently used as the word "jurisdiction," so capable of use in a general and vague sense, and which is used so often by men learned in the law without a due regard to precision in its application. As regards its use in the matters we have been discussing it may very well be conceded that if the General Assembly of the Presbyterian Church should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil court or anywhere else. Or if it should at the instance of one of its members entertain jurisdiction as between him and another member as to their individual right to prosperity, real or personal, the right in no sense depending on ecclesiastical questions, its decision would be utterly disregarded by any civil court where it might be set up. And it might be said in a certain general sense very justly, that it was because the General Assembly had no jurisdiction of the case. . . .

But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,—a matter over which the civil courts exercise no jurisdiction,—a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,—becomes the subject of its action. . . . But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must be examined into with minuteness and care, for

they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws.

## ANTI-POLYGAMY LAWS NOT AN INFRINGEMENT OF RELIGIOUS LIBERTY

Supreme Court of the United States

OCTOBER TERM, 1878

Reynolds v. United States \*

98 U.S., 145-169

Mr. Chief Justice Waite delivered the opinion of the court. . . .

On the trial, the plaintiff in error, the accused, proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church "that it was the duty of male members of said church, circumstances permitting, to practice polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practice polygamy by such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come." He also proved "that he had received permis-

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\* This opinion shows the line of demarcation between civil and religious duties and why the state must prevent actions which are injurious to individuals or society even when such actions are based on a religious belief. No one has a right to inflict an injury upon another, unless it is justified in equity and law for the commission of a crime. No criminal act, per se, is justified because it rests on a religious belief. No one has a natural right to a monopoly of wives any more than he has a right to a monopoly of wealth or a monopoly of trade, robbing all others of a similar right or privilege. Self-preservation is the first law of life, and the civil government is divinely ordained to regulate man's proper relationship with man and his dealings with society.

sion from the recognized authorities in said church to enter into polygamous marriage; . . . that Daniel H. Wells, one having authority in said church to perform the marriage ceremony, married the said defendant on or about the time the crime is alleged to have been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church.”

Upon this proof he asked the court to instruct the jury that if they found from the evidence that he “was married as charged—if he was married—in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be ‘not guilty.’” This request was refused, and the court did charge “that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right—under an inspiration, if you please, that it was right—deliberately married a second time, having a first wife living, the want of consciousness of evil intent—the want of understanding on his part that he was committing a crime—did not excuse him; but the law inexorably in such case implies the criminal intent.”

Upon this charge and refusal to charge the question is raised, whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned. The question to be determined is, whether the law now under consideration comes within this prohibition.

The word “religion” is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and no-

where more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that State having under consideration "a bill establishing provision for teachers of the Christian religion," postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested "to signify their opinion respecting the adoption of such a bill at the next session of assembly."

This brought out a determined opposition. Amongst others, Mr. Madison prepared a "Memorial and Remonstrance," which was widely circulated and signed, and in which he demonstrated "that religion, or the duty we owe the Creator," was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session the proposed bill was not only defeated, but another, "for establishing religious freedom," drafted by Mr. Jefferson, was passed. 1 Jeff. Works, 45; 2 Howison, Hist. of Va. 298. In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined; and after a recital "that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty," it is declared "that it is time enough for the rightful purposes of civil government for its offi-

cers to interfere when principles break out into overt acts against peace and good order.” In these two sentences is found the true distinction between what properly belongs to the church and what to the State.

In a little more than a year after the passage of this statute the convention met which prepared the Constitution of the United States. Of this convention Mr. Jefferson was not a member, he being then absent as minister to France. As soon as he saw the draft of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff. Works, 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. 1 Jeff. Works, 79. Five of the States, while adopting the Constitution, proposed amendments. Three—New Hampshire, New York, and Virginia—included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly, at the first session of the first Congress the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted.

Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 id. 113), took occasion to say: “Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions,—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sin-

cere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties." Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people. At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England polygamy has been treated as an offense against society. After the establishment of the ecclesiastical courts, and until the time of James I., it was punished through the instrumentality of those tribunals, not merely because ecclesiastical rights had been violated, but because upon the separation of the ecclesiastical courts from the civil the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes and offenses against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons.

By the statute of 1 James I. (c. 11), the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period re-enacted, generally with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration in a bill of rights that "all men have an equal, natural, and unalienable right to the free

exercise of religion, according to the dictates of conscience," the legislature of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, "it hath been doubted whether bigamy or poligamy be punishable by the laws of this Commonwealth." 12 Hening's Stat. 691. From that day to this we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 Kent, Com. 81, note (e). An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in

the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. Here the accused knew he had been once married, and that his first wife was living. He also knew that his second marriage was forbidden by law. When, therefore, he married the second time, he is presumed to have intended to break the law. And the breaking of the law is the crime. Every act necessary to constitute the crime was knowingly done, and the crime was therefore knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of

criminal intent, but not ignorance of the law. The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion: it was still belief, and belief only.

In *Regina v. Wagstaff* (10 Cox Crim. Cases, 531), the parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of manslaughter, while it was said the contrary would have been the result if the child had actually been starved to death by the parents, under the notion that it was their religious duty to abstain from giving it food. But when the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far.

As to that part of the charge which directed the attention of the jury to the consequences of polygamy.

The passage complained of is as follows: "I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children,—innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land."

While every appeal by the court to the passions or the prejudices of a jury should be promptly rebuked, and while it is the imperative duty of a reviewing court to take care that wrong is not done in this way, we see no just cause for complaint in this case. Congress, in 1862 (12 Stat. 501), saw fit to make bigamy a crime in the Territories. This was done because of the evil consequences that were supposed to flow from plural marriages. All

the court did was to call the attention of the jury to the peculiar character of the crime for which the accused was on trial, and to remind them of the duty they had to perform. There was no appeal to the passions, no instigation of prejudice. Upon the showing made by the accused himself, he was guilty of a violation of the law under which he had been indicted; and the effort of the court seems to have been not to withdraw the minds of the jury from the issue to be tried, but to bring them to it; not to make them partial, but to keep them impartial.

Upon a careful consideration of the whole case, we are satisfied that no error was committed by the court below. *Judgment affirmed.*

## THE "CHRISTIAN NATION" DECISION

### Supreme Court of the United States

#### The Church of the Holy Trinity v. The United States <sup>2</sup>

[DECIDED FEBRUARY 29, 1892]

143 U.S., 457-472

Mr. Justice Brewer delivered the opinion of the Court.

Plaintiff in error is a corporation, duly organized and incorporated as a religious society under the laws of the State of New York. E. Walpole Warren was, prior to September, 1887, an alien residing in England. In that month the plaintiff in error made a contract with him, by which he was to remove to the city of New York and enter into its service as rector and pastor; and in pursuance of such contract, Warren did so remove and enter upon such service. It is claimed by the United States that this contract on the part of the plaintiff in error was forbidden by the act of February 26, 1885, 23 Stat., 332, chapter 164, and an action was commenced to recover the penalty prescribed by that act. The Circuit Court held that the contract was within the prohibition of the statute, and rendered judgment accordingly (36 Fed. Rep., 303); and the single question presented for our determination is whether it erred in that conclusion.

The first section describes the act forbidden, and is in these words:

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia.”*

It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added “of any kind”; and, further, as noticed by the circuit judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers and domestic servants, strengthens the idea that every kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think Congress intended to denounce with penalties a transaction like that in the present case. It is a 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. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation,

or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. As said in *Plowden*, 205: "From which cases, it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances."

In *Margate Pier Co. v. Hannam* 3 B. & Ald., 266, 270, Abbott, C. J., quotes from Lord Coke as follows: "Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endamaged." In the case of the *State v. Clark*, 5 Dutcher, 29 N. J. Law 96, 98, 99, it appeared that an act had been passed making it a misdemeanor to willfully break down a fence in the possession of another person. Clark was indicted under that statute. The defense was that the act of breaking down the fence, though willful, was in the exercise of a legal right to go upon his own lands. The trial court rejected the testimony offered to sustain the defense, and the Supreme Court held that this ruling was error. . . . In *United States v. Kirby*, 7 Wall., 482, 486, the defendants were indicted for the violation of an act of Congress, providing "that if any person shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall, upon conviction, for every such offense pay a fine not exceeding one hundred dollars." \* . . . In its opinion the

\* In this case one Farris, captain of the steamboat *General Buell*, at that time

court says: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Pufendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.' And we think a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder." \* . . .

Among other things which may be considered in determining the intent of the legislature is the title of the act. We do not mean that it may be used to add or to take from the body of the statute *Hadden v. The Collector*, 5 Wall. 107, but it may help to interpret its meaning. In the case of *United States v.*

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engaged in carrying the mail, was arrested upon the authority of a bench warrant issued to the defendant, Kirby, a sheriff. Farris had previously been indicted for murder. Kirby's defense was that in arresting the captain of a steamboat carrying mail, he was not interfering with the carrying of the mail within the meaning of the law.

\* Similar conclusions were reached in *Henry v. Tilson*, 17 Vermont, 479; *Ryegate v. Wardsboro*, 30 Vermont, 746; *Ex parte Ellis*, 11 California, 222; *Ingraham v. Speed*, 30 Mississippi, 410; *Jackson v. Collins*, 3 Cowen, 89; *People v. Insurance Company*, 15 Johns., 358; *Burch v. Newbury*, 10 New York, 374; *People v. Commissioners of Taxes, etc.*, 95 New York, 554, 558; *People v. Lacombe*, 99 New York, 43, 49; *Canal Co. v. Railroad Co.*, 4 Gill & Johnson, 1, 152; *Osgood v. Breed*, 12 Massachusetts, 525, 530; *Wilbur v. Crane*, 13 Pick., 284; *Oates v. National Bank*, 100 United States, 239.

*Fisher*, 2 Cranch, 358, 386, Chief Justice Marshall said: "On the influence which the title ought to have in construing the enactment clauses much has been said; and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends that the title of an act can control plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration." And in the case of the *United States v. Palmer*, 3 Wheaton, 610, 631, the same judge applied the doctrine in this way: "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them. Did the legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas? The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this act is, 'An act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the legislature intended by this law to punish."

It will be seen that words as general as those used in the first section of this act were by that decision limited, and the intent of Congress with respect to the act was gathered partially, at least, from its title. Now, the title of this act is, "An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia." Obviously the thought expressed in this reaches only to the work of the manual laborer,

as distinguished from that of the professional man. No one reading such a title would suppose that Congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the brain. The common understanding of the terms labor and laborers does not include preaching and preachers; and it is to be assumed that words and phrases are used in their ordinary meaning. So whatever of light is thrown upon the statute by the language of the title indicates an exclusion from its penal provisions of all contracts for the employment of ministers, rectors and pastors.

Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. *United States v. Union Pacific Railroad*, 91 U. S. 72, 79. The situation which called for this statute was briefly but fully stated by Mr. Justice Brown when, as District Judge, he decided the case of *United States v. Craig*, 28 Fed. Rep. 795, 798: "The motives and history of the act are matters of common knowledge. It had become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer agreed, upon the one hand, to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market, and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage."

It appears, also, from the petitions, and in the testimony pre-

sented before the committees of Congress, that it was this cheap unskilled labor which was making the trouble, and the influx of which Congress sought to prevent. It was never suggested that we had in this country a surplus of brain toilers, and, least of all, that the market for the services of Christian ministers was depressed by foreign competition. Those were matters to which the attention of Congress, or of the people was not directed. So far, then, as the evil which was sought to be remedied interprets the statute, it also guides to an exclusion of this contract from the penalties of the act. . . .

But beyond all these matters no purpose of action against religion can be imputed to any legislation, state or national, *because this is a religious people.*<sup>3</sup> *This is historically true. From the discovery of this continent to the present hour there is a single voice making this affirmation.* The commission to Christopher Columbus, prior to his sail westward, is from "Ferdinand and Isabella, by the grace of God, King and Queen of Castile,"<sup>4</sup> etc., and recites that "it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered," etc. The first colonial grant, that made to Sir Walter Raleigh, in 1584, was from "Elizabeth, by the grace of God, of England, Fraunce and Ireland, queene, defender of the faith," etc., and the grant authorizing him to enact statutes for the government of the proposed colony provided that "they be not against the true Christian faith nowe professed in the Church of England."<sup>5</sup> The first charter of Virginia granted by King James I, in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: "We, greatly commending and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of His Divine Majesty, in propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; DO, by

these our Letters-Patents, graciously accept of, and agree to, their humble and well-intended Desires.”

Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant.<sup>6</sup> The celebrated compact made by the Pilgrims in the Mayflower, 1620, recites: “Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid.”

The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-1639, commence with this declaration: “Forasmuch as it hath pleased the Almighty God by the wise disposition of His diuynе prudence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford, and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered together the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouverment established according to God, to order and dispose of the affayres of the people at all seasons as occasion shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Comonwelth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confederation together, to mayntayne and presearue the liberty and purity of the gspell of our Lord Jesus wch we now pffesse, as also the

discipline of the Churches, wch according to the truth of the said gospell is now practised amongst vs."

In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: "Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare," etc.

Coming nearer to the present time, the Declaration of Independence recognizes the presence of the divine in human affairs in these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness." "We, therefore, the Representatives of the United States of America, the General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare," etc.; "And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor."

If we examine the constitutions of the various States, we find in them a constant recognition of religious obligations. Every constitution of every one of the forty-four States contains language which either directly or by clear implication recognizes a profound reverence for religion and an assumption that its influence in all human affairs is essential to the well-being of the community. This recognition may be in the preamble, such as is found in the constitution of Illinois, 1870: "We, the people of the State of Illinois, grateful to Almighty God for the civil, political and religious liberty which He hath so long permitted

us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations," etc.

It may be only in the familiar requisition that all officers shall take an oath closing with the declaration "so help me God." It may be in clauses like that of the constitution of Indiana, 1816, Article XI, section 4: "The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God." Or in provisions such as are found in articles 36 and 37 of the Declaration of Rights of the constitution of Maryland, 1867: "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no persons ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief: *Provided he believes in the existence of God*, and that, *under His dispensation*, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come. That no religious test ought ever to be required as qualification for any office of profit or trust in this State, *other than a declaration of belief in the existence of God*; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this constitution." Or like that in Articles 2 and 3, of Part 1st of the Constitution of Massachusetts, 1780: "It is the right as well as the duty of all men in society publicly and at stated seasons, to worship the Supreme

Being, the great Creator and Preserver of the universe. . . . As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion and morality; Therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts and other bodies-politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion and morality in all cases where such provision shall not be made voluntarily.” Or as in sections 5 and 14 of Article 7 of the constitution of Mississippi, 1832: “No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this State. . . . Religion, morality and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education, shall forever be encouraged in this State.” Or by Article 22 of the constitution of Delaware, 1776, which required all officers, besides an oath of allegiance, to make and subscribe the following declaration: “I, A. B., do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed forevermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.”

Even the Constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the First Amendment a declaration common to the constitutions of all the States, as follows: “Congress shall make no law respecting an establishment of religion or prohibiting the

free exercise thereof," etc. And also provides in Article 1, section 7, (a provision common to many constitutions,) that the Executive shall have ten days (Sundays excepted)<sup>r</sup> within which to determine whether he will approve or veto a bill.

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons: they are organic utterances; *they speak the voice of the entire people*. While because of a general recognition of this truth the question has seldom been presented to the courts, yet we find that in *Updegraph v. The Commonwealth*, 11 Serg. & Rawle, 394, 400, it was decided that, "*Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; . . . not Christianity with an established church, and tithes, and spiritual courts; but Christianity with liberty of conscience to all men.*" And in *The People v. Ruggles*, 8 Johns. 290, 294, 295, Chancellor Kent, the great commentator on American law, speaking as chief justice of the Supreme Court of New York, said: "The people of this State, in common with the people of this country, profess the general doctrines of Christianity, as the rule of their faith and practice; and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. . . . The free, equal and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community, is an abuse of that right. Nor are we bound, by any expressions in the Constitution as some have strangely supposed, either not to punish at all, or to punish indiscriminately, the like attacks upon the religion of *Mahomet* or of the *Grand Lama*; and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country

is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors." And in the famous case of *Vidal v. Girard's Executors*, 2 How. 127, 198, this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: "It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania."

If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs and its society, we find everywhere a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, "In the name of God, amen;" the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.<sup>8</sup> In the face of all these, 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?

Suppose in the Congress that passed this act some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and priest; or any Episcopal church should enter into a like contract with Canon Farrar; or any Baptist church should

make similar arrangements with Rev. Mr. Spurgeon; or any Jewish synagogue with some eminent Rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute.

*The judgment will be reversed, and the case remanded for further proceedings in accordance with this opinion.*

## CHRISTIANITY NOT PART OF COMMON LAW IN OHIO

### Supreme Court of Ohio

DECEMBER TERM, 1853

Hiram Bloom v. Cornelius Richards

2 N. S. Ohio State, 387-405

THURMAN, Justice. . . . The English common law, *so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our Federal and State Constitutions and statutes*, has been and is followed by our courts, and may be said to constitute a part of the common law of Ohio. But wherever it has been found wanting,

in either of these requisites, our courts have not hesitated to modify it to suit our circumstances, or, if necessary, to wholly depart from it. *Lessee of Lindsley v. Coates*.\* 1 Ohio 243; Ohio Code, 116.

Christianity, then, being a part of the common law of England,<sup>9</sup> there was some, though an insufficient, foundation for the saying of Chief Justice Best above quoted.† But the Constitution of Ohio having declared, "that all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required, as a qualification to any office of trust or profit," it follows that neither Christianity, or any other system of religion, is a part of the law of this State. We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate;‡ much less accurate is it to say, that one religion is a part of our law, and all others only tolerated. It is not by mere toleration that every individual here is protected in his belief or disbelief. He reposes not upon the leniency of government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the constitution, are beyond the control or interference of any human authority. We have no union of church and state, nor has our government ever been

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\* In this decision, the court said: "It has been repeatedly determined by the courts of this State that they will adopt the principles of the common law as the rules of decision, so far only as those principles are adapted to our circumstances, state of society, and form of government."

† For comment on Chief Justice Best's statement see p. 699.

‡ On this point a Senate Committee report says: "What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights of which government cannot deprive any portion of citizens, however small. Despotism may invade those rights, but justice still confirms them." See page 215.

vested with authority to enforce any religious observance, simply because it is religious.

Of course, it is no objection, but, on the contrary, is a high recommendation, to a legislative enactment, based upon justice of public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal and not over things spiritual. Thus the statute upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of this State, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty. For no power over things merely spiritual, has ever been delegated to the government, while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the Constitution. . . .

“But to allow men to make bargains on the Sabbath is to let them desecrate that holy day, and it should not be granted that the legislature would suffer that.” This is the language of the modern English cases, and perhaps it is consistently used in a country where Christianity is a part of the law, and in which there is an established church, and an omnipotent Parliament. But the General Assembly of Ohio is not, as we have shown, a guardian of the sanctity of any day. If it may protect the first day of the week from desecration, because it is the Christian Sabbath, it may, in like manner, protect the sixth day because it is the holy day of the Mahommedan, and the seventh day because it is the Sabbath of the Jew and the Seventh Day Baptist. Nay, more, it may protect the various festival days which, by some of the churches, are considered scarcely less sacred than the Sabbath day.

CHRISTIANITY NOT PART OF COMMON LAW <sup>10</sup>

## Superior Court of Baltimore City

Joshua Levering, Reverend William A. Davis, et al., v. Robert B. Ennis, et al.

[DECIDED MARCH 12, 1932]

(PETITION FOR MANDAMUS TO RESTRAIN CITY COUNCIL OF BALTIMORE FROM HOLDING A REFERENDUM ON QUESTION OF SUNDAY ORDINANCE.)

[The following is from Judge O'Dunne's opinion:]

It is undoubtedly true that in English history, a number of the English lords have decided, or asserted, that Christianity is part of the Common Law of England. They were pious, God-fearing Christians, of the established church, which was established and disestablished, and another one established in its place, from time to time, depending upon which party got in power. Each exercised it [judicial authority] with that religious zeal which Mr. Marshall characterized as a "sword in one hand and a fire-brand in the other," in order to impress the divinity of Christ upon the questioning population. A lot of those English Lords and Chief Justices of England (if I may with becoming respect so refer to such characters) have slopped over in their judicial expressions, and dispensed *religion* along with their conception of the law, unconsciously, because they were imbued with the faith, and unable to squelch it, or conceal it, or put it aside; so that a great many of the English decisions are a homeopathic dose of *religion* and an allopathic dose of law.

Whether the Christian religion is part of the common law of England, or whether it is part of the common law of Maryland, approached from a standpoint of a judicial inquiry, really becomes a legal question to ascertain. . . .

Now, if Christianity, as a legal proposition, was part of the common law of England, as distinguished from merely being administered by a lot of Christian gentlemen who believed in that faith, and who dispensed it, as Christian gentlemen will discharge

public duties, I say as a *legal* inquiry, if it came into the body politic of the common law of England, *as a fact*, and as a *legal* fact, it came in after the introduction of Christianity into England, and before the passage of Magna Charta. In other words, between the seventh century and the first Magna Charta; . . . or, if it was not in that Magna Charta, it was in, or should have been in, the succeeding one, of Henry III, of the Forest, in 1216. . . .

But there is not a reference to it in either Charter. Therefore, it is a fair assumption that it was *not* part of the common law of England, in spite of all that the Lord Chief Justices and the Lords of Parliament later stated to the contrary. . . .

Thomas Jefferson . . . challenges the proposition that Christianity was ever a part of the common law of England, and sets forth, in a very much more scientific and classical form, the exact argument I have thus far presented, . . . as justification for the challenge that Christianity was never, as a legal proposition, part of the common law of England. . . .

If we say "established principles of revealed religion" are part of the common law of this country, and use it in a rhetorical or literary or poetical sense, I say yes, and we might say the same thing about the Laws of Moses, and about the Hindu law, and about the leading principles of a great many of the ancient writers.

Judge Offutt, in his recent address to the Probation Department of the Supreme Bench, spoke of the expenditure of some eighteen billions of dollars in the suppression of crime in this country. That is at least some evidence of the non-conformist character of the Christians of this country.

The great case that is cited most often because it was recently decided, in 1917, by the House of Lords, is *Bowman v. Secular Society*. I think it is reported in 1917 D of the English Annotated cases. There is an opinion there, four members of the House of Lords sit in an appeal from the highest appellate Court in England. . . . The Court of Appeals had decided that a particular trust was valid. A certain clause of it was apparently for

a nonreligious, and as they interpreted it, an irreligious and unchristian end. . . .

The Court of Appeals, by its decision, declared that it was a valid exercise of testamentary disposition. It came up before the House of Lords, and Lord Finlay, who wrote the first opinion, in a very lengthy opinion, decided that it was invalid because it was antagonistic to the Christian religion, and that England could not tolerate through its Courts the sanctioning of a bequest that went to undermining the Christian religion. The other three Lords decided just the opposite. Now, in Lord Finlay's opinion, he decides categorically and flat-footedly, that Christianity is part of the common law of England, as a legal proposition. The other three lords decide that it is not so and never was. . . .

My decision is . . . that Christianity is not part of the common law of Maryland as a *legal* proposition; that it is not part of the common law of England, and that it is not the function of any Court in this country, where church and State are separated, to undertake to infuse into the law those religious principles in which an individual may believe, and try to use the medium of law as a vehicle to further Christianity, or to further his conceptions of Christianity, and to get them incorporated into the body politic. That is no function of government. We are not a Christian nation in the legal sense, at all. . . .

To declare that Christianity as such *is part of the law of the land*, as a *legal* proposition, I cannot do. This I deny. The great danger in this country is, and will be, the too intimate commingling of religious views of any sect with government, because if you once tolerate that, you will simply have a repetition of English history, where when one party is in power, it is the established faith, and when they get thrown out, and their enemies come in, *theirs* is the established faith, and there is nothing so zealous as converts, and they think it is pleasing to God to go and persecute those who disagree with them. . . .

In late years there has been continuous agitation and re-agitation of the Sunday question. . . . There has been a constant

chafing in Baltimore, of some elements in Baltimore, to be relieved of what they consider too strict legal requirements for the observance of the Sabbath . . . on *economic* grounds, for the conservation of human energy, for the conservation of human life, for the building of an heroic race. . . .

Of course, I haven't much patience, except as a judge, with putting it on *economic* grounds, because, to my mind, that is not intellectual honesty, yet that is the only ground on which it *can* come before the *Court*, that is the only ground that it can be considered on, and the difficulty is divorcing human nature from intellectual conception. You can't entirely divorce the observance of Sunday from whatever religious or non-religious point of view the individual may entertain, and still keep one hundred per cent, the idea that it is purely an economic question. That is the same judicial or legal cant that we go through, with which we satisfy ourselves when we tell the jury, "That is stricken out" of the record. Gentlemen of the jury, when you retire to your jury room, you must remember that you must not remember the things you can't help remembering. Now, they say that cures the record if you tell them that. Honor is saved, Law is gratified, and everybody is satisfied. . . .

You can't help getting some humor out of the law, because, to a large extent there is a good deal of joke about it, and a good deal of joker in it.

The only question here is, did the Legislature, in the exercise of its functions as the responsible custodian of the law-making power of the Free State, exercise its functions with technically accurate or legally sufficient mechanics? . . . You have a general Sunday law, State-wide in character, applicable, therefore, also to Baltimore City, and Baltimore City is petitioning the Legislature for an opportunity to change, in its own territorial limits, subject to the will of its people, not yet ascertained, its form of *Sunday legal recreation*, and nobody knows what the result of a ballot will be, if, and when taken, on the question of Sunday observance, whether the majority of the communities are in favor of a

closed Sunday, as applied to movies and baseball, or whether they are not. All the Legislature said to the citizens of Baltimore, or to the municipality, was, We will finally give you your rights, as we now view them, to determine that question for yourselves. We don't want you to determine them for us in our counties. We will take care of that ourselves, but you may have any kind of Sunday that your people will stand for by majority vote. We will attempt to give you blanket authority to do that. . . . We will let you pass an ordinance picking out the kind of ordinance you think will square with your local public opinion, and then you take a vote on it, and see whether you have guessed right or not. . . .

So, gentlemen, as the bill stands before me now, the demurrer to the answer is overruled, and that is as far as I go.

[NOTE.—This decision of the superior court of Baltimore City as set forth above clearly recognizes that these ancient Sunday laws are religious laws. It also shows conclusively that it is a legal fiction to say that "Christianity is a part of the common law."]

## COMPULSORY SALUTING OF THE NATIONAL FLAG <sup>11</sup>

### Supreme Court of the United States

OCTOBER TERM, 1942

The West Virginia State Board of Education, etc., et al., Appellants,

v.

Walter Barnette, Paul Stull and Lucy McClure

[DECIDED JUNE 14, 1943]

MR. JUSTICE JACKSON delivered the opinion of the Court.

Following the decision by this Court on June 3, 1940, in *Minersville School District v. Gobitis*, 310 U. S. 586, the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State "for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government." Appellant Board of

Education was directed, with advice of the State Superintendent of Schools, to "prescribe the courses of study covering these subjects" for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study "similar to those required for the public schools."

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's *Gobitis* opinion and ordering that the salute to the flag become "a regular part of the program of activities in the public schools," that all teachers and pupils "shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an Act of insubordination, and shall be dealt with accordingly."

The resolution originally required the "commonly accepted salute to the Flag" which it defined. Objections to the salute as "being too much like Hitler's" were raised by the Parent and Teachers Association, the Boy and Girl Scouts, the Red Cross, and the Federation of Women's Clubs. Some modification appears to have been made in deference to these objections, but no concession was made to Jehovah's Witnesses. What is now required is the "stiff-arm" salute, the saluter to keep the right hand raised with palm turned up while the following is repeated: "I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all."

Failure to conform is "insubordination" dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile the expelled child is "unlawfully absent" and may be proceeded against as a delinquent. His parents or guardians are liable to prosecution, and if convicted are subject to fine not exceeding \$50 and jail term not exceeding thirty days.

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Wit-

nesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superior to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says: "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them." They consider that the flag is an "image" within this command. For this reason they refuse to salute it.

Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted and are threatened with prosecutions for causing delinquency.

The Board of Education moved to dismiss the complaint setting forth these facts and alleging that the law and regulations are an unconstitutional denial of religious freedom, and of freedom of speech, and are invalid under the "due process" and "equal protection" clauses of the Fourteenth Amendment to the Federal Constitution. The cause was submitted on the pleadings to a District Court of three judges. It restrained enforcement as to the plaintiffs and those of that class. The Board of Education brought the case here by direct appeal.

This case calls upon us to reconsider a precedent decision, as the Court throughout its history often has been required to do. Before turning to the *Gobitis* case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.

The freedom asserted by these respondents does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behaviour is

peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touch individual opinion and personal attitude.

As the present CHIEF JUSTICE said in dissent in the *Gobitis* case, the State may "require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country." 310 U. S. at 604. Here, however, we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected route to aroused loyalties constitutionally may be shortcut by substituting a compulsory salute and slogan. This issue is not prejudiced by the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. It was held that those who take advantage of its opportunities may not on ground of conscience refuse compliance with such conditions. *Hamilton v. Regents*, 293 U. S. 245. In the present case attendance is not optional. That case is also to be distinguished from the present one because, independently of college privileges or requirements, the State has power to raise militia and impose the duties of service therein upon its citizens.

There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of

their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical raiment. Symbols of State often convey political ideas just as religious symbols come to convey theological ones. Associated with many of these symbols are appropriate gestures of acceptance or respect; a salute, a bowed or bared head, a bended knee. A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn.

Over a decade ago Chief Justice Hughes led this Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free speech guaranties of the Constitution. *Stromberg v. California*, 283 U. S. 359. Here it is the State that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication when coerced is an old one, well known to the framers of the Bill of Rights.

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony or whether it will be acceptable if they simulate assent by words without belief and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here the power of compulsion is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expres-

sion. To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations. If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence validity of the asserted power to force an American citizen publicly to profess any statement of belief or to engage in any ceremony of assent to one, presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies respondents' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether non-conformists' beliefs will exempt from the duty to salute unless we first find power to make the salute a legal duty.

The *Gobitis* decision, however, *assumed*, as did the argument in that case and in this, that power exists in the State to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. The question which underlies the flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be

imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine rather than assume existence of this power and, against this broader definition of issues in this case, re-examine specific grounds assigned for the *Gobitis* decision.

1. It was said that the flag-salute controversy confronted the Court with "the problem which Lincoln cast in memorable dilemma: 'Must a government of necessity be too *strong* for the liberties of its people, or too *weak* to maintain its own existence?' " and that the answer must be in favor of strength. *Minersville School District v. Gobitis, supra*, at 596.

We think these issues may be examined free of pressure or restraint growing out of such considerations.

It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favor of those in authority and would require us to override every liberty thought to weaken or delay execution of their policies.

Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class,

creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

2. It was also considered in the *Gobitis* case that functions of educational officers in states, counties and school districts were such that to interfere with their authority "would in effect make us the school board for the country." *Id.* at 598.

The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. The action of Congress in making flag observance voluntary and respecting the conscience of the objector in a matter so vital as raising the Army contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

3. The *Gobitis* opinion reasoned that this is a field "where courts possess no marked and certainly no controlling competence," that it is committed to the legislatures as well as the courts to guard cherished liberties and that it is constitutionally appropriate to "fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather

than to transfer the contest to the judicial arena," since all the "effective means of inducing political changes are left free." *Id.* at 597-598, 600.

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case.

Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the

eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision over men's affairs. We must transplant these rights to a soul in which the *laissez-faire* concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls. These changed conditions often deprive precedents of reliability and cost us more than we would choose upon our own judgment. But we act in these matters not by authority or our competence but by force of our commissions. We cannot, because of modest estimates of our competence in such specialities as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

4. Lastly, and this is the very heart of the *Gobitis* opinion, it reasons that "National unity is the basis of national security," that the authorities have "the right to select appropriate means for its attainment," and hence reaches the conclusion that such compulsory measures toward "national unity" are constitutional. *Id.* at 595. Upon the verity of this assumption depends our answer in this case.

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime,

and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the

price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

The decision of this Court in *Minersville School District v. Gobitis* and the holdings of those few *per curiam* decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is

*Affirmed.*

Mr. Justice Black and Mr. Justice Douglas, concurring.

We are substantially in agreement with the opinion just read, but since we originally joined with the Court in the *Gobitis* case, it is appropriate that we make a brief statement of reasons for our change of view.

Reluctance to make the Federal Constitution a rigid bar against state regulation of conduct thought inimical to the public welfare was the controlling influence which moved us to consent to the *Gobitis* decision. Long reflection convinced us that although the principle is sound, its application in the particular case was wrong. *Jones v. Opelika*, 316 U. S. 584, 623. We believe that the statute before us fails to accord full scope to the freedom

of religion secured to the appellees by the First and Fourteenth Amendments.

The statute requires the appellees to participate in a ceremony aimed at inculcating respect for the flag and for this country. The Jehovah's Witnesses, without any desire to show disrespect for either flag or the country, interpret the Bible as commanding, at the risk of God's displeasure, that they not go through the form of a pledge of allegiance to any flag. The devoutness of their belief is evidenced by their willingness to suffer persecution and punishment, rather than make the pledge.

No well ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity. Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made by this Court. The duty is a solemn one, and in meeting it we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

Words uttered under coercion are proof of loyalty to nothing but self-interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

Neither our domestic tranquillity in peace nor our martial effort in war depend on compelling little children to participate

in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

Mr. Justice Murphy, concurring.

I agree with the opinion of the Court and join in it.

The complaint challenges an order of the State Board of Education which requires teachers and pupils to participate in the prescribed salute to the flag. For refusal to conform with the requirement the State law prescribes expulsion. The offender is required by law to be treated as unlawfully absent from school and the parent or guardian is made liable to prosecution and punishment for such absence. Thus not only is the privilege of public education conditioned on compliance with the requirement, but non-compliance is virtually made unlawful. In effect compliance is compulsory and not optional. It is the claim of appellees that the regulation is invalid as a restriction on religious freedom and freedom of speech, secured to them against State infringement by the First and Fourteenth Amendments to the Constitution of the United States.

A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again,—all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

The right of freedom of thought and of religion as guaranteed by the Constitution against State action includes both the right

to speak freely and the right to refrain from speaking at all, except insofar as essential operations of government may require it for the preservation of an orderly society,—as in the case of compulsion to give evidence in court. Without wishing to disparage the purposes and intentions of those who hope to inculcate sentiments of loyalty and patriotism by requiring a declaration of allegiance as a feature of public education, or unduly belittle the benefits that may accrue therefrom, I am impelled to conclude that such a requirement is not essential to the maintenance of effective government and orderly society. To many it is deeply distasteful to join in a public chorus of affirmation of private belief. By some, including the members of this sect, it is apparently regarded as incompatible with a primary religious obligation and therefore a restriction on religious freedom. Officially compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what Jefferson characterized as the "severest contests in which I have ever been engaged."

I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that is entailed or to compensate for a restraint on the freedom of the individual to be vocal or silent according to his conscience or personal inclination. The trenchant words in the preamble to the Virginia Statute for Religious Freedom remain unanswerable: ". . . all attempts to influence [the mind] by temporal punishments, or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, . . ." Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.

UNLICENSED DISTRIBUTION OF RELIGIOUS  
LITERATURE <sup>12</sup>

## Supreme Court of the United States

OCTOBER TERM, 1937

Alma Lovell, Appellant, vs. The City of Griffin

[DECIDED MARCH 28, 1938]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, Alma Lovell, was convicted in the Recorder's Court of the City of Griffin, Georgia, of the violation of a city ordinance and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars. The Superior Court of the county refused sanction of a petition for review; the Court of Appeals affirmed the judgment of the Superior Court (55 Ga. App. 609); and the Supreme Court of the State denied an application for certiorari. The case comes here on appeal.

The ordinance in question is as follows:

"Section 1. That the practice of distributing, either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance."

The violation, which is not denied, consisted of the distribution without the required permission of a pamphlet and magazine in the nature of religious tracts, setting forth the gospel of the "Kingdom of Jehovah." Appellant did not apply for a permit, as she regarded herself as sent "by Jehovah to do His work" and that such an application would have been "an act of disobedience to His commandment."

Upon the trial, with permission of the court, appellant demurred to the charge and moved to dismiss it upon a number of grounds, among which was the contention that the ordinance violated the Fourteenth Amendment of the Constitution of the United States in abridging "the freedom of the press" and prohibiting "the free exercise of petitioner's religion." This contention was thus expressed:

Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:

" 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

"Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:

" 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

"Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of

literature about petitioner's religion in violation of the terms of said quoted amendments."

The Court of Appeals, overruling these objections, sustained the constitutional validity of the ordinance, saying—

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States."

While in a separate paragraph of its opinion the court said that the charge that the ordinance was void because it violated a designated provision of the state or federal constitution without stating wherein there was such a violation, was too indefinite to present a constitutional question, we think that this statement must have referred to other grounds of demurrer and not to the objection above quoted which was sufficiently specific and was definitely ruled upon. The contention as to restraint "upon the free exercise of religion," with respect to the same ordinance, was presented in the case of *Coleman v. City of Griffin*, 55 Ga. App. 123, and the appeal was dismissed (October 11, 1937) for want of a substantial federal question. *Reynolds v. United States*, 98 U. S. 145, 166, 167; *Davis v. Beason*, 133 U. S. 333, 342, 343. But, in the *Coleman* case, the Court did not deal with the question of freedom of speech and of the press as it had not been properly presented. We think that this question was adequately presented and was decided in the instant case. Whether it was so presented and was decided is itself a federal question. *Carter v. Texas*, 177 U. S. 442, 447; *Ward v. Love County*, 253 U. S. 17, 22; *First National Bank v. Anderson*, 269 U. S. 341, 346; *Schuylkill Trust Co. v. Pennsylvania*, 296 U. S. 113, 121. This Court has jurisdiction.

Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action. *Gitlow v. New York*, 268 U. S. 652, 666; *Stromberg v. California*, 283 U. S. 359, 368; *Near v. Minnesota*, 283 U. S. 697,

707; *Grosjean v. American Press Company*, 297 U. S. 233, 244; *De Jonge v. Oregon*, 299 U. S. 353, 364. See also, *Palko v. Connecticut*, decided December 6, 1937. It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment. *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20; *Home Telephone & Telegraph Co. v. Los Angeles*, 227 U. S. 278; *Cuyahoga Power Company v. Akron*, 240 U. S. 462.

The ordinance in its broad sweep prohibits the distribution of "circulars, handbooks, advertising, or literature of any kind." It manifestly applies to pamphlets, magazines and periodicals. The evidence against appellant was that she distributed a certain pamphlet and a magazine called the "Golden Age." Whether in actual administration the ordinance is applied, as apparently it could be, to newspapers, does not appear. The City Manager testified that "everyone applies to me for a license to distribute literature in this City. None of these people (including defendant) secured a permit from me to distribute literature in the City of Griffin." The ordinance is not limited to "literature" that is obscene or offensive to public morals or that advocates unlawful conduct. There is no suggestion that the pamphlet and magazine distributed in the instant case were of that character. The ordinance embraces "literature" in the widest sense.

The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation "either by hand or otherwise." There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager.

We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it

strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licenser. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing." And the liberty of the press became initially a right to publish "without a license what formerly could be published only with one." \* While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. See *Patterson v. Colorado*, 205 U. S. 454, 462; *Near v. Minnesota*, 283 U. S. 697, 713-716; *Grosjean v. American Press Company*, 297 U. S. 233, 245, 246. Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form.

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near v. Minnesota, supra*; *Grosjean v. American Press Company, supra*; *De Jonge v. Oregon, supra*.

The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean v. American Press Company, supra*, was held invalid because of its direct tendency to restrict circulation.

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\* See Wickwar, "The Struggle for the Freedom of the Press," p. 15.

As the ordinance is void on its face, it was not necessary for appellants to seek a permit under it. She was entitled to contest its validity in answer to the charge against her. *Smith v. Cahoon*, 283 U. S. 553, 562.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

## UNLICENSED DISTRIBUTION OF RELIGIOUS LITERATURE <sup>12</sup>

### Supreme Court of the United States

OCTOBER TERM, 1941

280. Roscoe Jones, Petitioner, v. City of Opelika \*

314. Lois Bowden and Zada Sanders, Petitioners, v. City of Fort Smith, Ark.

966. Charles Jobin, Appellant, v. The State of Arizona

[DECIDED JUNE 8, 1942]

Mr. Justice Reed delivered the opinion of the Court.

The City of Opelika, Alabama, filed a complaint in the Circuit Court of Lee County charging petitioner Jones with violation of its licensing ordinance by selling books without a license, by operating as a Book Agent without a license, and by operating as a transient agent, dealer or distributor of books without a license. The license fee for Book Agents (Bibles excepted) was \$10 per annum, that for transient agents, dealers or distributors of books \$5. Under section 1 of the ordinance all licenses were subject to revocation in the discretion of the City Commission, with or without notice. There is a clause providing for severance in case of invalidity of any section, condition or provision. Petitioner demurred, alleging that the ordinance because of unlimited discretion in revocation and requirement of a license was an unconstitutional encroachment upon freedom of the press. During the trial with-

\* In this decision three cases are considered as one because the facts are practically identical. The statement of the Opelika case is sufficient to give the reader an understanding of the facts. Since the opinion of the court was reversed later and the dissent prevailed, only the dissenting opinions are given here.

out a jury these contentions, with the added claim of interference with freedom of religion, were renewed at the end of the city's case, and at the close of all the evidence. The court overruled these motions, and found petitioner guilty on evidence that without a license he had been displaying pamphlets in his upraised hand and walking on a city street selling them two for five cents. The court excluded as irrelevant testimony designed to show that the petitioner was an ordained minister, and that his activities were in furtherance of his beliefs and the teachings of Jehovah's Witnesses. Once again by an unsuccessful motion for new trial the constitutional issues were raised. The Court of Appeals of Alabama reversed the conviction on appeal because it thought the unlimited discretion of the City Commission to revoke the licenses invalidated the ordinance. Without discussion of this point the Supreme Court of Alabama decided that non-discriminatory licensing of the sale of books or tracts was constitutional, reversed the Court of Appeals, and stayed execution pending certiorari. 241 Ala. 279, 3 So. 2d 76. This Court, having granted certiorari, 314 U. S. 593, dismissed the writ for lack of a final judgment. — U. S. —. The Court of Appeals thereupon entered a judgment sustaining the conviction, which was affirmed by the Alabama Supreme Court and is final. — Ala. —. We therefore grant the petition for rehearing of the dismissal of the writ, and proceed with the consideration of the case.

. . . . .

Mr. Chief Justice Stone [dissenting].

The First Amendment, which the Fourteenth makes applicable to the states, declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press." I think that the ordinance in each of these cases is on its face a prohibited invasion of the freedoms thus guaranteed, and that the judgment in each should be reversed.

The ordinance in the *Opelika* case should be held invalid on

two independent grounds. One is that the annual tax in addition to the 50 cent "issuance fee" which the ordinance imposes is an unconstitutional restriction on those freedoms, for reasons which will presently appear. The other is that the requirement of a license for dissemination of ideas, when as here the license is revocable at will without cause and in the unrestrained discretion of administrative officers, is likewise an unconstitutional restraint on those freedoms.

The sole condition which the Opelika ordinance prescribes for grant of the license is payment of the designated annual tax and issuance fee. The privilege thus purchased, for the period of a year, is forthwith revocable in the unrestrained and unreviewable discretion of the licensing commission without cause and without notice or opportunity for a hearing. The case presents in its baldest form the question whether the freedoms which the Constitution purports to safeguard can be completely subjected to uncontrolled administrative action. Only recently this Court was unanimous in holding void on its face the requirement of a license for the distribution of pamphlets which was to be issued in the sole discretion of a municipal officer. *Lovell v. Griffin*, 303 U. S. 444, 451. The precise ground of our decision was that the ordinance made enjoyment of the freedom which the Constitution guarantees contingent upon the uncontrolled will of administrative officers. We declared:

"We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing.' And the liberty of the press became initially a right to publish 'without a license what formerly could be published only with one.' While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty,

the prevention of that restraint was a leading purpose in the adoption of the constitutional provision.”

That purpose cannot rightly be defeated by so transparent a subterfuge as the pronouncement that, while a license may not be required if its award is contingent upon the whim of an administrative officer, it may be if its retention and the enjoyment of the privilege which it purports to give is wholly contingent upon his whim. In either case enjoyment of the freedom is dependent upon the same contingency and the censorship is as effective in one as in the other. Nor is any palliative afforded by the assertion that the defendant's failure to apply for a license deprives him of standing to challenge the ordinance because of its revocation provision, by the terms of which retention of the license and exercise of the privilege may be cut off at any time without cause.

Indeed, the present ordinance is a more callous disregard of the constitutional right than that exhibited in *Lovell v. Griffin*, *supra*. There at least the defendant might have been given a license if he had applied for it. In any event he would not have been compelled to pay a money exaction for a license to exercise the privilege of free speech—a license which if granted in this case would have been wholly illusory. Here the defendant Jones was prohibited from distributing his pamphlets at all unless he paid in advance a year's tax for the exercise of the privilege and subjected himself to termination of the license without cause, notice or hearing, at the will of city officials. To say that he who is free to withhold at will the privilege of publication exercises a power of censorship prohibited by the Constitution, but that he who has unrestricted power to withdraw the privilege does not, would be to ignore history and deny the teachings of experience, as well as to perpetuate the evils at which the First Amendment was aimed.

It is of no significance that the defendant did not apply for a license. As this Court has often pointed out, when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application for the license. But here it is

the prohibition of publication, save at the uncontrolled will of public officials, which transgresses constitutional limitations and makes the ordinance void on its face. The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands. *Lovell v. Griffin, supra*, 452-53; *Smith v. Cahoon*, 283 U. S. 553, 562. The question of standing to raise the issue in this case is indistinguishable from that in the *Lovell* case, where it was resolved in the only manner consistent with the First Amendment.

The separability provision of the Opelika ordinance cannot serve, in advance of judicial decision by the state court, to separate those parts which are constitutionally applicable from those which are not. We have no means of knowing that the city would grant any license if the license could not be made revocable at will. The state court applied the ordinance as written. It did not rely or pass upon the effect to be given to the separability clause, or determine whether any effect was to be given to it. Until it has done so this Court—as we decided only last Monday—must determine the constitutional validity of the ordinance as it stands and as it stood when obedience to it was demanded and punishment for its violation inflicted. No. 782, *Skinner v. Oklahoma*, decided June 1, 1942; *Smith v. Cahoon, supra*, 563-64.

In all three cases the question presented by the record and fully argued here and below is whether the ordinances—which as applied penalize the defendants for not having paid the flat fee taxes levied—violate the freedom of speech, press, and religion guaranteed by the First and Fourteenth Amendments. Defendants' challenge to the ordinances, naming them, is a challenge to the substantial taxes which they impose, in specified amounts, and not to some tax of a different or lesser amount which some other ordinance might levy. In their briefs here they argue, as upon the records they are entitled to do, that the taxes are an unconstitutional burden on the right of free speech and free religion comparable to license taxes which this Court has often held to be

an inadmissible burden on interstate commerce. They argue also that the cumulative effect of such taxes, in town after town throughout the country, would be destructive of freedom of the press for all persons except those financially able to distribute their literature without soliciting funds for the support of their cause.

While these are questions which have been studiously left unanswered by the opinion of the Court, it seems inescapable that an answer must be given before the convictions can be sustained. Decision of them cannot rightly be avoided now by asserting that the amount of the tax has not been put in issue; that the tax is "uncontested in amount" by the defendants, and can therefore be assumed by us to be "presumably appropriate", "reasonable", or "suitably calculated"; that it has not been proved that the burden of the tax is a substantial clog on the activities of the defendants, or that those who have defrayed the expense of their religious activities will not willingly defray the license taxes also. All these are considerations which would seem to be irrelevant to the question now before us—whether a flat tax, more than a nominal fee to defray the expenses of a regulatory license, can constitutionally be laid on a non-commercial, non-profit activity devoted exclusively to the dissemination of ideas, educational and religious in character, to those persons who consent to receive them.

Nor is the essential issue here disguised by the reiterated characterization of these exactions, not as taxes but as "fees"—a characterization to which the records lend no support. All these ordinances on their face purport to be an exercise of the municipality's taxing power. In none is there the slightest pretense by the taxing authority, or the slightest suggestion by the state court, that the "fee" is to defray expenses of the licensing system. The amounts of the "fees", without more, demonstrate that such a contention is groundless. In No. 280, Opelika itself contends that the issue relates solely to its power to raise money for general revenue purposes, and the Supreme Court of Alabama referred to the levy as a "reasonable" "tax." The tax exacted by Opelika, on

the face of the ordinance, is in addition to a 50 cent "issuance fee", which alone is presumably what the city deems adequate to defray the cost of administering the licensing system. Similarly in the *Fort Smith* and *Casa Grande* cases, the state courts sustained the ordinances as a tax, and nothing else. If this litigation has involved any controversy—and the state courts all seemed to think that it did—the controversy has been one solely relating to the power to tax, and not the power to collect a "fee" to support a licensing system which, as has already been indicated, has no regulatory purpose other than that involved in the raising of revenue.

This Court has often had occasion to point out that where the state may, as a regulatory measure, license activities which it is without constitutional authority to tax, it may charge a small or nominal fee sufficient to defray the expense of licensing, and similarly it may charge a reasonable fee for the use of its highways by interstate motor traffic which it cannot tax. Compare *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 598-600, with *Ingels v. Morf*, 300 U. S. 290, and cases cited; see *Cox v. New Hampshire*, 312 U. S. 569, 576-77. But we are not concerned in these cases with a nominal fee for a regulatory license, which may be assumed for argument's sake to be valid. Here the licenses are not regulatory, save as the licenses conditioned upon payment of the tax may serve to restrain or suppress publication. None of the ordinances, if complied with, purports to or could control the time, place or manner of the distribution of the books and pamphlets concerned. None has any discernible relationship to the police protection or the good order of the community. The only condition and purpose of the licenses under all three ordinances is suppression of the specified distributions of literature in default of the payment of a substantial tax fixed in amount and measured neither by the extent of the defendants' activities under the license nor the amounts which they receive for and devote to religious purposes in the exercise of the licensed privilege. Opelika exacts a license fee for book agents of \$10 per annum and of

\$5 per annum for transient distributors of books, in addition to a 50 cent "issuance fee" on each license. The Supreme Court of Alabama found it unnecessary to determine whether both or only one of these taxes was payable by defendant Jones. The Fort Smith tax of \$25 a month or \$10 a week or \$2.50 a day is substantial in amount for transient distributors of literature of the character here involved; the Opelika exaction is even more onerous when applied against one who may be in the city for only a day or two; and the tax of \$25 per quarter exacted by the Casa Grande ordinance, adopted in a community having an adult population of less than 1,000 and applied to distributions of literature like the present, is prohibitive in effect.

In considering the effect of such a tax on the defendants' activities it is important to note that the state courts have applied levies obviously devised for the taxation of business employments—in the first case the "business or vocation" of "book agent"; in the second the business of peddling specified types of merchandise or "other articles"; in the third, the practice of the callings of "peddlers, transient merchants and venders"—to activities which concededly are not ordinary business or commercial transactions. As appears by stipulation or undisputed testimony, the defendants are Jehovah's Witnesses, engaged in spreading their religious doctrines in conformity to the teachings of St. Matthew, Matt. 10:11-14 and 24:14, by going from city to city, from village to village, and house to house, to proclaim them. After asking and receiving permission from the householder, they play to him phonograph records and tender to him books or pamphlets advocating their religious views. For the latter they ask payment of a nominal amount, two to five cents for the pamphlets and twenty-five cents for books, as a contribution to the religious cause which they seek to advance. But they distribute the pamphlets, and sometimes the books, gratis when the householder is unwilling or unable to pay for them. The literature is published for such distribution by non-profit charitable corporations organized by Jehovah's Witnesses. The funds collected are used for the support of the

religious movement and no one derives a profit from the publication and distribution of the literature. In the *Opelika* case the defendant's activities were confined to distribution of literature and solicitation of funds in the public streets.

No one could doubt that taxation which may be freely laid upon activities not within the protection of the Bill of Rights could—when applied to the dissemination of ideas—be made the ready instrument for destruction of that right. Few would deny that a license tax laid specifically on the privilege of disseminating ideas would infringe the right of free speech. For one reason among others, if the state may tax the privilege it may fix the rate of tax and, through the tax, control or suppress the activity which it taxes. *Magnano Co. v. Hamilton*, 292 U. S. 40, 45; *Grosjean v. American Press Co.*, 297 U. S. 233, 244-45. If the distribution of the literature had been carried on by the defendants without solicitation of funds, there plainly would have been no basis, either statutory or constitutional, for levying the tax. It is the collection of funds which has been seized upon to justify the extension, to the defendants' activities, of the tax laid upon business callings. But if we assume, despite our recent decision in *Schneider v. State*, 308 U. S. 147, 163, that the essential character of these activities is in some measure altered by the collection of funds for the support of a religious undertaking, still it seems plain that the operation of the present flat tax is such as to abridge the privileges which the defendants here invoke.

It lends no support to the present tax to insist that its restraint on free speech and religion is non-discriminatory because the same levy is made upon business callings carried on for profit, many of which involve no question of freedom of speech and religion and all of which involve commercial elements—lacking here—which for present purposes may be assumed to afford a basis for taxation apart from the exercise of freedom of speech and religion. The constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas, and taxing it as business callings are

taxed. The immunity which press and religion enjoy may sometimes be lost when they are united with other activities not immune. *Valentine v. Chrestensen*, 315 U. S. —. But here the only activities involved are the dissemination of ideas, educational and religious, and the collection of funds for the propagation of those ideas, which we have said is likewise the subject of constitutional protection. *Schneider v. State, supra*; *Cantwell v. Connecticut*, 310 U. S. 296, 304-07.

The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary the Constitution, by virtue of the First and the Fourteenth Amendments, has put those freedoms in a preferred position. Their commands are not restricted to cases where the protected privilege is sought out for attack. They extend at least to every form of taxation which, because it is a condition of the exercise of the privilege, is capable of being used to control or suppress it.

Even were we to assume—what I do not concede—that there could be a lawful nondiscriminatory license tax of a percentage of the gross receipts collected by churches and other religious orders in support of their religious work, cf. *Giragi v. Moore*, 301 U. S. 670, we have no such tax here. The tax imposed by the ordinances in these cases is more burdensome and destructive of the activity taxed than any gross receipts tax. The tax is for a fixed amount, unrelated to the extent of the defendants' activities or the receipts derived from them. It is thus the type of flat tax which, when applied to interstate commerce, has repeatedly been deemed by this Court to be prohibited by the commerce clause. See *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 55-57, and cases cited; cf. *Best v. Maxwell*, 311 U. S. 454, 456. When applied as it is here to activities involving the exercise of religious freedom, its vice is emphasized in that it is levied and paid in advance of the activities taxed, and applied at rates well calculated to suppress those activities save only as others may volunteer to pay the tax. It requires a sizable out-of-pocket expense by someone who may

never succeed in raising a penny in his exercise of the privilege which is taxed.

The defendants' activities, if taxable at all, are taxable only because of the funds which they solicit. But that solicitation is for funds for religious purposes, and the present taxes are in no way gauged to the receipts. The taxes are insupportable either as a tax on the dissemination of ideas or as a tax on the collection of funds for religious purposes. For on its face a flat license tax restrains in advance the freedom taxed and tends inevitably to suppress its exercise. The First Amendment prohibits all laws abridging freedom of press and religion, not merely some laws or all except tax laws. It is true that the constitutional guaranties of freedom of press and religion, like the commerce clause, make no distinction between fixed-sum taxes and other kinds. But that fact affords no excuse to courts, whose duty it is to enforce those guaranties, to close their eyes to the characteristics of a tax which render it destructive of freedom of press and religion.

We may lay to one side the Court's suggestion that a tax otherwise unconstitutional is to be deemed valid unless it is shown that there are none who, for religion's sake, will come forward to pay the unlawful exaction. The defendants to whom the ordinances have been applied have not paid it and there is nothing in the Constitution to compel them to seek the charity of others to pay it before protesting the tax. It seems fairly obvious that if the present taxes, laid in small communities upon peripatetic religious propagandists, are to be sustained, a way has been found for the effective suppression of speech and press and religion despite constitutional guaranties. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth century newspapers and pamphleteers, and which were a moving cause of the American Revolution. See Collett, *History of the Taxes on Knowledge*, vol. 1, c. 1; May, *Constitutional History of England*, 7th ed., vol. 2, p. 245; Hanson, *Government and the Press, 1695-1763*, pp. 7-14; Morison, *The English Newspaper, 1622-1932*, pp.

83-88; *Grosjean v. American Press Co.*, *supra*, 245-49. Vivid recollections of the effect of those taxes on the freedom of press survived to inspire the adoption of the First Amendment.

Freedom of press and religion, explicitly guaranteed by the Constitution, must at least be entitled to the same freedom from burdensome taxation which it has been thought that the more general phraseology of the commerce clause has extended to interstate commerce. Whatever doubts may be entertained as to this Court's function to relieve, unaided by Congressional legislation, from burdensome taxation under the commerce clause, see *Gwin, etc. Inc. v. Henneford*, 305 U. S. 434, 441, 446-55; *McCarroll v. Dixie Lines*, 309 U. S. 176, 184-85, it cannot be thought that that function is wanting under the explicit guaranties of freedom of speech, press and religion. In any case the flat license tax can hardly become any the less burdensome or more permissible, when levied on activities within the protection extended by the First and Fourteenth Amendments both to the orderly communication of ideas, educational and religious, to persons willing to receive them, see *Cantwell v. Connecticut*, *supra*, and to the practice of religion and the solicitation of funds in its support. *Schneider v. State*, *supra*.

In its potency as a prior restraint on publication the flat license tax falls short only of outright censorship or suppression. The more humble and needy the cause, the more effective is the suppression. . . .

Mr. Justice Murphy, with whom the Chief Justice, Mr. Justice Black, and Mr. Justice Douglas concur, dissenting.

When a statute is challenged as impinging on freedom of speech, freedom of the press, or freedom of worship, those historic privileges which are so essential to our political welfare and spiritual progress, it is the duty of this Court to subject such legislation to examination, in the light of the evidence adduced, to determine whether it is so drawn as not to impair the substance of those cherished freedoms in reaching its objective. Ordinances that

may operate to restrict the circulation or dissemination of ideas on religious or other subjects should be framed with fastidious care and precise language to avoid undue encroachment on these fundamental liberties. And the protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs. Being satisfied by the evidence that the ordinances in the cases now before us, as construed and applied in the state courts, impose a burden on the circulation and discussion of opinion and information in matters of religion, and therefore violate the petitioners' rights to freedom of speech, freedom of the press, and freedom of worship in contravention of the Fourteenth Amendment, I am obliged to dissent from the opinion of the Court.

It is not disputed that petitioners, Jehovah's Witnesses, were ordained ministers preaching the gospel, as they understood it, through the streets and from house to house, orally and by playing religious records with the consent of the householder, and by distributing books and pamphlets setting forth the tenets of their faith. It does not appear that their motives were commercial, but only that they were evangelizing their faith as they saw it.

In No. 280 the trial court excluded as irrelevant petitioner's testimony that he was an ordained minister and that his activities on the streets of Opelika were in furtherance of his ministerial duties. The testimony of ten clergymen of Opelika that they distributed free religious literature in their churches, the cost of which was defrayed by voluntary contribution, and that they had never been forced to pay any license fee, was also excluded. It is admitted here that petitioner was a Jehovah's Witness and considered himself an ordained minister.

The Supreme Court of Arizona stated in No. 966 that appellant was "a regularly ordained minister of the denomination commonly known as Jehovah's Witnesses—going from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on

a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he then left a small leaflet summarizing some of the doctrines which he preached.”

The facts were stipulated in No. 314. Each petitioner “claims to be an ordained minister of the gospel. . . . They do not engage in this work for any selfish reason but because they feel called upon to publish the news and preach the gospel of the kingdom to all the world as a witness before the end comes. . . . They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute to them books and pamphlets setting forth their views on Christianity.” Petitioners “were going from house to house in the residential section within the city of Fort Smith . . . presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views on Christianity held by Jehovah’s Witnesses.” They solicited “a contribution of twenty-five cents for each book,” but “these books in some instances are distributed free when the people wishing them are unable to contribute.”

There is no suggestion in any of these three cases that petitioners were perpetrating a fraud, that they were demeaning themselves in an obnoxious manner, that their activities created any public disturbance or inconvenience, that private rights were contravened, or that the literature distributed was offensive to morals or created any “clear and present danger” to organized society.

The ordinance in each case is sought to be sustained as a system of nondiscriminatory taxation of various businesses, professions, and vocations, including the distribution of books for which contributions are asked, for the sole purpose of raising revenue. Any inclination to take the position that petitioners, who were prose-

lytizing by distributing informative literature setting forth their religious tenets, and whose activities were wholly unrelated to any commercial purposes, were not within the purview of these occupational tax ordinances, is foreclosed by the decisions of the state courts below to the contrary. As so construed the ordinances in effect impose direct taxes on the dissemination of ideas and the distribution of literature, relating to and dealing with religious matters, for which a contribution is asked in an attempt to gain converts, because those were petitioners' activities. Such taxes have been held to violate the Fourteenth Amendment, *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; *State v. Greaves*, 112 Vt. 222, 22 A. 2d 497; *City of Blue Island v. Kozul*, 379 Ill. 511, 41 N. E. 2d 515; and that should be the holding here.

#### Freedom of Speech and Freedom of the Press

In view of the recent decisions of this Court striking down acts which impair freedom of speech and freedom of the press no elaboration on that subject is now necessary. We have "unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares." *Valentine v. Chrestensen*, — U. S. —, No. 707 this Term, decided April 13, 1942. And as the distribution of pamphlets to spread information and opinion on the streets and from house to house for non-commercial purposes is protected from the prior restraint of censorship, *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. Irvington*, 308 U. S. 147, so should it be protected from the burden of taxation.

The opinion of the Court holds that the amount of the tax is not before us and that a "nondiscriminatory license fee, presumably appropriate in amount, may be imposed upon these activities." Both of these holdings must be rejected.

Where regulation or infringement of the liberty of discussion and the dissemination of information and opinion are involved,

there are special reasons for testing the challenged statute on its face. *Thornhill v. Alabama*, 310 U. S. 88, 96-98, and see *Lovell v. Griffin*, 303 U. S. 444, 452; *Drivers Union v. Meadowmoor Co.*, 312 U. S. 287, 297. That should be done here.\*

Consideration of the taxes leads to but one conclusion—that they prohibit or seriously hinder the distribution of petitioners' religious literature. The opinion of the Court admits that all the taxes are "substantial." The \$25 quarterly tax of Casa Grande approaches prohibition. The 1940 population of that town was 1,545. With so few potential purchasers it would take a gifted evangelist, indeed, in view of the antagonism generally encountered by Jehovah's Witnesses, to sell enough tracts at prices ranging from five to twenty-five cents to gross enough to pay the tax. Cf. *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682. While the amount is actually lower in Opelika and may be lower in Fort Smith in that it is possible to get a license for a short period, and while the circle of purchasers is wider in those towns, these exactions also place a heavy hand on petitioners' activities. The petitioners should not be subjected to such tribute.

But whatever the amount, the taxes are in reality taxes upon the dissemination of religious ideas, a dissemination carried on by the distribution of religious literature for religious reasons alone and not for personal profit. As such they place a burden on freedom of speech, freedom of the press, and the exercise of religion even if the question of amount is laid aside. Liberty of circulation is the very life blood of a free press, cf. *Lovell v. Griffin*, 303 U. S. 444, 452, and taxes on the circulation of ideas have a long history of misuse against freedom of thought. See *Grosjean v. American Press Co.*, 297 U. S. 233, 245-249. And taxes on circulation solely for the purpose of revenue were successfully resisted, prior to the adoption of the First Amendment, as interferences with freedom

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\* When the Opelika ordinance is considered on its face, there is an additional reason for its invalidity. The uncontrolled power of revocation lodged with the local authorities is but the converse of the system of prior licensing struck down in *Lovell v. Griffin*, 303 U. S. 444. Here, as there, the pervasive threat of censorship inherent in such a power vitiates the ordinance.

of the press. Surely all this was familiar knowledge to the framers of the Bill of Rights. We need not shut our eyes to the possibility that use may again be made of such taxes, either by discrimination in enforcement or otherwise, to suppress the unpalatable views of militant minorities such as Jehovah's Witnesses. See *McConkey v. City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682. As the evidence excluded in No. 280 tended to show, no attempt was there made to apply the ordinance to ministers functioning in a more orthodox manner than petitioner.

Other objectionable features in addition to the factor of historical misuse exist. There is the unfairness present in any system of flat fee taxation, bearing no relation to the ability to pay. And there is the cumulative burden of many such taxes throughout the municipalities of the land, as the number of recent cases involving such ordinances abundantly demonstrates. The activities of Jehovah's Witnesses are widespread, and the aggregate effect of numerous exactions, no matter how small, can conceivably force them to choose between refraining from attempting to recoup part of the cost of their literature, or else paying out large sums in taxes. Either choice hinders and may even possibly put an end to their activities. There is no basis, other than a refusal to consider the characteristics of taxes such as these, for any assumption that such taxes are "commensurate with the activities licensed." Nor is there any assurance that "a correlatively enlarged field of distribution" will insure sufficient proceeds even to meet such exactions, let alone leaving any residue for the continuation of petitioners' evangelization.

Freedom of speech, freedom of the press, and freedom of religion all have a double aspect—freedom of thought and freedom of action. Freedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind. But even an aggressive mind is of no missionary value unless there is freedom of action, freedom to communicate its message to others by speech and writing. Since in any form of action there is a possibility of collision with the rights of others,

there can be no doubt that this freedom to act is not absolute but qualified, being subject to regulation in the public interest which does not unduly infringe the right. However, there is no assertion here that the ordinances were regulatory, but if there were such a claim, they still should not be sustained. No abuses justifying regulation are advanced and the ordinances are not narrowly and precisely drawn to deal with actual, or even hypothetical evils, while at the same time preserving the substance of the right. Cf. *Thornhill v. Alabama*, 310 U. S. 88, 105; *Cantwell v. Connecticut*, 310 U. S. 296, 311. They impose a tax on the dissemination of information and opinion anywhere within the city limits, whether on the streets or from house to house. "As we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised elsewhere." *Schneider v. Irvington*, 308 U. S. 147, 163. These taxes abridge that liberty.

It matters not that the petitioners asked contributions for their literature. Freedom of speech and freedom of the press cannot and must not mean freedom only for those who can distribute their broadsides without charge. There may be others with messages more vital but purses less full, who must seek some reimbursement for their outlay or else forego passing on their ideas. The pamphlet, an historic weapon against oppression, *Lovell v. Griffin*, 303 U. S. 444, 452, is today the convenient vehicle of those with limited resources because newspaper space and radio time are expensive and the cost of establishing such enterprises great. If freedom of speech and freedom of the press are to have any concrete meaning, people seeking to distribute information and opinion, to the end only that others shall have the benefit thereof, should not be taxed for circulating such matter. It is unnecessary to consider now the validity of such taxes on commercial enterprises engaged in the dissemination of ideas. Cf. *Valentine v. Chrestensen*, No. 707 this Term, decided April 13, 1942; *Giragi v. Moore*, 301 U. S. 670. Petitioners were not engaged in a traffic for profit. While

the courts below held their activities were covered by the ordinances, it is clear that they were seeking only to further their religious convictions by preaching the gospel to others.

The exercise, without commercial motives, of freedom of speech, freedom of the press, or freedom of worship are not proper sources of taxation for general revenue purposes. In dealing with a permissible regulation of these freedoms and the fee charged in connection therewith, we emphasized the fact that the fee "was not a revenue tax, but one to meet the expense incident to the administration of the Act and to the maintenance of public order", and stated only that, "There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated." *Cox v. New Hampshire*, 312 U. S. 569, 577. The taxes here involved are ostensibly for revenue purposes; they are not regulatory fees. Respondents do not show that the instant activities of Jehovah's Witnesses create special problems causing a drain on the municipal coffers, or that these taxes are commensurate with any expenses entailed by the presence of the Witnesses. In the absence of such a showing I think no tax whatever can be levied on petitioners' activities in distributing their literature or disseminating their ideas. If the guaranties of freedom of speech and freedom of the press are to be preserved, municipalities should not be free to raise general revenue by taxes on the circulation of information and opinion in non-commercial causes; other sources can be found, the taxation of which will not choke off ideas. Taxes such as the instant ones violate petitioners' right to freedom of speech and freedom of the press, protected against state invasion by the Fourteenth Amendment.

### Freedom of Religion

Under the foregoing discussion of freedom of speech and freedom of the press any person would be exempt from taxation upon the act of distributing information or opinion of any kind, whether political, scientific, or religious in character, when done solely in an effort to spread knowledge and ideas, with no thought of

commercial gain. But there is another, and perhaps more precious reason why these ordinances cannot constitutionally apply to petitioners. Important as free speech and a free press are to a free government and a free citizenry, there is a right even more dear to many individuals—the right to worship their Maker according to their needs and the dictates of their souls and to carry their message or their gospel to every living creature. These ordinances infringe that right, which is also protected by the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U. S. 296.

Petitioners were itinerant ministers going through the streets and from house to house in different communities, preaching the gospel by distributing booklets and pamphlets setting forth their views of the Bible and the tenets of their faith. While perhaps not so orthodox as the oral sermon, the use of religious books is an old, recognized and effective mode of worship and means of proselytizing. For this petitioners were taxed. The mind rebels at the thought that a minister of any of the old established churches could be made to pay fees to the community before entering the pulpit. These taxes on petitioners' efforts to preach the "news of the Kingdom" should be struck down because they burden petitioners' right to worship the Deity in their own fashion and to spread the gospel as they understand it. There is here no contention that their manner of worship gives rise to conduct which calls for regulation, and these ordinances are not aimed at any such practices.

One need only read the decisions of this and other courts in the past few years to see the unpopularity of Jehovah's Witnesses and the difficulties put in their path because of their religious beliefs. An arresting parallel exists between the troubles of Jehovah's Witnesses and the struggles of various dissentient groups in the American colonies for religious liberty which culminated in the Virginia Statute for Religious Freedom, the Northwest Ordinance of 1787, and the First Amendment. In most of the colonies there was an established church, and the way of the dissenter was hard. All sects, including Quaker, Methodist, Baptist,

Episcopalian, Separatist, Rogerine, and Catholic, suffered. Many of the non-conforming ministers were itinerants, and measures were adopted to curb their unwanted activities. The books of certain denominations were banned. Virginia and Connecticut had burdensome licensing requirements. Cf. *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. Irvington*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296. Other states required oaths before one could preach which many ministers could not conscientiously take. Cf. *Reid v. Borough of Brookville, Pa.*, 39 F. Supp. 30; *Kennedy v. City of Moscow*, 39 F. Supp. 26. Research reveals no attempt to control or persecute by the more subtle means of taxing the function of preaching, or even any attempt to tap it as a source of revenue.

By applying these occupational taxes to petitioners' non-commercial activities, respondents now tax sincere efforts to spread religious beliefs, and a heavy burden falls upon a new set of itinerant zealots, the Witnesses. That burden should not be allowed to stand, especially if, as the excluded testimony in No. 280 indicates, the accepted clergymen of the town can take to their pulpits and distribute their literature without the impact of taxation. Liberty of conscience is too full of meaning for the individuals in this nation to permit taxation to prohibit or substantially impair the spread of religious ideas, even though they are controversial and run counter to the established notions of a community. If this Court is to err in evaluating claims that freedom of speech, freedom of the press, and freedom of religion have been invaded, far better that it err in being overprotective of these precious rights. . . .

Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Murphy.

The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which *Minersville School District v. Gobitis*, 310 U. S. 586, took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since

we joined in the opinion in the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in these and in the *Gobitis* case do exactly that.

## UNLICENSED DISTRIBUTION OF RELIGIOUS LITERATURE <sup>12</sup>

### Supreme Court of the United States

OCTOBER TERM, 1941

Roscoe Jones, Petitioner, vs. City of Opelika  
Lois Bowden and Zada Sanders, Petitioners, vs. City of Fort Smith, Arkansas  
Charles Jobin, Appellant, vs. The State of Arizona

[DECIDED MAY 3, 1943]

*Per Curiam:* The judgments in these cases were affirmed at the October Term, 1941, 316 U. S. 584. Because the issues in all three cases were of the same character as those brought before us in other cases by applications for certiorari at the present term, we ordered a reargument and heard these cases together with Nos. 480-487, *Murdock et al, v. Pennsylvania*. For the reasons stated in the opinion of the Court in Nos. 480-487, decided this day, and in the dissenting opinions filed in the present cases after the argument last term, the Court is of the opinion that the judgment in each case should be reversed. The judgments of this Court heretofore entered in these cases are therefore vacated, and the judgments of the state courts are reversed.

*So ordered.*

UNLICENSED DISTRIBUTION OF RELIGIOUS  
LITERATURE <sup>12</sup>

Supreme Court of the United States

OCTOBER TERM, 1942

Robert Murdock, Jr., et al., Petitioners, v.  
Commonwealth of Pennsylvania (City of Jeannette)

[DECIDED MAY 3, 1943]

Mr. Justice Douglas delivered the opinion of the Court.

The City of Jeannette, Pennsylvania, has an ordinance, some forty years old, which provides in part:

"That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

"For one day \$1.50, for one week seven dollars (\$7.00), for two weeks twelve dollars (\$12.00), for three weeks twenty dollars (\$20.00), provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette."

Petitioners are "Jehovah's Witnesses". They went about from door to door in the City of Jeannette distributing literature and soliciting people to "purchase" certain religious books and pamphlets, all published by the Watch Tower Bible & Tract Society. The "price" of the books was twenty-five cents each, the "price" of the pamphlets five cents each. In connection with these activities petitioners used a phonograph on which they played a record expounding certain of their views on religion. None of them obtained a license under the ordinance. Before they were arrested each had made "sales" of books. There was evidence that it was their practice in making these solicitations to request a "contribution" of twenty-five cents each for the books and five

cents each for the pamphlets but to accept lesser sums or even to donate the volumes in case an interested person was without funds. In the present case some donations of pamphlets were made when books were purchased. Petitioners were convicted and fined for violation of the ordinance. Their judgments of conviction were sustained by the Superior Court of Pennsylvania, 149, Pa. Super. Ct. 175, 27 Atl. 2d 666, against their contention that the ordinance deprived them of the freedom of speech, press, and religion guaranteed by the First Amendment. Petitions for leave to appeal to the Supreme Court of Pennsylvania were denied. The cases are here on petitions for writs of certiorari which we granted along with the petitions for rehearing of *Jones v. Opelika*, 316 U. S. 584, and its companion cases.

The First Amendment, which the Fourteenth makes applicable to the states, declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ." It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that.

Petitioners spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full or part time workers. They claim to follow the example of Paul, teaching "publicly, and from house to house." Acts 20:20. They take literally the mandate of the Scriptures, "Go ye into all the world, and preach the gospel to every creature." Mark 16:15. In doing so they believe that they are obeying a commandment of God.

The hand distribution of religious tracts is an age-old form of missionary evangelism—as old as the history of printing presses. It has been a potent force in various religious movements down through the years. This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith. It is more

than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

The integrity of this conduct or behaviour as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. *Reynolds v. United States*, 98 U. S. 145, 161-167, and *Davis v. Beason*, 133 U. S. 333 denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. The manner in which it is practiced at times gives rise to special problems with which the police power of the states is competent to deal. See for example *Cox v. New Hampshire* 312 U. S. 569 and *Chaplinsky v. New Hampshire*, 315 U. S. 568. But that merely illustrates that the rights with which we are dealing are not absolutes. *Schneider v. State*, 308 U. S. 147, 160-161. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires religious colporteurs to

pay a license tax as a condition to the pursuit of their activities.

The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus it was stated in *Jones v. Opelika*, *supra*, p. 597, that when a religious sect uses "ordinary commercial methods of sales of articles to raise propaganda funds", it is proper for the state to charge "reasonable fees for the privilege of canvassing." Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in *Jamison v. Texas*, 318 U. S. —, "The state can prohibit the use of the street for the distribution of purely commercial leaflets, even though such leaflets may have 'a civil appeal, or a moral platitude' appended. *Valentine v. Chrestensen*, 316 U. S. 52, 55. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes." But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not

merely to those who can pay their own way. As we have said, the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find that petitioners "sold" the literature. The Supreme Court of Iowa in *State v. Mead*, 230 Ia. 1217, described the selling activities of members of this same sect as "merely incidental and collateral" to their "main object which was to preach and publicize the doctrines of their order." And see *State v. Meredith*, 197 S. C. 351; *People v. Barber*, 289 N. Y. 378, 385-386. That accurately summarizes the present record.

We do not mean to say that religious groups and the press are free from all financial burdens of government. See *Grosjean v. American Press Co.*, 297 U. S. 233, 250. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. *Magnano Co. v. Hamilton*, 292 U. S. 40, 44-45, and cases cited. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can

take from them a part of the vital power of the press which has survived from the Reformation.

It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (*McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 56-58), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. *Id.*, p. 47 and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. *Lovell v. Griffin*, 303 U. S. 444; *Schneider v. State*, *supra*; *Cantwell v. Connecticut*, 310 U. S. 296, 306; *Largent v. Texas*, 218 U. S. —; *Jamison v. Texas*, *supra*. It was for that reason that the dissenting opinions in *Jones v. Opelika*, *supra*, stressed the nature of this type of tax. 316 U. S. pp. 607-609, 620, 623. In that case, as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied

and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution." *Blue Island v. Kozul*, 379 Ill. 511, 519. So it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.

The taxes imposed by this ordinance can hardly help but be as severe and telling in their impact on the freedom of the press and religion as the "taxes on knowledge" at which the First Amendment was partly aimed. *Grosjean v. American Press Co.*, *supra*, pp. 244-249. They may indeed operate even more subtly. Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of huck-

sters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. *State Tax Commission v. Aldrich*, 316 U. S. 174, and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the federal constitution.

Considerable emphasis is placed on the kind of literature which petitioners were distributing—its provocative, abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See *Douglas v. City of Jeannette*, concurring opinion, decided this day. But those considerations are no justification for the license tax which the ordinance imposes. Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.

Jehovah's Witnesses are not "above the law." But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. *Chaplinsky v. New Hampshire*, *supra*. Nor do we have here, as we did in *Cox v. New Hampshire*, *supra*, and *Chaplinsky v. New Hampshire*, *supra*, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the

present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. See *Cantwell v. Connecticut*, *supra*, 306. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See *Cox v. New Hampshire*, *supra*, pp. 576-577. Nor can the present ordinance survive if we assume that it has been construed to apply only to solicitation from house to house. The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (*Jones v. Opelika*) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion. They stand or fall together.

The judgment in *Jones v. Opelika* has this day been vacated. Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature. The judgments are reversed and the causes are remanded to the Pennsylvania Superior Court for proceedings not inconsistent with this opinion.

*Reversed.*

UNLICENSED DISTRIBUTION OF RELIGIOUS  
LITERATURE <sup>12</sup>

## Supreme Court of the United States

OCTOBER TERM, 1915

Grace Marsh, Appellant, v. The State of Alabama

[DECIDED JANUARY 7, 1946]

Mr. Justice Black delivered the opinion of the Court.

In this case we are asked to decide whether a State, consistently with the First and Fourteenth Amendments, can impose criminal punishment on a person who undertakes to distribute religious literature on the premises of a company-owned town contrary to the wishes of the town's management. The town, a suburb of Mobile, Alabama, known as Chickasaw, is owned by the Gulf Ship-building Corporation. Except for that it has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a "business block" on which business places are situated. A deputy of the Mobile County Sheriff, paid by the company, serves as the town's policeman. Merchants and service establishments have rented the stores and business places on the business block and the United States uses one of the places as a post office from which six carriers deliver mail to the people of Chickasaw and the adjacent area. The town and the surrounding neighborhood, which can not be distinguished from the Gulf property by anyone not familiar with the property lines, are thickly settled, and according to all indications the residents use the business block as their regular shopping center. To do so, they now, as they have for many years, make use of a company-owned paved street and sidewalk located alongside the store fronts in order to enter and leave the stores and the post office. Intersecting company-owned roads at each end of the business block lead into a four-lane public highway which runs parallel to the business block at a distance of thirty feet. There is nothing to stop highway traffic from coming into the business block and upon arrival a traveler

may make free use of the facilities available there. In short the town and its shopping district are accessible to and freely used by the public in general and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation.

Appellant, a Jehovah's Witness, came onto the sidewalk we just described, stood near the post-office and undertook to distribute religious literature. In the stores the corporation had posted a notice which read as follows: "This Is Private Property, and Without Written Permission, No Street, or House Vendor, Agent or Solicitation of Any Kind Will Be Permitted." Appellant was warned that she could not distribute the literature without a permit and told that no permit would be issued to her. She protested that the company rule could not be constitutionally applied so as to prohibit her from distributing religious writings. When she was asked to leave the sidewalk and Chickasaw she declined. The deputy sheriff arrested her and she was charged in the state court with violating Title 14, Section 426, of the 1940 Alabama Code which makes it a crime to enter or remain on the premises of another after having been warned not to do so. Appellant contended that to construe the state statute as applicable to her activities would abridge her right to freedom of press and religion contrary to the First and Fourteenth Amendments to the Constitution. This contention was rejected and she was convicted. The Alabama Court of Appeals affirmed the conviction, holding that the statute as applied was constitutional because the title to the sidewalk was in the corporation and because the public use of the sidewalk had not been such as to give rise to a presumption under Alabama law of its irrevocable dedication to the public. — Ala. App. —, 21 So. 2d 558. The State Supreme Court denied certiorari. — Ala. —, 21 So. 2d 564, and the case is here on appeal under Section 237 (a) of the Judicial Code, 28 U. S. § 344 (a).

Had the title to Chickasaw belonged not to a private but to a municipal corporation and had appellant been arrested for violating a municipal ordinance rather than a ruling by those

appointed by the corporation to manage a company-town it would have been clear that appellant's conviction must be reversed. Under our decision in *Lovell v. Griffin*, 303 U. S. 444 and others which have followed that case, neither a state nor a municipality can completely bar the distribution of literature containing religious or political ideas on its streets, sidewalks and public places or make the right to distribute dependent on a flat license tax or permit to be issued by an official who could deny it at will. We have also held that an ordinance completely prohibiting the dissemination of ideas on the city streets can not be justified on the ground that the municipality holds legal title to them. *Jamison v. Texas*, 318 U. S. 413. And we have recognized that the preservation of a free society is so far dependent upon the right of each individual citizen to receive such literature as he himself might desire that a municipality could not without jeopardizing that vital individual freedom, prohibit door to door distribution of literature. *Martin v. Struthers*, 319 U. S. 141, 146, 147. From these decisions it is clear that had the people of Chickasaw owned all the homes, and all the stores, and all the streets, and all the sidewalks, all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring the distribution of religious literature. Our question then narrows down to this: Can those people who live in or come to Chickasaw be denied freedom of press and religion simply because a single company has legal title to all the town? For it is the state's contention that the mere fact that all the property interests in the town are held by a single company is enough to give that company power, enforceable by a state statute, to abridge these freedoms.

We do not agree that the corporation's property interests settle the question. The State urges in effect that the corporation's right to control the inhabitants of Chickasaw is coextensive with the right of a homeowner to regulate the conduct of his guests. We can not accept that contention. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his

rights become circumscribed by the statutory and constitutional rights of those who use it. Cf. *Republic Aviation Corp. v. N. L. R. B.*, 65 S. Ct. (Adv. Sheets) 982, 985, 987 n. 8. Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm. Since these facilities are built and operated primarily to benefit the public and since their operation is essentially a public function, it is subject to state regulation. And, though the issue is not directly analogous to the one before us we do want to point out by way of illustration that such regulation may not result in an operation of these facilities, even by privately owned companies, which unconstitutionally interferes with and discriminates against interstate commerce. *Port Richmond Ferry v. Hudson County*, *supra*, 234 U. S. at 326 and cases cited, pp. 328-329; cf. *South Carolina Highway Department v. Barnwell Brothers*, 303 U. S. 177. Had the corporation here owned the segment of the four-lane highway which runs parallel to the "business block" and operated the same under a State franchise, doubtless no one would have seriously contended that the corporation's property interest in the highway gave it power to obstruct through traffic or to discriminate against interstate commerce. See *County Commissioners v. Chandler*, 96 U. S. 205, 208; *Donovan v. Pennsylvania Co.*, *supra*, 199 U. S. at 294; *Covington Drawbridge Co. v. Shepherd*, 21 How. 112, 125. And even had there been no express franchise but mere acquiescence by the State in the Corporation's use of its property as a segment of the four-lane highway, operation of all the highway, including the segment owned by the corporation, would still have been performance of a public function and discrimination would certainly have been illegal.

We do not think it makes any significant constitutional difference as to the relationship between the rights of the owner and those of the public that here the State, instead of permitting the corporation to operate a highway, permitted it to use its property as a town, operate a "business block" in the town and a street and sidewalk on that business block. Cf. *Barney v. Keokuk*,

94 U. S. 324, 340. Whether a corporation or a municipality owns or possesses the town the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free. As we have heretofore stated, the town of Chickasaw does not function differently from any other town. The "business block" serves as the community shopping center and is freely accessible and open to the people in the area and those passing through. The managers appointed by the corporation cannot curtail the liberty of press and religion of these people consistently with the purposes of the Constitutional guarantees, and a state statute, as the one here involved, which enforces such action by criminally punishing those who attempt to distribute religious literature clearly violates the First and Fourteenth Amendments to the Constitution.

Many people in the United States live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as all other citizens they must make decisions which affect the welfare of community and nation. To act as good citizens they must be informed. In order to enable them to be properly informed their information must be uncensored. There is no more reason for depriving these people of the liberties guaranteed by the First and Fourteenth Amendments than there is for curtailing these freedoms with respect to any other citizen.

When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment "lies at the foundation of free government by free men" and we must in all cases "weigh the circumstances and appraise the reasons in support of the regulation of those rights." *Schneider v. State*, 308 U. S. 147, 161. In our view the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not

sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a State statute. Insofar as the State has attempted to impose criminal punishment on appellant for undertaking to distribute religious literature in a company town, its action cannot stand. The case is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

*Reversed and remanded.*

## UNLICENSED DISTRIBUTION OF RELIGIOUS LITERATURE<sup>12</sup>

Supreme Court of the United States

OCTOBER TERM, 1915

A. R. Tucker, Appellant, v. The State of Texas  
[DECIDED JANUARY 7, 1916]

Mr. Justice Black delivered the opinion of the Court.

The appellant was charged in the Justice Court of Medina County, Texas, with violating Article 479, Chap. 3 of the Texas Penal Code which makes it an offence for any "peddler or hawker of goods or merchandise" wilfully to refuse to leave premises after having been notified to do so by the owner or possessor thereof. The appellant urged in his defense that he was not a peddler or hawker of merchandise, but a minister of the gospel engaged in the distribution of religious literature to willing recipients. He contended that to construe the Texas statute as applicable to his activities would, to that extent, bring it into conflict with the Constitutional guarantees of freedom of press and religion. His contention was rejected and he was convicted. On appeal to the Medina County Court, his Constitutional contention was again overruled. Since he could not appeal to a higher state court this appeal under Sec. 237 (a) of the Judicial Code, 28 U. S. C. 344 (a) is properly before us. *Largent v. Texas*, 318 U. S. 418.

The facts shown by the record need be but briefly stated. Appellant is an ordained minister of the group known as Jehovah's

Witnesses. In accordance with the practices of this group he calls on people from door to door, presents his religious views to those willing to listen, and distributes religious literature to those willing to receive it. In the course of his work he went to the Hondo Navigation Village located in Medina County, Texas. The village is owned by the United States under a Congressional program which was designed to provide housing for persons engaged in National Defense activities. 42 U. S. C. § 1521-1553. According to all indications the village was freely accessible and open to the public and had the characteristics of a typical American town. The Federal Public Housing Authority had placed the buildings in charge of a manager whose duty it was to rent the houses, collect the rents, and generally to supervise operations, subject to over-all control by the Authority. He ordered appellant to discontinue all religious activities in the village. Appellant refused. Later the manager ordered appellant to leave the village. Insisting that the manager had no right to suppress religious activities, appellant declined to leave, and his arrest followed. At the trial the manager testified that the controlling Federal agency had given him full authority to regulate the conduct of those living in the village, and that he did not allow preaching by ministers of any denomination without a permit issued by him in his discretion. He thought this broad authority was entrusted to him, at least in part, by a regulation, which the Authority's Washington office had allegedly promulgated. He testified that this regulation provided that no peddlers or hawkers could come into or remain in the village without getting permission from the manager. Since the Texas Court has deemed this evidence of authority of the manager to suppress appellant's activities sufficient to support a conviction under the State statute, we accept their holding in this respect for the purposes of this appeal.

The foregoing statement of facts shows their close similarity to the facts which led us this day to decide in *Marsh v. Alabama*, No. 114, that managers of a company-owned town could not bar all distribution of religious literature within the town, or condition

distribution upon a permit issued at the discretion of its management. The only difference between this case and *Marsh v. Alabama* is that here instead of a private corporation, the Federal Government owns and operates the village. This difference does not affect the result. Certainly neither Congress nor Federal agencies acting pursuant to Congressional authorization may abridge the freedom of press and religion safeguarded by the First Amendment. True, under certain circumstances it might be proper for security reasons to isolate the inhabitants of a settlement, such as Hondo Village, which houses workers engaged in producing war materials. But no such necessity and no such intention on the part of Congress or the Public Housing Authority are shown here.

It follows from what we have said that to the extent that the Texas statute was held to authorize appellant's punishment for refusing to refrain from religious activities in Hondo Village it is an invalid abridgement of the freedom of press and religion.

We think it only proper to add that neither the Housing Act passed by Congress nor the Housing Authority Regulations contain language indicating a purpose to bar freedom of press and religion within villages such as the one here involved. The case is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

*Reversed and remanded.*

## PROFESSION OF RELIGIOUS BELIEF

### Supreme Court of the United States

No. 472.—OCTOBER TERM, 1943

The United States of America, Petitioner, *vs.* Edna W. Ballard  
and Donald Ballard

[APRIL 24, 1944]

Mr. Justice Douglas delivered the opinion of the Court.

Respondents were indicted and convicted for using, and conspiring to use, the mails to defraud. § 215 Criminal Code, 18 U. S. C. § 338; § 37 Criminal Code, 18 U. S. C. § 88. The indictment was in twelve counts. It charged a scheme to defraud by

organizing and promoting the I Am movement through the use of the mails. The charge was that certain designated corporations were formed, literature distributed and sold, funds solicited, and memberships in the I Am movement sought "by means of false and fraudulent representations, pretenses and promises". The false representations charged were eighteen in number. It is sufficient at this point to say that they covered respondents' alleged religious doctrines or beliefs. . . .

The Circuit Court of Appeals held that the question of the truth of the representations concerning respondent's religious doctrines or beliefs should have been submitted to the jury. And it remanded the case for a new trial. It may be that the Circuit Court of Appeals took that action because it did not think that the indictment could be properly construed as charging a scheme to defraud by means other than misrepresentations of respondents' religious doctrines or beliefs. Or that court may have concluded that the withdrawal of the issue of the truth of those religious doctrines or beliefs was unwarranted because it resulted in a substantial change in the character of the crime charged. But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. "The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones*, 13 Wall. 679, 728. The First Amendment has a dual aspect. It not only "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship" but also "safeguards the free exercise of the chosen form of religion." *Cantwell v. Connecticut*, 310 U. S. 296, 303. "Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." *Id.*, pp. 303-304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education v. Barnette*, 319 U. S.

624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v. Pennsylvania*, 319 U. S. 105. As stated in *Davis v. Beason*, 133 U. S. 333, 342, "With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by

him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." See *Prince v. Massachusetts*, 321 U. S. 158. So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents.

Respondents maintain that the reversal of the judgment of conviction was justified on other distinct grounds. The Circuit Court of Appeals did not reach those questions. Respondents may, of course, urge them here in support of the judgment of the Circuit Court of Appeals. *Langnes v. Green*, 282 U. S. 531, 538-539; *Story Parchment Co. v. Paterson Co.*, 282 U. S. 555, 560, 567-568. But since attention was centered on the issues which we have discussed, the remaining questions were not fully presented to this Court either in the briefs or oral argument. In view of these circumstances we deem it more appropriate to remand the cause to the Circuit Court of Appeals so that it may pass on the questions reserved. *Lutcher & Moore Lumber Co. v. Knight*, 217 U. S. 257, 267-268; *Brown v. Fletcher*, 237 U. S. 583. If any questions of importance survive and are presented here, we will then have the benefit of the views of the Circuit Court of Appeals. Until that additional consideration is had, we cannot be sure that it will be necessary to pass on any of the other constitutional issues which respondents claim to have reserved.

The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

*Reversed.*

Mr. Justice Jackson, dissenting.

I should say the defendants have done just that for which they are indicted. If I might agree to their conviction without creating a precedent, I cheerfully would do so. I can see in their teachings nothing but humbug, untainted by any trace of truth. But that does not dispose of the constitutional question whether misrepre-

sentation of religious experience or belief is prosecutable; it rather emphasizes the danger of such prosecutions.

The Ballard family claimed miraculous communication with the spirit world and supernatural power to heal the sick. They were brought to trial for mail fraud on an indictment which charged that their representations were false and that they "well knew" they were false. The trial judge, obviously troubled, ruled that the court could not try whether the statements were untrue, but could inquire whether the defendants knew them to be untrue; and, if so, they could be convicted. •

I find it difficult to reconcile this conclusion with our traditional religious freedoms.

In the first place, as a matter of either practice or philosophy I do not see how we can separate an issue as to what is believed from considerations as to what is believable. The most convincing proof that one believes his statements is to show that they have been true in his experience. Likewise, that one knowingly falsified is best proved by showing that what he said happened never did happen. How can the Government prove these persons knew something to be false which it cannot prove to be false? If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.

In the second place, any inquiry into intellectual honesty in religion raises profound psychological problems. William James, who wrote on these matters as a scientist, reminds us that it is not theology and ceremonies which keep religion going. Its vitality is in the religious experiences of many people. "If you ask what these experiences are, they are conversations with the unseen, voices and visions, responses to prayer, changes of heart, deliverances from fear, inflowings of help, assurances of support, whenever certain persons set their own internal attitude in certain appropriate ways." \* If religious liberty includes, as it must, the right

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\* William James, *Collected Essays and Reviews*, pp. 427-8; see generally his

to communicate such experiences to others, it seems to me an impossible task for juries to separate fancied ones from real ones, dreams from happenings, and hallucinations from true clairvoyance. Such experiences, like some tones and colors, have existence for one, but none at all for another. They cannot be verified to the minds of those whose field of consciousness does not include religious insight. When one comes to trial which turns on any aspect of religious belief or representation, unbelievers among his judges are likely not to understand and are almost certain not to believe him.

And then I do not know what degree of skepticism or disbelief in a religious representation amounts to actionable fraud. James points out that "Faith means belief in something concerning which doubt is theoretically possible." \* Belief in what one may demonstrate to the senses is not faith. All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credulity than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. It is hard in matters so mystical to say how literally one is bound to believe the doctrine he teaches and even more difficult to say how far it is reliance upon a teacher's literal belief which induces followers to give him money.

There appear to be persons—let us hope not many—who find refreshment and courage in the teachings of the "I Am" cult. If the members of the sect get comfort from the celestial guidance of their "Saint Germain," however doubtful it seems to me, it is

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Varieties of Religious Experience and The Will to Believe. See also Burton, *Heyday of a Wizard*.

\* William James, *The Will to Believe*, p. 90.

hard to say that they do not get what they pay for. Scores of sects flourish in this country by teaching what to me are queer notions. It is plain that there is wide variety in American religious taste. The Ballards are not alone in catering to it with a pretty dubious product.

The chief wrong which false prophets do to their following is not financial. The collections aggregate a tempting total, but individual payments are not ruinous. I doubt if the vigilance of the law is equal to making money stick by over-credulous people. But the real harm is on the mental and spiritual plane. There are those who hunger and thirst after higher values which they feel wanting in their humdrum lives. They live in mental confusion or moral anarchy and seek vaguely for truth and beauty and moral support. When they are deluded and then disillusioned, cynicism and confusion follow. The wrong of these things, as I see it, is not in the money the victims part with half so much as in the mental and spiritual poison they get. But that is precisely the thing the Constitution put beyond the reach of the prosecutor, for the price of freedom of religion or of speech or of the press is that we must put up with, and even pay for, a good deal of rubbish.

Prosecutions of this character easily could degenerate into religious persecution. I do not doubt that religious leaders may be convicted of fraud for making false representations on matters other than faith or experience, as for example if one represents that funds are being used to construct a church when in fact they are being used for personal purposes. But that is not this case, which reaches into wholly dangerous ground. When does less than full belief in a professed credo become actionable fraud if one is soliciting gifts or legacies? Such inquiries may discomfort orthodox as well as unconventional religious teachers, for even the most regular of them are sometimes accused of taking their orthodoxy with a grain of salt.

I would dismiss the indictment and have done with this business of judicially examining other people's faiths.

## DISCUSSION

## Loan Association Case States the Law (P. 539)

<sup>1</sup> In *Loan Association v. Topeka* the extent of legislative power was the direct question at issue, and of the nine justices only one dissented from the opinion as delivered by Mr. Justice Miller. Mr. Justice Clifford dissented, taking the position that "except where the constitution has imposed limits upon the legislative power the rule of law appears to be that the power of legislation must be considered to be as practically absolute, whether the law operates according to natural justice or not in any particular case, for the reason that courts are not the guardians of the rights of the people of the State, save where those rights are secured by some constitutional provision which comes within judicial cognizance." 20 Wallace, 668. There are those, and there probably always will be, who assert legislative omnipotence, the law and the facts to the contrary notwithstanding. Yet the law that legislatures are limited as pointed out in this decision is so well established as hardly to need defense.

*Loan Association v. Topeka*, has been quoted and requoted since by the courts of the United States, and has thus now become the unquestioned statement of the law. See *Lothrop v. Stedman*, decided October, 1875, which cites it:

"The power of the legislature, therefore, is not unlimited, for the private rights of persons are not subject to an unjust and despotic exercise of power by a legislature, without means of redress. 'The theory of our governments, State and National, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.'" 13 Blatchford's U. S. Circuit Court Reports, 134, 142. 15 Federal cases 922, 925.

In the case of *Hurtado v. People of California*, 1883, the Supreme Court decision quoted from and agreed with the Loan Association decision. Justice Stanley Matthews, in delivering the opinion of the court said:

"In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Charta were incorporated into Bills of Rights. They were limitations upon all the powers of government, legislative as well as executive and judicial.

"It necessarily happened, therefore, that as these broad and general

maxims of liberty and justice held in our system a different place and performed a different function from their position and office in English constitutional history and law, they would receive and justify a corresponding and more comprehensive interpretation. Applied in England only as guards against executive usurpation and tyranny, here they have become bulwarks also against arbitrary legislation; but, in that application, as it would be incongruous to measure and restrict them by the ancient customary English law, they must be held to guarantee not particular forms of procedure, but the very substance of individual rights to life, liberty, and property. . . .

"It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. . . . Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude. And the limitations imposed by our constitutional law upon the action of the governments, both State and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of government. . . . [This decision quotes from *Loan Association v. Topeka* the paragraph reproduced on pages 539, 540.]" 110 U. S., 531.

#### Extracts From Cases Cited by Bishop on Limitations

Joel Prentiss Bishop, in his *First Book of the Law* (1868), Bk. II, chap. 9, sec. 90, says: "It is pretty plainly the better opinion, in our country, that there are limitations upon the legislative power other than what are expressed in our State and national constitutions"—citing the following numerous cases from which we quote:

*The Regents of the University of Maryland v. Williams*, 9 Gill and Johnson (22 Maryland), 365, 408: "Independent of that instrument [the Constitution of the United States] and of any express restriction in the constitution of the State, there is a fundamental principle of right and justice, inherent in the nature and spirit of the social compact (in this country at least), the character and genius of our government, the causes from which they sprang, and the purposes for which they were established, that rises above and restrains and sets bounds

to the power of legislation, which the legislature cannot pass without exceeding its rightful authority. It is that principle which protects the life, liberty, and property of the citizen from violation, in the unjust exercise of legislative power."

*Ward v. Bernard*, 1 Aikens (Vt.), 121, 127: "It is a fundamental principle, engrafted into the Constitution, that *all power is originally inherent in the people*; and that *all officers of government, whether legislative or executive, are their trustees and servants*—therefore, such power, and such only, as is delegated to them, can they exercise."

*Lyman v. Mower*, 2 Vt., 517, 518: "The question . . . must be considered settled by the decision in the case of *Ward v. Bernard*."

*Goshen v. Stonington*, 4 Conn. 209, 225: "With those judges, who assert the omnipotence of the legislature, in all cases, where the constitution has not interposed an explicit restraint, I cannot agree. Should there exist what I know is not only an incredible supposition, but a most remote improbability, a case of the direct infraction of vested rights, too palpable to be questioned, and, too unjust to admit of vindication, I could not avoid considering it as a violation of the social compact, and within the control of the judiciary. If for example, a law were made, without any cause, to deprive a person of his property, or to subject him to imprisonment; who would not question its legality, and who would aid in carrying it into effect?"

*Vanhorne's Lessee v. Dorrance*, 2 Dallas (U. S.), 304.

*Williams v. Robinson*, 6 Cushing's Report, 335, decided by the supreme Judicial Court of Massachusetts (1850), says: "The rules of the common law and the principles of natural justice are to be applied in the construction of these statutes," and cites *Day v. Savadge*, decided by Lord Chief Justice Hobart of England. Hobart's statement was: "Even an act of Parliament, made against natural equity, as to make a man judge in his own case, is void in itself, for *jura naturæ sunt immutabilia*, and they are *leges legum*."—Hobart, in 80 English Reports, reprint, 235, 237. Chief Justice Holt's words in *London v. Wood* are likewise cited, "that even an act of parliament 'cannot make one, that lives under a government, judge and party.' 12 Mod., 688." Holt quotes Coke to the same effect: "And what my Lord Coke says in Doctor Bonham's case in his 8 Coke's Reports, is far from any extravagancy, for it is a very reasonable and true saying, that if an act of Parliament should ordain that the same person should be party and judge, or which is the same thing, judge in his own cause, it would be a void act of Parliament."

*Taylor v. Porter*, 4 Hill (N. Y.), 144 ff.: "Under our form of govern-

*ment the legislature is not supreme.* It is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of the government, *it can only exercise such powers as have been delegated to it;* and when it steps beyond that boundary, its acts, like those of the most humble magistrate in the State who transcends his jurisdiction, *are utterly void.* . . . It is readily admitted that the two houses, subject only to the qualified negative of the governor, possess all 'the legislative power of this State;' but the question immediately presents itself, What is that 'legislative power' and how far does it extend? Does it reach the life, liberty, or property of a citizen who is not charged with a transgression of the laws, and when the sacrifice is not demanded by a just regard for the public welfare? [Here is inserted a quotation from Mr. Justice Story in *Wilkinson v. Leland* (see page 641), followed by the additional citation, "See also Kent's Commentaries, 13, 340, and cases there cited."] . . .

"The security of life, liberty and property, lies at the foundation of the social compact; and to say that this grant of 'legislative power' includes the right to attack private property, is equivalent to saying that the people have delegated to their servants the power of defeating one of the great ends for which the government was established. *If there was not one word of qualification in the whole instrument, I should feel great difficulty in bringing myself to the conclusion that the clause under consideration had clothed the legislature with despotic power; and such is the extent of their authority if they can take the property of A, either with or without compensation, and give it to B. 'The legislative power of this State' does not reach to such an unwarrantable extent. Neither life, liberty, nor property, except when forfeited by crime, or when the latter is taken for public use, falls within the scope of the power.* Such, at least, are my present impressions.

"But the question does not necessarily turn on the section granting legislative power. The people have added negative words, which should put the matter at rest. 'No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.' (Constitution, article 7, section 1.) The words 'by the law of the land,' as here used, do not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense. The people would be made to say to the two houses, 'You shall be vested with "the legislative power of the State;" but no

one "shall be disfranchised, or deprived of any of the rights or privileges" of a citizen, unless you pass a statute for that purpose: 'in other words, 'You shall not do the wrong, unless you choose to do it.'"

*Bloodgood v. The Mohawk and Hudson Railroad Company*, 18 Wendell's New York Court of Errors Reports, 56 ff.

*Varick v. Smith*, 5 Paige's New York Chancery Reports, 137, 159.

*Wilkinson v. Leland, et al.*, 2 Peters (U.S.), 656ff.: "That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require, that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming, that the power to violate and disregard them, a power so repugnant to the common principles of justice and civil liberty, lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well-being, without very strong and direct expressions of such an intention. . . ."

"We know of no case in which a legislative act to transfer the property of A to B without his consent, has ever been held a constitutional exercise of legislative power in any State in the Union. On the contrary, it has been constantly resisted as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced."

*Bowman v. Middleton*, 1 Bay (S. C.), 254, 255: "The Court, . . . after a full consideration on the subject, were clearly of the opinion, that the plaintiffs could claim no title under the act in question [a statute of 1712 conflicting with common-law rights] as it was against common right, as well as against Magna Charta. . . . *That act was, therefore, ipso facto, void.* That no length of time could give it validity, being originally founded on erroneous principles."

*Cochran v. Van Surlay*, 20 Wendell's New York Court of Errors Reports, 372, 373, opinion delivered by Chancellor Walworth, cites Chief Justice Marshall's words in the case of *Fletcher v. Peck*: "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power." 10 U. S., 135.

*Medford v. Learned*, 16 Mass., 217.

*Bates v. Kimball*, 2 Daniel Chipman (Vt.), 89, 90.

"So it has been laid down generally," concludes Bishop, "that 'statutes passed against plain and obvious principles of common right

and common reason, *are absolutely null and void, as far as they are calculated to operate against those principles.*' (*Ham v. McClaws*, 1 Bay [S. C.], 93, 98; *Barksdale v. Morrison*, Harper [S. C.], 101.)

"This doctrine commends itself, moreover, by a considerable weight of English as well as of American judicial authority. (*Day v. Savadge*, Hobart, 85, 87; *Bonham's case*, 8 Coke's Reports, 114, 118, where it is said: 'It appears in our books that in many cases the common law will control acts of Parliament, and sometimes adjudge them to be utterly void; for, when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.' *London v. Wood*, 12 Mod[ern Reports,] 669, 687; 1 Fonb[lanque's] Eq[uity,] chapter 1, section 3; *Sharpe v. Bickerdyke*, 3 Dow, 102; 1 Bl[ackstone's] Com[mentaries,] 41.) . . .

"The ground is, that such statutes transcend the powers which the people have vested, or could vest, in the legislative body, which is itself circumscribed, like the judicial and executive departments."—*First Book of the Law* (1868), book 2, chap. 9, secs. 90, 91; *Ram's Legal Judgments* (New York, 1871), pp. 35, 39.

### Principles of Law

There are certain principles of law that bind States themselves as well as their agents. One of these principles is that no State can at any time impose any law upon the State curtailing its freedom of action at any time subsequent. *Perpetua lex est nullam legem humanam ac positivam perpetuam esse; et clausula quae abrogationem excludit, ab initio non valet.* ("It is a perpetual law that there is no human and positive law perpetual; and the clause which excludes disannulling, is not valid from the beginning.") This principle of law was recognized by Thomas Jefferson in his act declaratory of religious rights in Virginia in 1785, in the following words: "To declare this act irrevocable would be of no effect in law."

It is the nature of these fundamental principles of law which it is impossible for any man understandingly to contradict, that makes the common law—the sum total of these principles—the controller of all law. Bishop sets this forth very clearly in his *First Book of the Law*:

"The law is a system of principles, and *the principles are the law itself*, while the cases are only to be received in the nature of evidence, tending more or less strongly to prove the principles, as well as to make apparent another thing; namely, that the common-law principles do

not, like the statutory ones, rest in a precise form of words. And a great part of the skill, both of judges and of legal writers, consists in the selection of such language as shall, in the most accurate and clear manner, convey to the reader the image of those principles, which, unseen by the outward eye, lie as pictures before the eye of the legal understanding, and form together the body of our common or unwritten law, the same as the statute books do the body of our written law.

“Now when the principles are ascertained, *they are just as authoritative upon the courts, and control the decisions in particular cases with the same absolute sway, as the express words of a legislative enactment.* (*Commonwealth v. Chapman*, 13 Met. [54 Mass.], 68, 70; *Martin v. Martin*, 25 Ala., 201; *Powell v. Brandon*, 24 Miss., 343.) The difference between a common-law and statutory principle is simply this, that, while the former may not be always readily ascertained to exist, or its terms or limits may be a little uncertain or undefined; there is ordinarily no question as to the existence of the latter, and, being clothed in exact words, *its limits are generally supposed to be ascertained with greater certainty, though, in fact, the contrary of this last statement is often true.*”—Secs. 103, 104.

“The law is what ‘authority’ determines it to be, and the voice of ‘authority’ is nothing other than the language of those principles which constitute the law.”—*Ibid.*, sec. 109.

“The law consists of rule, of reason—or, as the expression was in a previous chapter, of legal principles—and not of mere points as presented in particular cases. Therefore he who, whether as a judge, or as a lawyer arguing a cause, or as a legal author, brings forward new applications of old principles, does not attempt the introduction of any novelty; he merely expounds anew the old.

“This matter was once stated by a very able Massachusetts judge; as follows: ‘It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adapted to the precise circumstances of particular cases, which would become obsolete and fail when the practice and course of business to which they apply should cease or change, the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. These general principles of equity and policy are rendered precise, specific, and adapted to practical use, by usage, which is the proof of their general fitness and common convenience, but still

more by judicial exposition; so that, when in a course of judicial proceeding by tribunals of the highest authority, the general rule has been modified, limited, and applied, according to particular cases, such judicial exposition, when well settled and acquiesced in, becomes itself a precedent, and forms a rule of law for future cases under like circumstances.' (Chief Justice Shaw, in *Norway Plains Co. v. Boston and Maine Railroad*, 1 Gray [67 Mass.], 263, 267, 268. And for similar observation, see *Bell v. The State*, 1 Swan's Tenn. [31], 42.)—*Ibid.*, secs. 93, 94.

Among the common-law writers and jurists there is no difference of opinion as to this fundamental nature of the common law. Judge Cooley, in accordance with the ideas set forth in these decisions, lays down the following as to what the law is:

"The code of today is therefore to be traced rather in the spirit of judicial decisions than in the letter of the statute. The process of growth has been something like the following: Every principle declared by a court in giving judgment is supposed to be a principle more or less general in its application, and which is applied under the facts of the case, because, in the opinion of the court, the facts bring the case within the principle. The case is not the measure of the principle; it does not limit and confine it within the exact facts, but it furnishes an illustration of the principle, which, perhaps, might still have been applied, had some of the facts been different. Thus, one by one, important principles become recognized through adjudications which illustrate them and which constitute authoritative evidence of what the law is when other cases shall arise.

"But cases are seldom exactly alike in their facts; they are, on the contrary, infinite in their diversities; and as numerous controversies on differing facts are found to be within the reach of the same general principle, the principle seems to grow and expand, and does actually become more comprehensive, though so steadily and insensibly under legitimate judicial treatment that for the time the expansion passes unobserved. But new and peculiar cases must also arise from time to time, for which the courts must find the governing principle, and these may either be referred to some principle previously declared, or to some one which now, for the first time, there is occasion to apply. But a principle newly applied is not supposed to be a new principle; on the contrary, it is assumed that from time immemorial it has constituted a part of the common law of the land, and that it has only not been applied before, because no occasion has arisen for its application. This assumption is the very groundwork and justification for

its being applied at all, because the creation of new rules of law, by whatsoever authority, can be nothing else than legislation; and the principle now announced for the first time must always be so far in harmony with the great body of the law that it may naturally be taken and deemed to be a component part of it, as the decision assumes it to be.”—*Elements of Torts*, pp. 12, 13.

Upon this principle as here stated rests the authority of the precedent. “Precedents against law or the law’s reason must be set aside. . . . There is such a thing as idolatry of precedents, and an idolatry it is, which has slaughtered, at times, Justice at her own altars.”—Francis Lieber, *Legal and Political Hermeneutics*, chap. 7, sec. 14.

### Justice Brewer and the “Christian Nation” Decision (P. 552)

<sup>2</sup> In *The Church of the Holy Trinity v. The United States* the point at issue was whether *professional, skilled, or “brain” labor* was banned under the alien labor law of 1887, or only *manual labor* was intended under the Act of Congress. No one had raised the question of the religious status of the nation, and therefore the statement by Justice David J. Brewer that the United States is a “Christian nation” was not the real decision in this case, but simply an obiter dictum, which from a legal viewpoint has no standing as a judicial decision. The following quotations will make this clear:

#### Obiter Dictum

“[Courts. §344.] **Dicta.** A dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in a case; a statement in an opinion not necessary to the decision of the case, or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term ‘dictum’ is generally used as an abbreviation of ‘obiter dictum’ which means a remark by the way. Such an expression, while entitled to respectful consideration as expressing the view of the judge by whom it was uttered, is not binding as authority within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. So also the reasoning, references, illustrations, and analogies contained in the opinion are not precedents, for while the opinion announces the decision of the court, it does not follow that each member has arrived at his conclusion by

the same reasoning or bases it on the same principles.”—15 Corpus Juris, 950-952.

The footnote to this statement comprises more than a solid page of fine-type citations of cases, and includes the following quotation from Bouvier:

“It frequently happens that, in assigning its opinion upon a question before it, the court discusses collateral questions and expresses a decided opinion upon them. Such opinions, however, are frequently given without much reflection or without previous argument at the bar; and as, moreover, they do not enter in the adjudication of the point at issue, they have only that authority which may be accorded to the opinion, more or less deliberate, of the individual judge who announces it.”—*Bouvier’s Law Dictionary*, article “Dictum,” (1914 ed., 1:863).

“Possibly no better definition [of “dictum”] can be found than that of Folger, J., in *Rohrbach v. Ins. Co.*, 62 N. Y. 58, 20 Am. Rep. 451: ‘*Dicta* are the opinions of a judge which do not embody the resolution or determination of the court, and, made without argument or full consideration of the point, are not the professed, deliberate determinations of the judge himself; *obiter dicta* are such opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects.’

“The general rule, broadly stated by the United States supreme court, is that to make an opinion a decision ‘there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties, . . . and, therefore, this court has never held itself bound by any part of an opinion which was not needful to the ascertainment of the question between the parties.’ Per Curtis, J., in *Carroll v. Carroll*, 16 How. 287, 14 L. Ed. 936.”—*Ibid.*

“But even when the point ruled was not directly and necessarily in issue, there are distinctions drawn as to the relative authority of judicial expressions of opinion comprehended under the general term *dicta*, as used in its broadest sense. An expression of opinion upon a point involved in a case, argued by counsel and deliberately passed upon by the court, though not essential to the disposition of the case, if a *dictum*, should be considered as a judicial *dictum* as distinguished from a mere *obiter dictum*, i. e. an expression originating alone with the judge writing the opinion, as an argument or illustration.”—*Ibid.*, p. 864.

### Is the United States a Christian Nation? (P. 558)

<sup>3</sup> For many centuries it has been customary to distinguish between nations by their religion. The nations of Europe were called Christian nations. Turkey was a Mohammedan nation, and so were several North African countries. Other nations were classed as pagan. During most of recorded history this seemed appropriate, for the religious practices and rules of a people were incorporated into their legal code and enforced by the police power—in other words, there was a union of church and state. The states were in a certain sense founded upon a religion.

Not until the founding of the United States did there appear a nation not founded on religion. This is not to deny that the people were religious, or even that the majority of them were not Christians. Several of the colonies, at the time of federation, actually did have religious establishments, but under the influence of the new Federal Constitution these soon disappeared. The founding fathers very carefully separated church from state. No religious test was required for membership. Mohammedans and pagans were just as eligible for citizenship as the most devout Christian, and so it is today. In a legal sense, therefore, it must be stated categorically that the United States is not a Christian nation. Our Constitution prohibits Congress from passing laws on the subject of religion.

It is true that Christians and people influenced by Christian ideals form a large section of the population of the United States. But the Census Bureau figures for 1936 indicate that only 51,000,000 people in the United States even claim church membership. With less than half of the population professing Christianity, the people of the country as a whole can scarcely be classified as Christian. But even if Christians were in the majority, the country cannot be a Christian nation for the nation professes no religion.

### Divine Right (P. 558)

<sup>4</sup> Spain had a union of church and state of the most militant type, and the fact that Ferdinand and Isabella claimed to be king and queen “by the grace of God,” or “divine right,” when they issued the commission to Columbus, is so foreign to the American system of government that it seems most illogical, to say the least, to cite the kingly claim of “divine right” as a legal precedent for American jurisprudence.

### Queen Elizabeth's Commission (P. 558)

<sup>5</sup> If "the true Christian faith now professed in the Church of England," under the reign of Queen Elizabeth, is to be the legal standard of religion for all Christians in the United States, why was that particular church disestablished by the State governments in America? Since it has been legally disestablished and the church and state separated, what logic is there in Mr. Justice Brewer's quoting the divine right and "defender of the faith" claim of Queen Elizabeth in her commission to Sir Walter Raleigh?

### Mr. Justice Brewer's Biased Citations From Charters (P. 559)

<sup>6</sup> One of the reasons why Mr. Justice Brewer in his obiter dictum declared the United States to be "a Christian nation" in 1892, was that King James I, in granting the various charters to the English colonies, declared emphatically that the purpose of these grants was for the "*propagating*" and "*establishment of the Christian religion.*"

Mr. Justice Brewer gathered together certain *religious phrases and expressions* found in the colonial charters, the Mayflower Compact of the Pilgrims, and the early statutes of Puritan settlements where the Christian religion was established by law and enforced upon dissenters and nonconformists with a vengeance, and he makes these religious establishments, which have long since been repudiated, the basis for his obiter dictum that "this is a Christian nation." In all his research work of kingly documents, colonial laws, and State court decisions, so utterly at variance with present-day American ideals of civil government, he never once alludes to the legal and historical data which furnish positive proof that all these religious establishments were legally disestablished. Not in a single instance did he make reference to any of the famous State documents, petitions, remonstrances, and memorials which brought about the disestablishment of religion in America; he passed by all the official declarations and denials of the jurisdiction of government in matters of religion as though they were no part of American jurisprudence, as though they never existed in American history. This omission would appear incredible and inexplicable if it were not for the fact that Mr. Justice Brewer was in favor of a national religion, and advocated principles similar to those of the National Reform Association, whose objective it was to establish the Christian religion as the national religion of the United States, "and to secure such an amendment to the Constitution of the United States as will declare the nation's allegiance to Jesus Christ and its acceptance of the moral laws of the Christian religion, and so indicate

that this is a Christian nation, and place all the Christian laws, institutions, and usages of our government on an undeniably legal basis in the fundamental law of the land.”—*Constitution of the National Reform Association, Article II.* (See page 250.)

Mr. Justice Brewer took advantage of his position on the Supreme Court bench to propagate his national-religion principles, and to make his own personal views on religion the basis for a judicial decision, when such an obiter dictum was uncalled for in this case.

Why did he completely ignore all the legal documents referring to the separation of church and state and, cite only those which relate to a union of church and state? It seems eminently fitting that we should quote the language of Abraham Lincoln when he commented on a similar omission by Stephen A. Douglas in defending the decision of the Supreme Court of the United States in 1856 in the Dred Scott case, written by Chief Justice Taney, in which slavery was justified and the doctrine advanced that a colored man “had no rights which the white man was bound to respect.” Lincoln said: “I ask, How extraordinary a thing it is that a man who has occupied a position upon the floor of the Senate of the United States, who is now in his third term, and who looks to see the government of this whole country fall into his own hands, pretending to give a truthful and accurate history of the slavery question in this country, should so entirely ignore the whole of that portion of our history—the most important of all. Is it not a most extraordinary spectacle, that a man should stand up and ask for any confidence in his statements, who sets out as he does with portions of history, calling upon the people to believe that it is a true and fair representation, when the leading part and controlling feature of the whole history is carefully suppressed? . . .

“And now he asks the community to believe that the men of the Revolution were in favor of his great principle, when we have the naked history that they themselves dealt with this very subject matter of his principle, and utterly repudiated his principle, acting upon a precisely contrary ground. It is as impudent and absurd as if a prosecuting attorney should stand up before a jury and ask them to convict A as the murderer of B, while B was walking alive before them.”—Speech at Columbus, Sept. 16, 1859, “*Complete Works of Abraham Lincoln,*” (Nicolay and Hay, eds.), vol. 5, pp. 170-172.

Douglas was anxious to uphold slavery at all odds and thus quoted only such statements as suited his view. Mr. Justice Brewer likewise desired to sustain the old view of a church and state religion and cited only those legal authorities which sanctioned a state religion. Lincoln

contended that the decision of the Supreme Court in the Dred Scott case was wrong in principle and should be reversed. Mr. Justice Brewer's obiter dictum that "this is a Christian nation" is wrong in principle and in fact. It is contrary to American ideals and American jurisprudence. It is a denial of the guaranties of religious freedom and of a separation of church and state as conceived by the founders of the American Republic. The mischievous and sinister use that has already been made of this obiter dictum by religious reform organizations to justify further religious legislation and to uphold religious laws now upon the statute books, demonstrates how prolific of mischief these religious innovations prove to be when once they obtain a foothold in civic jurisprudence.

#### **The President MAY Observe Sunday (P. 563)**

<sup>7</sup> The Constitution does not say that the President of the United States must not sign bills on Sunday, or that he must observe Sunday; it merely allows him these extra days to consider and sign bills, or rest if he prefers. It is not mandatory but elective with the President to work or not to work on Sunday. It is a historical fact that important Federal legislation has been signed on Sunday; for example, fifteen bills were signed by President Wilson March 4, 1917, and sixty-one were signed by President Harding on March 4, 1923. (See U. S. Stat. vol. 39, part 1, pp. 1134-1202, and vol. 42, part 1, pp. 1444-1563.)

#### **Decision Cited by Religious Organizations (P. 564)**

<sup>8</sup> This obiter dictum by Mr. Justice Brewer of the Supreme Court was hailed by the organ of the National Reform Association as "the most tremendously far reaching in its consequences of all the utterances of that sovereign tribunal." The National Reformers had earlier started an agitation for an amendment to the Federal Constitution which would recognize the Christian religion as the national religion of the United States and had sponsored a bill requiring the recognition and observance of Sunday in all territories or places under exclusive Federal jurisdiction. Another bill had been introduced with the backing of the National Reformers requiring "the principles of the Christian religion" to be taught in the public schools of America.

Brewer's obiter dictum was regarded as furnishing the long-sought basis for "Christian Government, Christian laws, Christian institutions, Christian practices, Christian Citizenship. . . . All that the National Reform Association seeks, all that this department of Christian politics works for, is to be found in the development of that royal truth, "This

is a Christian Nation.' ”—*The Christian Statesman*, Nov. 19, 1892. The Reformers (including other organizations working along with the National Reform Association) cited this statement in their campaign for a Federal recognition of Sunday through a Sunday-closing proviso in the World's Fair appropriations. This was only a preliminary step in the intended development of the Christianization of the national government, yet it showed the country how the religio-political pressure groups could sway Congress. While their more ambitious plans were not realized, in the years since that time many attempts have been made by these religious legalists, based upon this obiter dictum, virtually to effect a union of church and state, and to nullify the first amendment to the Constitution. In 1921 the general superintendent of the National Reform Association and editor of the *Christian Statesman*, the official organ of the aforesaid organization, made a vicious attack upon the first amendment to the Federal Constitution because it prevents Congress from enacting religious laws which would require secularists and dissenters to conform to the usages, customs, and observances of the Christian religion under civil penalties and for this reason the National Reform Association claims that the first amendment to the Constitution as framed by the founders of the American Republic is “a most dangerous weapon.” (See pp. 253, 254.)

Not the First Amendment, but this “obiter dictum” of Mr. Justice Brewer was, and could again become, “a most dangerous weapon” in the hands of those who seek to establish by civil statute “all the usages, customs, and observances of the Christian religion” as interpreted by religious legalists. As recently as 1944 Harry L. Bowlby, general secretary of the Lord's Day Alliance of the United States, advocated a bill for stamping pre-Easter mail with the words “Observe Sunday,” and cited this mere obiter dictum as an opinion handed down by the United States Supreme Court declaring “the fact that Christianity is the religion of the Republic of the United States.” (Under the remarks of Senator Capper of Kansas in the *Congressional Record*, March 22, 1944, vol. 90, p. 2878.)

### Jefferson on Christianity and the Common Law (P. 566)

\* Justice Thurman's concession that Christianity was a part of the common law of England, was strongly combated by Jefferson. Nevertheless, that Christianity is now universally recognized as constituting a part of the English common law, cannot be denied; but, on the other hand, it cannot be denied, either, that it came to be recognized con-

trary to the principles of the common law. Jefferson's comments show this very plainly. In America, however, Christianity forms no part of the common law, because state Christianity has been superseded by religious liberty—the equality of all religions. This liberty, according to the Century Dictionary, is “the right of freely adopting and professing opinions on religious subjects, and of worshiping or refraining from worship according to the dictates of conscience, without external control;” and this liberty is a right, not simply a privilege. The American Government recognizes the self-evident truth that “all men are created equal;” that governments are instituted for the protection of all alike, whether religious or nonreligious; and that man is accountable to God alone for matters of opinion. The principles of Christianity were never intended to be *forced* upon men. Therefore, engrafting Christianity upon the common law was not only contrary to the principles of the common law, but was also contrary to the principles of Christianity itself. In a letter dated June 5, 1824, to Major John Cartwright, Jefferson wrote as follows:

“I was glad to find in your book a formal contradiction, at length, of the judiciary usurpation of legislative powers; for such the judges have usurped in their repeated decisions, that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible; to wit, that the common law existed while the Anglo-Saxons were yet pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you, to show when, and by what means, they stole this law in upon us. In a case of *quare impedit* in the Year-book 34[th year] H[enry] VI, folio 38 (anno 1458)[Tottel, 1556, fol. 40], a question was made, how far the ecclesiastical law was to be respected in a common law court? And Prisot, Chief Justice, gives his opinion in these words: ‘A tiel leis qu’ils de seint église ont en *ancien scripture*, covient à nous à donner credence; car ceo common ley sur quels tous manners leis sont fondés. Et auxy, monsieur, nous sumus oblégés de conustre lour ley de saint église; et semblablement ils sont obligé de consustre nostre ley. Et, monsieur, si poit apperer or à nous que l’evesque ad fait comme un ordinaire fera en tiel cas, adong nous devons cet adjuger bon, ou auterment nemy,’ etc. See S. C. Fitzh[erbert’s] Abr[idgment], *Qu[are] imp[edit]*, 89; Bro[oke’s] Abr[idgment], *Qu[are] imp[edit]*, 12. Finch in his first book, c[hapter] 3, is the first afterwards who quotes this case and mistakes it thus: ‘To such laws of the church as have warrant in *Holy Scripture*, our law giveth credence.’ And cites Prisot; mistranslating ‘*ancien scripture*’ into ‘*Holy*

*Scripture.* Whereas Prisot palpably says, 'to such laws as those of holy church have in *ancient writing*, it is proper for us to give credence,' to wit, to their *ancient written* laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot, Win[gate's] Max[ims], 3. And Sheppard, title, 'Religion,' in 1675, copies the same mistranslation, quoting the Y[ear] B[ook], Finch and Wingate. Hale expresses it in these words: 'Christianity is parcel of the laws of England.' 1 Ventris's Reports, 293; 3 Keb[le's Reports,] 607. But he quotes no authority.

"By these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of the *King v. Woolston*, 2 Stra[nge,] 834, the court would not suffer it to be debated, whether to write against Christianity was punishable in the temporal court at common law? Wood, therefore, 409, ventures still to vary the phrase, and say that all blasphemy and profaneness are offenses by the common law; and cites 2 Str[ange]. Then Blackstone, in 1763, iv, 59, repeats the words of Hale, that 'Christianity is part of the laws of England,' citing Ventris and Strange. And, finally, Lord Mansfield, with a little qualification, in Evan's case, in 1767, says that 'the essential principles of revealed religion are part of the common law.' Thus engulfing Bible, Testament and all into the common law, without citing any authority. And thus we find this chain of authorities hanging link by link, one upon another, and all ultimately on one and the same hook, and that a mistranslation of the words '*ancien scripture*,' used by Prisot. Finch quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch and Wingate. Hale cites nobody. The court in Woolston's case cites Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale. And Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best-read lawyer to produce another scrip of authority for this judiciary forgery; and I might go on further to show, how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the twentieth, 21st, 22d, and 23d chapters of Exodus, and the 15th of the Acts of the Apostles, from the 23d to the 29th verses. But this would lead my pen and your patience too far. What a conspiracy this, between Church and State!"—*The Writings of Thomas Jefferson*, (Library ed., 1903), vol. 16, pp. 48-51.

### Christianity Not Part of the Common Law (P. 568)

<sup>10</sup> The Maryland State Legislature, during the session of 1931, passed an act providing for the repeal of the State's ancient Sunday law as

applied to the city of Baltimore, to take effect when a substitute ordinance passed by the mayor and city council should be approved by the people in a referendum. The Lord's Day Alliance of Maryland petitioned the Superior Court of Baltimore City for a mandamus to restrain the city council from submitting a liberalized ordinance to the people on a referendum. The contention of the Lord's Day Alliance was that to repeal the Sunday laws would violate fundamental "public mores," or natural law, in that "Christianity is part of the common law of England and part of the common law of Maryland, and part of Charles I Charter to Lord Baltimore." The Alliance also contended that to repeal the Maryland Sunday law would be to legislate against Christianity.

Judge Eugene O'Dunne of the Superior Court of Baltimore City ruled, however, that "as a legal proposition Christianity is not part of the common law of England"; he also held that similarly "Christianity is not part of the common law of Maryland" and that the people had a constitutional right to modify the Sunday laws. The Lord's Day Alliance appealed from Judge O'Dunne's decision to the Court of Appeals of Maryland, the supreme court of the State. The higher tribunal confirmed the decision of the Superior Court of Baltimore City.

### **Compulsory Flag Salute in Public Schools (P. 572)**

<sup>11</sup> The religious body known as Jehovah's Witnesses teach that special deference shown to a flag, such as the civilian salute, is an act of idolatry. Their teaching brought them into no special difficulty, it appears, until the Minersville, Pennsylvania, School District made the flag salute compulsory and refusal to participate an act of insubordination. On June 3, 1940, the Supreme Court of the United States ruled in favor of the school district, and every lover of religious liberty in the country felt a deep concern that even in so small an area of liberty our highest court had turned back the wheels of progress. Hope was expressed that eventually the court would see its way clear to reconsider the principles involved and render a different decision. Perhaps much sooner than anyone dared hope, June 14, 1943, in the case of *West Virginia Board of Education v. Barnette, et al.*, the court reversed its decision. The opinions speak for themselves.

### **Unlicensed Distribution of Religious Literature (Pp. 587-630)**

<sup>12</sup> Freedom of speech and of the press have been among the most jealously guarded of our many liberties. The issue has been raised

anew in recent years by the efforts of many municipalities which have sought to regulate house-to-house businesses of various kinds by the requirement that a license be secured before a person could do business. They have applied the law to the distribution of literature. There have been many different shades of control, amounting in some cases to arbitrary and dictatorial censorship of literature and the dissemination of ideas. Because their religious workers carry on activities largely by house-to-house visitation, Jehovah's Witnesses have suffered most severely from these restrictions, but other religious groups have also been embarrassed. In the case of *Jones v. Opelika* the Supreme Court of the United States upheld the validity of these municipal ordinances. Other cases of the same type came to the court, and a reargument of this case was ordered. On May 3, 1943, the decision was reversed, and the dissent became the law. Another great victory for liberty had been won. A reading of these decisions will impress one with soundness of the positions taken. Liberty of expression must not be curtailed.

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If every American does his or her best for America and for Humanity we shall become, and remain, the Grandest of Nations – admired by all and feared by none, our strength being our Wisdom and kindness.

Knowledge knows no race, sex, boundary or nationality; what mankind knows has been gathered from every field plowed by the thoughts of man. There is no reason to envy a learned person or a scholarly institution, learning is available to all who seek it in earnest, and it is to be had cheaply enough for all.

To study and plow deeper the rut one is in does not lead to an elevation of intelligence, quite the contrary! To read widely, savor the thoughts, and blind beliefs, of others will make it impossible to return again to that narrowness that did dominate the view of the uninformed.

To prove a thing wrong that had been believed will elevate the mind more than a new fact learned.

Emmett F. Fields  
Bank of Wisdom

Bank of wisdom  
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U.S.A.

**PART XIII**

**Court Decisions—2**

**Sunday Laws**



H. F. STONE

Eminent Justices Have Decided Both For and Against the  
Constitutionality of Sunday Laws

## Sunday Legislation Before the Courts

**I**N MOST contested areas, religious liberty was well established by the adoption of the Federal Constitution. One by one the new States dropped their old colonial religious establishments and left the churches to their own support and their own devices. With few exceptions the religious disabilities were removed and the religious laws either were repealed or fell into disuse. The outstanding exception was the retention of the old Sunday-observance laws on the statute books and the enactment of new ones.

A weekly day of rest and worship had been an integral part of religion since the creation of the world. In fact, a weekly cessation from work for a period of twenty-four hours has its basis only in the belief that a divine decree has set aside such time for worship and rest. The Bible records the act of God in sanctifying the first seventh day of time, and the Decalogue enshrines the practice of Sabbathkeeping in the very heart of the moral law.

It has not always been easy for judges steeped in the traditions of Christianity to distinguish clearly between what may properly be included in the legal codes under a separation of church and state and what may not be so included. The decisions that follow hold to both sides of the question in regard to Sunday laws—some upholding their constitutionality and others denying it. The reader is invited to consider carefully the principles set forth in the Discussion at the close of this section.

SUNDAY CONTRACTS VALID <sup>1</sup>

## Supreme Court of Ohio

DECEMBER TERM, 1849

Preston W. Sellers v. George Dugan \*

18 Ohio, 489-497

CALDWELL, Justice, dissenting. . . . If an act such as making a single contract on Sunday, that in its nature is not calculated to disturb the peace and quiet of the day, can be made the subject of legal supervision and penal enactment, *it can only be on the ground that it is abstractly wrong, immoral.* If the legislature can punish an act of this kind, they can another, and their power to persecute, to punish for whatever they may consider abstractly wrong, is unlimited. It is the glory of our country that the right of belief in any particular religious tenet without molestation on account thereof, *is granted to every one;* but this principle can only be preserved by extending it equally to the unbeliever. It is the same great indivisible principle that alike protects humanity, the birth-right of the whole, which each with equal reason may claim, should he believe any religious creed whatever; or should he disbelieve the whole.

We have been referred to the decisions of the court for authority upon this subject. Those decisions are all made on statutes essentially differing from our own. We know that many authorities can be found, both ancient and modern, that have gone as far as this decision in enforcing the observance of the

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\* The majority of the Supreme Court of Ohio decided, in this case, that, "under the act of 1831, 'for the prevention of immoral practices,' a sale on Sunday of four hundred bushels of corn, is void, and no action for damages can be sustained for the breach of such contract." The judgment of the Supreme Court for Brown County, which had decided to the contrary, was accordingly reversed. From this decision Mr. Justice Caldwell dissented. Dissenting opinions have been a prominent characteristic in decisions on the constitutionality of Sunday laws; and, as is evident from the following Supreme Court decisions, the point of contention seems to be whether religious precedents or American principles shall prevail as the rule of decision in our State courts. Thus far the former rule has largely been followed, but the decisions adopting the latter have been by far the most able and best reasoned opinions.

The Ohio Supreme Court at this time held annual county sessions, hence the reference to "the Supreme Court of Brown County."

Sabbath. We do not propose to examine them for two reasons: one is, the one mentioned above, that the statutes on which they are made, differ from ours. Another is, that the pernicious and ruinous consequences of enforcing religious principle by legal enactment have been so well tested, and are so apparent, that any decision of the kind should not be regarded. Indeed, if I were to attempt to present the error into which I think the court have fallen in this decision, in its strongest light, I would do it by a reference to the action of the courts and legislative bodies, not only in Europe, but in some parts of this country, in its early settlement, in attempting to enforce the observance of the Sabbath by law. It always has, and always will produce, a pharisaical and hypocritical observance of a religious duty, and creates a spirit of censorious bigotry, and tends powerfully to destroy every religious feeling of the heart.

I know of but one reported decision in the State; that is the case of *Swisher's Lessee v. Williams's Heirs*, Wright's Reports, 754. The court there say "the objection that the deed was executed on Sunday will not avail you. Both parties partook equally of the sin of violating the Sabbath, and the law does not require of us to enable either party to add to the sin, by breaking the faith pledged on that day, and commit a fraud, out of assumed regard for the Sabbath day." This decision is directly in point, and I think good law. I think the decision of the court on the circuit was right, and should have been affirmed.

## ARKANSAS SUNDAY LAW HELD CONSTITUTIONAL

### Supreme Court of Arkansas

JANUARY TERM, 1850

*Shover v. the State* <sup>2</sup>

10 Arkansas, 259-265

The Christian religion is recognized as constituting part of the common law, its institutions are entitled to profound respect, and may well be protected by law.

The Sabbath, properly called the Lord's day, is amongst the first and most sacred institutions of Christianity, and the act for the pun-

ishment of Sabbath-breaking (Digest, chap. 51, part 7, art. 5, p. 369) is not in derogation of the liberty of conscience secured to the citizen by the third section of the Declaration of Rights.

In an indictment under the above act for keeping open a grocery on Sunday, it is not necessary to aver that it was kept open with any criminal intent—keeping it open on that day is the gist of the offense.

When the fact of keeping the grocery open on the Sabbath is established, the law presumes a criminal intent, and the defendant must excuse himself by showing that charity or necessity required it.

Keeping a grocery door open on the Sabbath is a temptation to vice, and therefore criminal.

In such an indictment it is not necessary to aver that the person charged with keeping open the grocery is the owner of it; but if alleged, it must be proven.

Any person who has control of a grocery, may be indicted for keeping it open on Sunday, whether he be owner or not.

### Appeal From the Hempstead Circuit Court

. . . . .

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the court.

The indictment in this case is based upon the fifth section, chapter fifty-first, Digest. That section enacts that "Every person, who shall, on Sunday, keep open any store, or retail any goods, wares, or merchandise, or keep open any dram-shop or grocery, or sell or retail any spirits or wine, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars nor more than twenty."

The first objection taken is to the indictment, and is predicated upon the supposed unconstitutionality of the act by which the offense is created. If the act is unauthorized by the Constitution, it must arise from the fact that it interferes with the rights of conscience which are secured to all by the Declaration of Rights. A portion of those rights consists in a freedom to worship Almighty God according to the dictates of every one's conscience, and in not being compellable to attend, erect, or support, any place of worship, or to maintain any ministry against their con-

sent. The act in question cannot, with any degree of propriety, be said to trench upon any one of the rights thus secured. By reserving to every individual the sacred and indefeasible rights of conscience, the convention most certainly did not intend to leave it in his power to do such acts as are evil in themselves and necessarily calculated to bring into contempt the most venerable and sacred institutions of the country. Sunday or the Sabbath is properly and emphatically called the Lord's day, and is one amongst the first and most sacred institutions of the Christian religion. This system of religion is recognized as constituting a part and parcel of the common law, and as such all of the institutions growing out of it, or, in any way, connected with it, in case they shall not be found to interfere with the rights of conscience, are entitled to the most profound respect, and can rightfully claim the protection of the law-making power of the State. (See the case of *Vidal et al. v. Girard's Executors*, 2 Howard's Reports, 198.) We think it will readily be conceded that the practice, against which the act is directed, is a great and crying vice, and that, in view of its exceedingly deleterious effects upon the body politic, there cannot be a doubt that it falls appropriately under the cognizance of the law-making power.

The indictment is believed to have been drawn with technical accuracy and to contain all the averments necessary under the statute to a full description of the offense. The very gist of the offense charged in the first count is, the keeping open the grocery on Sunday, and it was not necessary that any criminal intent should have been alleged; as, upon the finding of the fact charged, the law presumes the intent, and unless the defendant is prepared to show that no such intent existed—as that it occurred in the exercise of acts of charity, or that, as a matter of necessity, he could not avoid it—the offense will be fully made out, and consequently nothing can remain to be done but to fix the penalty. The nature and tendency of the act prohibited furnish ample reason why the Legislature did not expressly require the intent to be expressed in the indictment as constituting a material part of the descrip-

tion of the offense. The act of keeping open a grocery on Sunday is not, in itself, innocent or even indifferent, but it is, on the contrary, highly vicious and demoralizing in its tendency, as it amounts to a general invitation to the community to enter and indulge in the intoxicating cup, thereby shocking their sense of propriety and common decency, and bringing into utter contempt the sacred and venerable institution of the Sabbath. It is not simply the act of keeping open a grocery, but the keeping of it open on Sunday, that forms the head and front of the offense; and when it is alleged to have been done on *that day*, the description is perfect.<sup>8</sup>

If the objection to the first count be admissible as failing to give a full and perfect description of the offense, we can perceive no good reason why it should not apply with equal force to the second, as it is silent also as to the intent. The charge in the latter count is, that the defendants sold spirits on Sunday, and it is wholly silent as to the intent with which the act was done. It certainly would not be contended that an indictment for selling spirits on Sunday should further aver that it was sold with intent to have it drunk. The Legislature did not conceive the act of selling to be any worse in point of criminality than that of keeping the grocery open, and consequently they have placed them both upon precisely the same footing. They have the unquestionable right, so long as they keep themselves within the pale of the Constitution, to command the performance of such acts as are right, and to prohibit such as they may conceive, in their wisdom, to be wrong; and their right is equally indisputable to say whether the intention shall be presumed from the mere act prohibited, or whether, in addition to such act, the State shall also show the intent which prompted its commission.

The next objection relates to the sufficiency of the testimony to warrant the conviction. It is manifest from the whole tenor of the evidence as exhibited by the bill of exceptions that both parties, as well the State as the defendant, considered it essential to a conviction that the ownership of the grocery should have

been proven before the jury. This the statute did not require, but having unnecessarily averred the fact of ownership, it devolved upon the State to prove it in order to authorize a conviction. The act merely forbids the keeping of a grocery open on Sunday. It certainly cannot be material whether it shall be done by the party having the legal title or by any other individual having the control of the establishment at the time of the commission of the alleged offense. If it were incumbent upon the State to show title to the grocery before a conviction could be had for keeping it open on Sunday, it would, in the very nature of things, be utterly impossible in many cases to effectuate the objects of the law. The true question therefore under the statute is not, who is the owner of the grocery? but who is shown to have had the control of it at the time of the commission of the act? The State, in this case, did introduce some slight circumstances tending to establish the allegation of ownership, but utterly failed to prove that the defendant had been guilty of keeping the grocery open on Sunday.

The judgment of the Circuit Court of Hempstead County is, therefore, reversed, and the cause remanded with instructions to proceed therein according to law, and not inconsistent with this opinion.

## MISSOURI SUNDAY LAW HELD CONSTITUTIONAL

### Supreme Court of Missouri

OCTOBER TERM, 1854

The State, Respondent, v. Ams, Appellant\*

20 Missouri, 216-220

The main question argued in the briefs of the counsel in this case was, the constitutionality of the law exacting the observance of Sunday, as a day of rest. It was maintained for the appellant, that the laws enjoining an abstinence from labor on Sunday, under a penalty, and prohibiting the opening of ale and beer

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\* The case was an appeal from the St. Louis criminal court to the supreme court of the State. Mr. Justice Scott delivered the opinion of the court.

houses, and selling intoxicating liquors on that day, were dictated by religious motives, and consequently could not be sustained, being inconsistent with the State Constitution, which ordains that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support or attend any place of worship; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship; that no preference can ever be given by law to any sect or mode of worship.

The statute compelling the observance of Sunday, as a day of rest from worldly labor, expressly provides, that it shall not extend to any person who is a member of a religious society, by whom any other than the first day of the week is observed as a Sabbath, so that he observed such Sabbath.

Those who question the constitutionality of our Sunday laws, seem to imagine that the Constitution is to be regarded as an instrument framed for a State composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past; that, unlike ordinary laws, it is not to be construed in reference to the state and condition of those for whom it was intended, but that the words in which it is comprehended are alone to be regarded, without respect to the history of the people for whom it was made.<sup>4</sup>

It is apprehended, that such is not the mode by which our organic law is to be interpreted. We must regard the people for whom it was ordained. It appears to have been made by Christian men. The Constitution, on its face, shows that the Christian religion was the religion of its framers. At the conclusion of that instrument, it is solemnly affirmed by its authors, under their hands, that it was done in the year of our Lord one thousand eight hundred and twenty—a form adopted by all Christian na-

tions, in solemn public acts, to manifest the religion to which they adhere.

Long before the convention which framed our Constitution was assembled, experience had shown that the mild voice of Christianity was unable to secure the due observance of Sunday as a day of rest. The arm of the civil power had interposed.<sup>o</sup> The convention sat under a law exacting a cessation from labor on Sunday. (1 Edward's Compilation, 302.) The journal of the convention will show that this law was obeyed by its members as such, by adjournments from Saturday until Monday. In the tenth section of the fourth article of the Constitution it is provided that, if the Governor does not return a bill within ten days, (Sundays excepted,) it shall become a law without his signature. Although it may be said that this provision leaves it optional with the Governor, whether he will consider bills or not on Sunday, yet, regard being had to the circumstances under which it was inserted, can any impartial mind deny but that it contains a recognition of the Lord's day, as a day exempt by law from all worldly pursuits? The framers of the Constitution, then, recognized Sunday as a day to be observed, acting themselves under a law which exacted a compulsive observance of it. If a compulsive observance of the Lord's day, as a day of rest, had been deemed inconsistent with the principles contained in the Constitution, can anything be clearer than, as the matter was so plainly and palpably before the convention, a specific condemnation of the Sunday law would have been ingrafted upon it. So far from it, Sunday was recognized as a day of rest, when, at the same time, a cessation from labor on that day was coerced by a penalty. They, then, who ingrafted on our Constitution the principles of religious freedom therein contained, did not regard the compulsory observance of Sunday as a day of rest, a violation of those principles. They deemed a statute compelling the observance of Sunday necessary to secure a full enjoyment of the rights of conscience. How could those who conscientiously believe that Sunday is hallowed time, to be devoted to the worship of God,

enjoy themselves in its observance amidst all the turmoil and bustle of worldly pursuits, amidst scenes by which the day was desecrated, which they conscientiously believed to be holy? The Sunday law was not intended to compel people to go to church, or to perform any religious act, as an expression of preference for any particular creed or sect, but was designed to coerce a cessation from labor, that those who conscientiously believed that the day was set apart for the worship of God, might not be disturbed in the performance of their religious duties. Every man is free to use the day for the purpose for which it is set apart, or not, as he pleases. If he sees proper to devote it to religious purposes, the law protects him from the disturbance of others; if he will not employ himself in religious duties, he is restrained from interrupting those who do. Thus the law, so far from affecting religious freedom, is a means by which the rights of conscience are enjoyed. It cannot be maintained that the law exacting a cessation from labor on Sunday compels an act of religious worship.<sup>o</sup> Because divines may teach their churches that the reverential observance of the Lord's day is an act of religious worship, it by no means follows that the prohibition of worldly labor on that day was designed by the General Assembly as an act of religion. Such an idea can only be based on the supposition of an entire ignorance in the Legislature of the nature of the worship which God exacts from His creatures. A compliance with the law, induced by a fear of its penalties, could never be regarded as an act acceptable to the Deity. No act of worship, unless dictated by heartfelt love, can be pleasing to the Almighty. God listens alone to the voice of the heart.

Bearing in mind that our Constitution was framed for a people whose religion was Christianity, who had long lived under, and experienced the necessity of laws to secure the observance of Sunday as a day of rest, how remarkable would it have been that they should have agreed to make common, by their fundamental law, a day consecrated from the very birth of their religion, and hallowed by associations dear to every Christian. Convert Sunday

into a worldly day by law, and what becomes of Christianity? How can we reconcile the idea to our understanding, that a people professing Christianity would make a fundamental law by which they would convert Sunday into a worldly day? It would have been an act of deadly hostility to the religion they professed, exposing it to the danger of being reduced to the condition in which it was before the Roman world was governed by Christian princes. Though it might not be persecuted by the arm of the civil power, it would be driven by the annoyances and interruptions of the world to corners and by-places, in which to find a retreat for its undisturbed exercise.

How startling would the announcement be to the people of Missouri that, by their organic law, they had abolished Sunday as a day of rest, and had put it out of the power of their legislators ever to restore it as such! With what sorrow would the toil-worn laborer receive the intelligence that there was no longer by law a day of rest from his labor! <sup>7</sup> The poor beasts of burden would soon find by experience, that our laws were no longer tempered by the softening influences of Christianity, and all the social advantages, which great and good men have attributed to the observance of Sunday as a day of rest, would be taken away. <sup>8</sup>

In conclusion, we are of the opinion that there is nothing inconsistent with the Constitution, as it was understood at the time of its adoption, with a law compelling the observance of Sunday as a day of rest. The Constitution itself recognizes that day as a day of rest, and from the circumstances under which it was done, we are warranted in the opinion, that a power to compel a cessation from labor on that day was not designed to be withheld from the General Assembly.

CALIFORNIA SUNDAY LAW HELD  
UNCONSTITUTIONAL

## Supreme Court of California

APRIL TERM, 1858

Ex parte Newman \*

9 California, 502-518

SUNDAY LAW UNCONSTITUTIONAL.—Per TERRY, Chief Justice.—The act of April, 1858, “for the better observance of the Sabbath,” is in conflict with the first and fourth sections of article first of the Constitution of the State, and is therefore void.

CONSTITUTIONAL LAW.—RELIGIOUS TOLERATION.—The Constitution, when it forbids discrimination or preference in religion, does not mean merely to guarantee toleration, but religious liberty in its largest sense, and a perfect equality without distinction between religious sects. The enforced observance of a day held sacred by one of these sects, is a discrimination in favor of that sect, and a violation of the religious freedom of the others.

IDEM.—POWER OF LEGISLATURE.—Considered as a municipal regulation, the Legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week, any more than it can forbid it altogether.

IDEM.—EXTENT OF POWER OF GOVERNMENT.—The governmental power only extends to restraining each one in the freedom of his conduct so as to secure perfect protection to all others from every species of danger to person, health and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these seem to be all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation.

IDEM.—ACT UNCONSTITUTIONAL.—The act in question is in intention and effect a discrimination in favor of one religious profession over all others, and as such is in violation of the Constitution.

IDEM.—RELIGIOUS EQUALITY ENTITLED TO PROTECTION.—Per BURNETT, Justice.—Our Constitutional theory regards all religions, *as such*, as equally entitled to protection, and equally unentitled to preference. When there is no ground or necessity upon which a principle can rest

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\* Justice Field dissented from the decision of the court, and subsequently, when he became Chief Justice, in *Ex parte Andrews*, 18 California, 685, this decision was disapproved, and the dissenting opinion of Justice Field, approved.

but a religious one, then the Constitution steps in and says that it shall not be enforced by authority of law.

**SUNDAY LAW UNCONSTITUTIONAL.**—The Sunday law violates this provision of the Constitution, because it establishes a compulsory religious observance. It violates as much the religious freedom of the Christian as of the Jew. The principle is the same, whether the act compels us to do what we wish to do or what we wish not to do.

**IDEM.—POWER OF LEGISLATURE.**—If the Legislature has the power to establish a day of compulsory rest, it has the right to select the particular day.

**IDEM.—PROTECTION OF CONSTITUTION.**—The protection of the Constitution extends to every individual or to none. It is the individual that is intended to be protected. Every citizen has the right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State. When the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything because it violates simply a religious principle or observance, the Act is unconstitutional.

**IDEM.—A QUESTION OF LEGISLATIVE POWER.**—The constitutional question is a naked question of legislative power, and the inquiry as to the reasons which operated on the minds of members in voting for the measure, is wholly immaterial.

**CONSTITUTION CONSTRUED.**—If section first of article first of the Constitution asserts a principle not susceptible of practical application, then it may admit of a question whether any principle asserted in the declaration of rights can be the subject of judicial enforcement. And if such a position be true that the rights of property cannot be enforced by the Courts against an Act of the Legislature, a power is then conceded which renders the provisions of the other sections wholly inoperative.

**IDEM.—RIGHT TO POSSESS PROPERTY.**—The right to possess and protect property is not more clearly protected by the Constitution, than the right to acquire it. The right to acquire is the right to use the proper means to attain the end; and the use of such means cannot be prohibited by the Legislature, except the peace and safety of the State require it.

**IDEM.—Free agents must be left free, as to themselves.** If they cannot be trusted to regulate their own labor, its times, and quantity, it is difficult to trust them to make their own contracts. If the Legislature can prescribe the *days* of rest for them, it would seem that the same power can prescribe the *hours* to work, rest, and eat.

## HABEAS CORPUS.

Newman, the petitioner, was tried, and convicted before a justice of the peace of the city of Sacramento, for a violation of the Act of April tenth, 1858, entitled, "An Act to provide for the better observance of the Sabbath," and was sentenced to pay a fine of fifty dollars, and the costs of the prosecution—twenty dollars—or, in default of the payment of such fine and costs, to be imprisoned thirty-five days. Failing to pay the fine and costs imposed, he was imprisoned. The petitioner is an Israelite, engaged in the business of selling clothing, at Sacramento. The offense of which he was convicted was the sale of goods on Sunday. Upon his imprisonment, he petitioned this Court for a writ of habeas corpus, and prayed that he might be discharged from imprisonment, on the ground of the illegality of the same, by reason of the unconstitutionality of the Act.

The writ was issued, and on the return thereof, the petitioner was discharged.

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TERRY, Chief Justice.—The petitioner was tried and convicted before a justice of the peace for a violation of the Act of April, 1858, entitled "An Act for the better observance of the Sabbath," and, upon his failure to pay the fine imposed, was imprisoned.

The counsel for petitioner moves his discharge, on the ground that the Act under which these proceedings were had is in conflict with the first and fourth sections of the first article of the State Constitution, and therefore void.

The first section declares "all men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness."

The fourth section declares "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

The questions which arise in the consideration of the case are:

1. Does the act of the Legislature make a discrimination or preference favorable to one religious profession, or is it a mere civil rule of conduct?

2. Has the Legislature the power to enact a municipal regulation which enforces upon the citizen a compulsory abstinence from his ordinary lawful and peaceable avocations for one day in the week?

There is no expression in the Act under consideration which can lead to the conclusion that it was intended as a civil rule, as contradistinguished from a law for the benefit of religion. It is entitled "An Act for the better observance of the Sabbath," and the prohibitions in the body of the Act are confined to the "Christian Sabbath."

It is, however, contended, on the authority of some of the decisions of other States, that notwithstanding the pointed language of the Act, it may be construed into a civil rule of action, and that the result would be the same, even if the language were essentially different.

The fault of this argument is that it is opposed to the universally admitted rule which requires a law to be construed according to the intention of the law-maker, and this intention to be gathered from the language of the law, according to its plain and common acceptance.

It is contended that a civil rule requiring the devotion of one seventh of the time to repose is an absolute necessity, and the want of it has been dilated upon as a great evil of society. But have the Legislature so considered it? Such an assumption is not warranted by anything contained in the Sunday law. On the contrary, the intention which pervades the whole Act is to enforce, as a religious institution, the observance of a day held sacred by the followers of one faith, and entirely disregarded by all the other denominations within the State. The whole scope of the Act is expressive of an intention on the part of the Legislature to require a periodical cessation from ordinary pursuits, not as a civil duty, necessary for the repression of any existing evil, but in furtherance

of the interests, and in aid of the devotions of those who profess the Christian religion.

Several authorities, affirming the validity of similar statutes, have been cited from the reports of other States. While we entertain a profound respect for the Courts of our sister States, we do not feel called upon to yield our convictions of right to a blind adherence to precedent; especially when they are, in our opinion, opposed to principle, and the reasoning by which they are endeavored to be supported is by no means satisfactory or convincing. In *Bryan v. Berry*, (6 California, 398,) in reference to the decisions of other States, we said, "decided cases are, in some sense, evidence of what the law is. We say in some sense, because it is not so much the decision as it is the reasoning upon which the decision is based, which makes it authority, and requires it to be respected."

It will be unnecessary to examine all the cases cited by the district attorney. The two leading cases in which the question is more elaborately discussed than in the others, are the cases of *Sepect v. the Commonwealth*, (8 Barr. 313) and *The City Council v. Benjamin*, (2 Strob[hart,] 508,) decided respectively by the Supreme Courts of Pennsylvania and South Carolina. These decisions are based upon the ground that the statutes requiring the observance of the Christian Sabbath established merely a civil rule, and make no discrimination or preference in favor of any religion. By an examination of these cases, it will be seen that the position taken rests in mere assertion, and that not a single argument is adduced to prove that a preference in favor of the Christian religion is not given by the law. In the case in 8 Barr, the Court said: "It (the law) intermeddles not with the natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences; it compels none to attend, erect or support any place of worship, or to maintain any ministry, against his consent; it pretends not to control or interfere with the rights of conscience, and it establishes no preference for any religious establishment or mode of worship."

This is the substance of the arguments to show that these

laws establish no preference. The last clause in the extract asserts the proposition broadly; but it is surely no legitimate conclusion from what precedes it, and must be taken as the plainest example of *petitio principii*. That which precedes it establishes that the law does not destroy religious toleration, but that is all.

Now, does our Constitution, when it forbids discrimination or preference in religion, mean merely to guarantee toleration? For that, in effect, is all which the cases cited seem to award, as the right of a citizen. In a community composed of persons of various religious denominations, having different days of worship, each considering his own as sacred from secular employment, all being equally considered and protected under the Constitution, a law is passed which in effect recognizes the sacred character of one of these days, by compelling all others to abstain from secular employment, which is precisely one of the modes in which its observance is manifested, and required by the creed of that sect to which it belongs as a Sabbath. Is not this a discrimination in favor of the one? Does it require more than an appeal to one's common sense to decide that this is a preference? And when the Jew or seventh-day Christian complains of this, is it any answer to say, Your conscience is not constrained, you are not compelled to worship or to perform religious rites on that day, nor forbidden to keep holy the day which you esteem as a Sabbath? We think not, however high the authority which decides otherwise.

When our liberties were acquired, our republican form of government adopted, and our Constitution framed, we deemed that we had attained not only toleration, but religious liberty in its largest sense—a complete separation between Church and State, and a perfect equality without distinction between all religious sects.\* “Our Government,” says Mr. Johnson, in his celebrated

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\* See *Bloom v. Richards*, pages 565-567; *Hale v. Everett*, 53 New Hampshire, 1. The principle of absolute religious equality is the foundation stone of religious liberty in this country. As Madison says, “Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the religion which we believe to be of divine origin, we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us.” (See p. 114.)

Sunday-mail report, "is a civil and not a religious institution; whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others." And again, dwelling upon the danger of applying the powers of government to the furtherance and support of sectarian objects, he remarks, in language which should not be forgotten, but which ought to be deeply impressed on the minds of all who desire to maintain the supremacy of our republican system: "Extensive religious combinations to effect a political object, were, in the opinion of the committee, always dangerous. The first effort of the kind calls for the establishment of a principle which would lay the foundation for dangerous innovation upon the spirit of the Constitution, and upon the religious rights of the citizens. If admitted, it may be justly apprehended that the future measures of the government will be strangely marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence, and when that influence begins to operate upon the political institution of a country, the civil power soon bends under it, and the catastrophe of other nations furnishes an awful warning of the consequences. . . . What other nations call religious toleration, we call religious rights; they were not exercised in virtue of governmental indulgence, but as rights of which the government cannot deprive any portion of her citizens, however small. Despotism may invade those rights, but justice still confirms them. Let the National Legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid for that usurpation of the divine prerogative in this country, which has been the desolating scourge of the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion for enforcing religious observances."

We come next to the question whether, considering the Sunday law as a civil regulation, it is in the power of the Legislature to

enforce a compulsory abstinence from lawful and ordinary occupation for a given period of time, without some apparent civil necessity for such action; whether a pursuit, which is not only peaceable and lawful, but also praiseworthy and commendable, for six days of the week, can be arbitrarily converted into a penal offense or misdemeanor on the seventh. As a general rule, it will be admitted that men have a natural right to do anything which their inclinations may suggest, if it be no evil in itself, and in no way impairs the rights of others.\* When societies are formed, each individual surrenders certain rights,† and as an equivalent for that surrender has secured to him the enjoyment of certain others appertaining to his person and property, without the protection of which society cannot exist. All legislation is a restraint on individuals, but it is a restraint which must be submitted to by all who would enjoy the benefits derived from the institutions of society.

It is necessary, for the preservation of free institutions, that there should be some general and easily recognized rule, to determine the extent of governmental power, and establish a proper line of demarcation between such as are strictly legitimate and such as are usurpations which invade the reserved rights of the citizen, and infringe upon his constitutional liberty. The true rule of distinction would seem to be that which allows to the Legislature the right so to restrain each one, in his freedom of conduct, as to secure perfect protection to all others from every species of danger to person, health, and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these, we think, are all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation. For these reasons the

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\* As Herbert Spencer says: "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man."—*Justice* (1891), p. 46.

† For the views of others upon this question, see pages 196-201. The *natural* rights of man are inalienable; for governments have no legitimate power to take away what they were instituted to protect.

law restrains the establishment of tanneries, slaughterhouses, gunpowder depots, the discharge of firearms, etc., in a city, the sale of drugs and poisons, and the practice of physic by incompetent persons, and makes a variety of other prohibitions, the reason and sense of which are obvious to the most common understanding.

Now, when we come to inquire what reason can be given for the claim of power to enact a Sunday law, we are told, looking at it in its purely civil aspect, that it is absolutely necessary for the benefit of *his* [the individual's] health and the restoration of *his* powers, and in aid of this great social necessity, the Legislature may, for the general convenience, set apart a particular day of rest, and require its observance by all.

This argument is founded on the assumption that mankind are in the habit of working too much, and thereby entailing evil upon society; and that, without compulsion, they will not seek the necessary repose which their exhausted natures demand. This is to us a new theory, and is contradicted by the history of the past and the observations of the present. We have heard, in all ages, of declamations and reproaches against the vice of indolence; but we have yet to learn that there has ever been any general complaint of an intemperate, vicious, unhealthy, or morbid industry. On the contrary, we know that mankind seek cessation from toil from the natural influences of self-preservation, in the same manner and as certainly as they seek slumber, relief from pain, or food to appease their hunger.

Again, it may be well considered that the amount of rest which would be required by one half of society may be widely disproportionate to that required by the other. It is a matter of which each individual must be permitted to judge for himself according to his own instincts and necessities. As well might the Legislature fix the days and hours for work, and enforce their observance by an unbending rule which shall be visited alike upon the weak and strong. Whenever such attempts are made the lawmaking power leaves its legitimate sphere and makes an incursion into the realms of physiology, and its enactments, like the sumptuary

laws of the ancients, which prescribe the mode and texture of people's clothing, or similar laws which might prescribe and limit our food and drink, must be regarded as an invasion, without reason or necessity, of the natural rights of the citizen, which are guaranteed by the fundamental law.

The truth is, however much it may be disguised, that this one day of rest is a purely religious idea. Derived from the Sabbatical institutions of the ancient Hebrew, it has been adopted into all the creeds of succeeding religious sects throughout the civilized world; and whether it be the Friday of the Mohammedan, the Saturday of the Israelite, or the Sunday of the Christian, it is alike fixed in the affections of its followers, beyond the power of eradication, and in most of the States of our Confederacy, the aid of the law to enforce its observance has been given, under the pretense of a civil, municipal, or police regulation.

But it has been argued that this is a question exclusively for the Legislature; that the law-making power alone has the right to judge of the necessity and character of all police rules, and that there is no power in the judiciary to interfere with the exercise of this right.

One of the objects for which the judicial department is established is the protection of the constitutional rights of the citizen. The question presented in this case is not merely one of expediency or abuse of power; it is a question of usurpation of power. If the Legislature have the authority to appoint a time of compulsory rest, we would have no right to interfere with it, even if they required a cessation from toil for six days in the week instead of one. If they possess this power, it is without limit, and may extend to the prohibition of all occupations at all times.

While we concede to the Legislature all the supremacy to which it is entitled, we cannot yield to it the omnipotence which has been ascribed to the British Parliament, so long as we have a Constitution which limits its powers, and places certain innate rights of the citizen beyond its control.

It is said that the first section of article first of the Constitution

is a common-place assertion of a general principle, and was not intended as a restriction upon the power of the Legislature. This Court has not so considered it.

In *Billings v. Hall*, (7 California, 1.) Chief Justice Murray says, in reference to this section of the constitution: "This principle is as old as the Magna Charta. It lies at the foundation of every constitutional government, and is necessary to the existence of civil liberty and free institutions. It was not lightly incorporated into the Constitution of this State, as one of those political dogmas designed to tickle the popular ear, and conveying no substantial meaning or idea, but as one of those fundamental principles of enlightened government, without a rigorous observance of which there could be neither liberty nor safety to the citizen."

In the same case, Mr. Justice Burnett asserted the following principles, which bear directly upon the question: "That among the inalienable rights declared by our Constitution as belonging to each citizen, is a right of 'acquiring, possessing, and protecting property.' . . . 'That for the Constitution to declare a right inalienable, and at the same time leave the Legislature unlimited power over it, would be a contradiction in terms, an idle provision, proving that a Constitution was a mere parchment barrier, insufficient to protect the citizen, delusive and visionary, and the practical result of which would be to destroy, not conserve the rights it vainly assumed to protect.'" \*

Upon this point, I dissent from the opinion of the Court in *Billings v. Hall*, and if I considered the question an open one, I might yet doubt its correctness; but the doctrine announced in that opinion having received the sanction of the majority of the Court, has become the rule of decision, and it is the duty of the Court to see it is uniformly enforced, and that its application is not confined to a particular class of cases.

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\* James Madison, in remonstrating against any infringement by the Legislature of Virginia upon the religious liberty of the individual, had occasion to assert the same principle: "Either, then, we must say that the will of the Legislature is the only measure of their authority, and that in the plenitude of this authority, they may sweep away all our fundamental rights; or that they are bound to leave this particular right untouched and sacred." (See page 119.)

It is the settled doctrine of this Court to enforce every provision of the Constitution in favor of the rights reserved to the citizen against a usurpation of power in any question whatsoever, and although in a doubtful case, we would yield to the authority of the Legislature, yet upon the question before us, we are constrained to declare that, in our opinion, the Act in question is in conflict with the first section of article first of the Constitution, because, without necessity, it infringes upon the liberty of the citizen, by restraining his right to acquire property.

And that it is in conflict with the fourth section of the same article, because it was intended as, and is in effect, a discrimination in favor of one religious profession, and gives it a preference over all others.

It follows that the petitioner was improperly convicted, and it is ordered that he be discharged from custody.

BURNETT, Justice.—The great importance of the constitutional principle involved, and the different view I take of some points, make it proper for me to submit a separate opinion. The question is one of no ordinary magnitude, and of great intrinsic difficulty. The embarrassment we might otherwise experience in deciding a question of such interest to the community, and in reference to which there exists so great a difference of opinion, is increased by the consideration that the weight of the adjudged cases is against the conclusion at which we have been compelled to arrive.

In considering this constitutional question, it must be conceded that there are some great leading principles of justice, eternal and unchangeable, that are applicable at all times and under all circumstances. It is upon this basis that all Constitutions of free government must rest. A Constitution that admits that there are any inalienable rights of human nature reserved to the individual, and not ceded to society, must, of logical necessity, concede the truth of this position. But it is equally true that there are other principles, the application of which may be justly modified by circumstances.

It would seem to be true that exact justice is only an exact con-

formity to some law. Without law there could be neither merit or demerit, justice or injustice; and, when we come to decide the question whether a given act be just or unjust, we must keep in our view that system of law by which we judge it. As judged by one code of law, the act may be innocent; while as judged by another, it may be criminal. As judged by the system of abstract justice (which is only that code of law which springs from the natural relation and fitness of things) there must be certain inherent and inalienable rights of human nature that no government can rightfully take away. These rights are retained by the individual because their surrender is not required by the good of the whole. The just and legitimate ends of civil government can be practically and efficiently accomplished whilst these rights are retained by the individual. Every person, upon entering into a state of society, only surrenders so much of his individual rights as may be necessary to secure the substantial happiness of the community. Whatever is not necessary to attain this end is reserved to himself.

But, conceding the entire correctness of these views, it must be equally clear that the original and primary jurisdiction to determine the question what are these inalienable rights, must exist somewhere; and wherever placed, its exercise must be conclusive, in the contemplation of the theory, upon all.

The power to decide what individual right must be conceded to society, originally existed in the sovereign people who made the Constitution. As they possessed this primary and original jurisdiction, their action must be final. If they exercised this power, in whole or in part, in the formation of the Constitution, their action, so far, is conclusive.

It must also be conceded that this power, from its very nature, must be legislative and not judicial. The question is simply one of necessity—of abstract justice. It is a question that naturally enters into the mind of the law-maker, not into that of the law-expounder. The judicial power, from the nature of its functions, cannot determine such a question. Judicial justice is but conformity to the law as already made.

If these views be correct, the judicial department cannot, in any case, go behind the Constitution, and by any original standard judge the justice or legality of any single one or more of its provisions. The judiciary is but the creature of the Constitution, and cannot judge its creator. It cannot rise above the source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means. And the same may be said of any act of the Legislature, if within the limits of its discretion, as defined by the Constitution. Such an act of the Legislature is as much beyond the reach of the judiciary as is the Constitution itself. (1 Bald[win,] 74; 1 Brocken[borough,] 203; 10 Peters, 478; 5 Geor[gia,] 194.)

But it is the right and the imperative duty of this Court to construe the Constitution and statutes in the last resort; and, from that construction, to ascertain the will of the law-maker. And the only legitimate purpose for which a Court can resort to the principles of abstract justice, is to ascertain the proper construction of the law in cases of doubt. When, in the opinion of the Court, a given construction is clearly contrary to the manifest principles of justice, then it will be presumed, as a case not free from doubt, that the Legislature never intended such a consequence. (*Varick v. Briggs*, 6 Paige, 330; *Flint River Steamboat Company v. Foster*, 5 Geor[gia,] 194.) But when the intention is clear, however unjust and absurd the consequences may be, it must prevail, unless it contravenes a constitutional provision.

If these views be correct, it follows that there can be for this court no higher law than the Constitution; and in determining this question of constitutional construction, we must forget, as far as in us lies, that we are religious or irreligious men. It is solely a matter of construction, with which our individual feelings, prejudices, or opinions upon abstract questions of justice can have nothing to do. The Constitution may have been unwisely framed. It may have given too much or too little power to the Legislature. But these are questions for the statesman, not for the jurist. Courts are bound by the law as it is.

The British constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both. It is believed that this difference has been sometimes overlooked by our Courts in considering constitutional questions; and English authorities followed in cases to which they could be properly applied. We often meet with the expression that Christianity is a part of the common law. Conceding that this is true, it is not perceived how it can influence the decision of a constitutional question. The Constitution of this State will not tolerate any discrimination or preference in favor of any religion; and, so far as the common law conflicts with this provision, it must yield to the Constitution. Our constitutional theory regards all religions, as such, equally entitled to protection, and all equally unentitled to any preference. Before the Constitution they are all equal. In so far as the principles found in all or in any one or more of the different religious systems, are considered applicable to the ends legitimately contemplated by civil constitutional government, they can be embodied in our laws and enforced. But when there is no ground or necessity upon which a principle can rest, but a religious one, then the Constitution steps in, and says that you shall not enforce it by authority of law.

The Constitution says that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

If we give this language a mere literal construction, we must conclude that the protection given is only intended for the professor, and not for him who does not worship. "The free exercise and enjoyment of religious profession and worship," is the thing expressly protected by the Constitution. But, taking the whole section together, it is clear that the scope and purpose of the Constitution was to assert the great, broad principle of religious freedom for all—for the believer and the unbeliever. The government has no more power to punish a citizen when he professes no religion, than it has when he professes any particular religion.

The Act of the Legislature under consideration violates this section of the Constitution, because it establishes a compulsory religious observance; and not as I conceive, because it makes a discrimination between different systems of religion. If it be true that the Constitution intended to secure entire religious freedom to all, without regard to the fact whether they were believers or unbelievers, then it follows that the Legislature could not create and enforce any merely religious observance whatever. It was the purpose of the Constitution to establish a *permanent* principle, applicable at all times, under all circumstances, and to all persons. If all the people of the State had been unbelievers, the Act would have been subject to the same objection. So, if they had all been Christians, the power of the Legislature to pass the Act would equally have been wanting. The will of the whole people has been expressed through the Constitution; and until this expression of their will has been changed in some authoritative form it must prevail with all the departments of the State government. The Constitution, from its very nature as a permanent organic Act, could not shape its provisions so as to meet the changing views of individuals. Had the Act made Monday, instead of Sunday, a day of compulsory rest, the constitutional question would have been the same. The fact that the Christian *voluntarily* keeps holy the first day of the week, does not authorize the Legislature to make that observance compulsory. The Legislature cannot compel the citizen to do that which the Constitution leaves him free to do or omit, at his election. The Act violates as much the religious freedom of the Christian as of the Jew. Because the conscientious views of the Christian compel him to keep Sunday as a Sabbath, he has the right to object, when the Legislature invades his freedom of religious worship, and assumes the power to compel him to that which he has the right to omit if he pleases. The principle is the same, whether the Act of the Legislature *compels* us to do that which we wish to do or not to do.

The *compulsory* power does not exist in either case. If the Legislature has power over the subject, this power exists without

regard to the particular views of individuals. The sole inquiry with us is, whether the Legislature can create a day of compulsory rest. If the Legislature has the power, then it has the right to select the particular day. It could not well do otherwise.

The protection of the Constitution extends to *every* individual or to none. It is the individual that is intended to be protected. The principle is the same, whether the many or the few are concerned. The Constitution did not mean to inquire how many or how few would profess or not profess this or that particular religion. If there be but a single individual in the State who professes a particular faith, he is as much within the sacred protection of the Constitution as if he agreed with the great majority of his fellow-citizens. We cannot, therefore, inquire into the particular views of the petitioner, or of any other individual. We are not bound to take judicial notice of such matters, and they are not matters of proof. There may be individuals in the State that hold Monday as a Sabbath. If there be none such now, there may be in the future. And if the unconstitutionality of an act of this character depended, in any manner, upon the fact that a particular day of the week was selected, then it follows that any individual could defeat the act by professing to hold the day specified as his Sabbath. The Constitution protects the freedom of religious *profession* and worship, without regard to the sincerity or insincerity of the worshiper. We could not inquire into the fact whether the individual professing to hold a particular day as his Sabbath was sincere or otherwise. He has the right to profess and worship as he pleases, without having his motives inquired into. His motives in exercising a constitutional privilege are matters too sacred to be submitted to judicial scrutiny. Every citizen has the undoubted right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State.

Under the Constitution of this State, the Legislature cannot pass any Act, the legitimate effect of which is *forcibly* to establish any merely religious truth, or enforce any merely religious observances. The Legislature has no power over such a subject.

When, therefore, the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything, because it violates simply a religious principle or observance, the Act is unconstitutional.

In considering the question whether the Act can be sustained, upon the ground that it is a mere municipal regulation, the inquiry as to the reasons which operated upon the minds of members, in voting for the measure, is, as I conceive, wholly immaterial. The constitutional question is a naked question of legislative power. Had the Legislature the power to do the particular thing done? What was that particular thing? It was the prohibition of labor on Sunday. Had the Act been so framed as to show that it was intended by those who voted for it, as simply a municipal regulation; yet, if, in fact, it contravened the provision of the Constitution securing religious freedom to all, we should have been compelled to declare it unconstitutional for *that* reason. So, the fact that the Act is so framed as to show that a different reason operated upon the minds of those who voted for it, will not prevent us from sustaining the Act, if any portion of the Constitution conferred the power to pass it upon the Legislature.

Where the power exists to do a particular thing, and the thing is done, the reason which induced the Act is not to be inquired into by the Courts. The power may be abused; but the abuse of the power cannot be avoided by the judiciary. A Court may give a wrong reason for a proper judgment; still, the judgment must stand. The members of the Legislature may vote for a particular measure from erroneous or improper motives. The only question with the Courts is, whether that body had the power to command the particular Act to be done or omitted. The view here advanced, is sustained substantially by the decision in the case of *Fletcher v. Peck* (6 Cranch, 131). It was urged, in argument, that the provision of the first section of the first article of the Constitution, asserting the "inalienable right of acquiring, possessing, and protecting property," was only the statement in general terms, on a general principle, not capable in its nature of being judicially enforced.

It will be observed that the first article contains a declaration of rights, and if the first section of that article asserts a principle not susceptible of practical application, then it may admit of a question whether any principles asserted in this declaration of rights can be the subject of judicial enforcement. But that at least a portion of the general principle asserted in that article can be enforced by judicial determination, must be conceded. This has been held at all times, by all the Courts, so far as I am informed.

The provisions of the sixteenth section of the first article which prohibits the Legislature from passing any law impairing the obligation of contracts, is based essentially upon the same ground as the first section, which asserts the right to acquire, possess, and defend property. The right substantially secured by both sections is the right of property. This right of property is the substantial basis upon which the provisions of both sections must rest. The reason of, and the end to be accomplished by, each section are the same. The debtor has received property or other valuable consideration for the sum he owes the creditor, and the sum, when collected by the creditor, becomes his property. The right of the creditor to collect from the debtor that which is due, is essentially a right of property. It is the right to obtain from the debtor property which is unjustly detained from the creditor.

If we take the position to be true, for the sake of the argument, that the right of property cannot be enforced by the Courts against an Act of the Legislature, we then concede a power that renders the restrictions of other sections inoperative. For example, if the Legislature has the power to take the property of one citizen, and give it to another without compensation, the prohibition to pass any law impairing the obligation of contracts, could readily be avoided. All the Legislature would have to do to accomplish this purpose, would be to allow the creditor first to collect his debt, and afterwards take the property of the creditor, and give it to the debtor. For if we once concede the power of the Legislature

to take the property of A and give it to B, without compensation, we must concede to that body the exclusive right to judge when, and in what instances, this conceded right should be exercised.

It was also insisted, in argument, that the judicial enforcement of the right of property, as asserted in the first section, is inconsistent with the power of compulsory process, to enforce the collection of debts by the seizure and sale of the property of the debtor. But is this true? On the contrary, is not the power to seize and sell the property of the debtor expressly given by the Constitution for the very purpose of protecting and enforcing this right of property? When the Constitution says that you shall not impair the obligation of the contract it says in direct effect that you shall enforce it; and the only means to do this efficiently is by a seizure and sale. The seizure and sale of the property of the debtor was contemplated by the Constitution, as being a part of the contract itself. The debtor stipulates in the contract, that, in case he fails to pay, the creditor may seize and sell his property by legal process. Such is the legal effect of the contract, because the existing law enters into and forms a part of it.

The different provisions of the Constitution will be found when fairly and justly considered, to be harmonious and mutually dependent one upon the other. A general principle may be asserted in one section without any specification of the exceptions in that place. But it must be evident that practical convenience and logical arrangement will not always permit the exceptions to be stated in the same section. It is matter of no importance in what part of the Constitution the exception may be found. Wherever found, it must be taken from the general rule, leaving the remainder of the rule to stand. The general right of enjoying and defending life and liberty is asserted in the first section of the first article; while the exceptions are stated in the eighth, ninth, fifteenth, and eighteenth sections of the same article. A party may, by express provisions of the Constitution, forfeit his liberty. The same remark, in reference to exceptions to general principles, will apply to other provisions.

The right to protect and possess property is not more clearly protected by the Constitution than the right to acquire. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents.<sup>9</sup> The Legislature, therefore, cannot prohibit the proper use of the means of acquiring property, except the peace and safety of the State require it. And in reference to this point, I adopt the reasons given by the Chief Justice, and concur in the views expressed by him.

There are certain classes of subjects over which the Legislature poses a wide discretion; but still this discretion is confined within certain limits; and although, from the complex nature of the subject, these limits cannot always be definitely settled in advance, they do and must exist. It was long held, in general terms, that the Legislature had the power to regulate the remedy; but cases soon arose where the courts were compelled to interpose. In the case of *Bronson v. Kenzie*, (1 How[ard,] 311,) Chief Justice Taney uses this clear language:

“It is difficult, perhaps, to draw a line that would be applicable in all cases, between legitimate alterations of the remedy and provisions which in the form of remedy impair the right; but it is manifest that the obligation of the contract may, in effect, be destroyed by denying the remedy altogether; or may be seriously impaired by hampering the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing.”

So, the power of the Legislature to pass recording acts and statutes of limitations is conceded, in general terms, and a wide discretion given. Yet, in reference to these powers, Mr. Justice Baldwin, in delivering the opinion of the Supreme Court of the United States, in the cases of *Jackson v. Lamphine*, (3 Peters, 289,) uses this language:

“Cases may occur where the provisions of a law on these subjects may be so unreasonable as to amount to a denial of the right and call for the interposition of the Court.”

The Legislature is vested by the Constitution with a wide dis-

cretion in determining what is necessary to the peace and safety of the State; yet this discretion has some limits. It may be difficult, in many cases, to define these limits with exact precision; but this difficulty cannot show that there are no limits. Such difficulties must arise under every system of limited government.

The question arising under this act is quite distinguishable from the case where the Legislature of a State in which slavery is tolerated, passes an act for the protection of the slave against the inhumanity of the master in not allowing sufficient rest. In this State, every man is a free agent, competent and able to protect himself, and no one is bound by law to labor for any particular person. Free agents must be left free, as to themselves. Had the act under consideration been confined to infants or persons bound by law to obey others, then the question presented would have been very different. But if we cannot trust free agents to regulate their own labor, its times and quantity, it is difficult to trust them to make their own contracts. If the Legislature could prescribe the days of rest for them, then it would seem that the same power could prescribe the hours to work, rest, and eat.

For these reasons, I concur with the Chief Justice in discharging the petitioner.

## DENVER, COLORADO, SUNDAY LAW INVALID

### Supreme Court of Colorado

SEPTEMBER TERM, 1909

Mergen v. City and County of Denver

46 Colorado, 385

Plaintiff in error was convicted of violating sec. 1256 of the Municipal Code of the city and county of Denver. The section is as follows: "It shall be unlawful for any person, firm or corporation to keep open or conduct any butcher shop, meat market or grocery store, or to expose or offer for sale or sell any meats, fish, game, poultry, groceries or provisions on the first day of the week, commonly called Sunday."

It does not appear that the section, as framed, will promote the peace, welfare, health, or other ends for the promotion of

which the police power of the city may be exercised.<sup>10</sup> Upon the authority of *Denver v. Bach*, 26 Colorado, 530, and for the reasons there given the section of the Municipal Code under which plaintiff in error was convicted, is invalid.

The judgment will, therefore, be reversed and the cause remanded with instructions to dismiss the complaint. . . . All the justices concurring.

## MARYLAND SUNDAY LAW OF 1723 NOT IN FORCE IN DISTRICT

### Court of Appeals of the District of Columbia

District of Columbia, Plaintiff in Error, v. Charles Robinson

[DECIDED JANUARY 21, 1908]

*Washington Law Reporter* 36:101-103, Feb. 14, 1908

Mr. Justice Van Orsdel delivered the opinion of the court.

This cause was brought here on writ of error to the Police Court of the District of Columbia. An information was filed therein, charging the defendant with the offense of working on Sunday. The statute, under which the prosecution was sought to be maintained, was an act of the Maryland legislative assembly of 1723, chapter 16, section 10, appearing in Abert's Compiled Statutes D. C., page 176.\* It is as follows:

"That no person whatsoever shall work or do any bodily labor on the Lord's Day, commonly called Sunday, and that no

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\* See p. 49. This law, with other Maryland laws, had been incorporated by act of Congress in 1801, into the laws of the District when it was taken over by Congress, and remained on the District statute books in codes compiled as late as 1868. But it had never been enforced. A test case, however, was started under it in 1907. In July of that year, General John M. Wilson protested to the District Commissioners against the hauling of dirt along Massachusetts Avenue on Sunday, July 21, by Charles Robinson, a driver for J. H. Houser, the District contractor. The complaint was referred to Corporation Counsel E. H. Thomas for an opinion as to whether prosecution could be brought, resulting in the exhuming of this old Maryland blue law, and a trial under it in the police court before Judge Mullowny, October 29, 1907. Judge Mullowny at once decided that the law was obsolete and inoperative. The case was appealed to the District Court of Appeals, the highest court of the District, where it came up for hearing January 10, 1908. The decision, confirming the opinion of the lower court, was rendered January 21, 1908. In his brief before the latter court, Edward S. Duvall, Jr., attorney for the defendant said: "*The Act is unconstitutional because it is plainly a law prohibited by the first amendment to the Constitution.*"

person having children, servants, or slaves shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's Day (works of necessity and charity always excepted), nor shall suffer or permit any children, servants, or slaves to profane the Lord's Day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations, and that every person transgressing this act, and being thereof convict by the oath of one sufficient witness, or confession of the party, *before the Police Court* (a single magistrate) shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid."

The complaint was in the usual form, signed and sworn to by the corporation counsel. The defendant demurred to the complaint on several grounds, one of which was "that the said act of the Maryland legislature has never been enforced in this District, and by disuse has become obsolete." The police justice sustained the demurrer and dismissed the defendant. From that judgment the case was brought here on a writ of error by the corporation counsel. We think a consideration of the one ground of demurrer above cited will fully dispose of the questions involved in this case.<sup>11</sup> . . .

While it is the legitimate prerogative of the legislature to impose upon society the civil duty of observing one day in seven as a day of rest, it is beyond its power to impose the observance of Sunday as a purely religious duty. In other words, while the legislature may very properly prescribe and impose upon the citizen obligations of a civil nature, it cannot impose the same obligations as religious duties. If, therefore, the act in question was intended to enforce the observance of the Sabbath as a religious obligation, and not a civil duty, whatever power the colonial legislative assembly may have had to prescribe and enforce such a law, we are of the opinion that it can not be legally enforced under our present constitutional form of government. The Constitution of the United States guarantees to the citizen absolute religious freedom in that it forbids the enactment of any

law respecting an establishment of religion, or that will prohibit the free exercise thereof.

With this distinction before us let us analyze the manifest object and purpose of the statute before us. The act of which this section was a part was entitled "An act to punish blasphemers, swearers, drunkards, and Sabbath breakers, and for repealing the laws heretofore made for punishing such offenders." The first section provided "that if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blaspheme or curse God, or deny our Saviour Jesus Christ to be the son of God, or shall deny the Holy Trinity; the Father, Son, and Holy Ghost, or the Godhead of any of the Three Persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity or any of the Persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offence, be bored through the tongue and fined twenty pounds sterling; . . . for the second offence . . . shall be stigmatized by burning in the forehead with the letter B, and fined forty pounds sterling; . . . and that for the third offence, the offender, being convicted as aforesaid, shall suffer death without the benefit of the clergy." The second section related to profane swearing in the presence of certain officers named, among which were ministers, vestrymen and church wardens. The third section prohibited drunkenness. The other sections aside from the one here under consideration, related to the manner in which trials should be conducted, and the manner of enforcing the collection of fines and the infliction of punishment. The act then provided for the repeal of certain acts providing for "Sanctifying and Keeping Holy the Lord's Day, commonly called Sunday, and for the Punishment for Blasphemy, Profane Swearing, Cursing and Drunkenness."

Taking the entire act into consideration, we are forced to the conclusion that the object of this statute undoubtedly was to prevent a desecration of the Lord's Day, as it was called in the act, and not primarily to enforce a day of rest, which is the

present policy of such laws as defined by the courts. The statute before us is part of a peculiar class of legislation that was enacted in many of the colonies during the seventeenth and the early part of the eighteenth centuries. The object of such legislation was not to bring about the purpose sought to be accomplished by the legislation of the present day, providing for a cessation from labor on one day in seven, but to enforce a strict religious observance of the Sabbath day. Such laws were the outgrowth of the system of religious intolerance that prevailed in many of the colonies. They prescribed religious and not civil duties. With the adoption of the Constitution and the establishment of constitutional governments in the States of the Union these laws dropped into disuse, and any attempt to enforce them was frowned upon by the courts.<sup>12</sup> . . .

It was admitted at bar that no former attempt had ever been made to enforce the statute in question, though it has been on the statute books of the District of Columbia for more than one hundred years. . . . It is proper to regard the statute before us not only as obsolete, but as repealed by implication in such essential parts as an advanced and enlightened civilization justifies with due regard for the personal liberties of the citizen. . . . The judgment of the Police Court is affirmed.

## EXEMPTIONS UNDER SUNDAY LAWS

### Oklahoma Criminal Court of Appeals

Krieger, et al., v. State

OCTOBER 18, 1916

160 Pac. 36-38

Appeal from County Court, Blaine County:

G. J. Krieger and another were convicted of violating the Sabbath law, and appeal. Reversed and remanded, with directions to dismiss.

William O. Woolman, of Watonga, and Cyrus Simmons, of Knoxville, Tennessee, for plaintiffs in error.

R. McMillan, Assistant Attorney General and Homer N. Boardman, of Oklahoma City, for the State.

BRETT, J. The plaintiffs in error in this case were prosecuted and convicted in the county court of Blaine County for violating our Sabbath or Sunday laws.

It appears from the record that they were conducting a general mercantile business at Hitchcock, Oklahoma, and exposed their merchandise for sale on Sunday; that this was done in an orderly, peaceable, and quiet way. And there is no complaint that it was done in such manner as to interrupt or disturb other persons in observing Sunday or the first day of the week as "holy time." It also appears that plaintiffs in error are and were Seventh-day Adventists, and uniformly and religiously observed Saturday, or the seventh day of the week, as a day of rest and "holy time."

[1-3] Counsel for both plaintiffs in error and the State have filed able and elaborate briefs.<sup>13</sup> But as we view the situation, the question presents a very simple proposition, and turns on the legislative intent as expressed in section 2406, Revised Laws 1910.

After designating the first day of the week as the Sabbath and declaring that Sabbathbreaking shall consist: First of "servile labor, except works of necessity or charity;" and, second, "trades, manufactures and mechanical employments"—the Legislature then makes an exception, and in Section 2406 provides that:

"It is a sufficient defense in proceeding for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time."

Now the question is, What did the Legislature contemplate by the term "servile labor" in this exception? It is loosely stated by some courts that the term "servile labor" is infelicitous. But there is no such thing as "servile labor" in this country, and has

not been for years; and the term is not only “infelicitous” but is obsolete and meaningless, as applied to present conditions. And if our statute should be limited to the literal meaning of the term, then neither the prohibition nor exception in the statute could apply to any class of labor existing today, either in this state or the nation. The word “servile” pertains to slaves, to those held in subjection and enslaved, and no such thing as that exists today in our nation. But our legislators certainly had in mind some existing character or class of labor to which they intended that both the prohibition and the exception should apply, and we think must have intended to use the word “servile” as synonymous with secular. It would be highly improper to strike down a statute so vital as this as meaningless, unless it should be impossible, by any reasonable construction, to ascertain the Legislative intent. This law, as stated by an eminent jurist, . . . “proceeds upon the theory, entertained by most of those who have investigated the subject, that the physical, intellectual, and moral welfare of mankind requires a periodical day of rest from labor, and, as some particular day must be fixed, the one most naturally selected is that which is regarded as sacred by the greatest number of citizens, and which by custom is generally devoted to religious worship, or rest and recreation, as this causes the least interference with business or existing customs.”

But our Legislature, we think, wisely and properly, by the provisions of Section 2406, Revised Laws, 1910, exempted anyone who “uniformly keeps another day of the week as holy time, and does not labor upon that day” from the penalties of this statute; provided, such person who uniformly and religiously keeps another day as holy time works on the first day “in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.” The writer of this opinion conscientiously and religiously believes that Sunday, or the first day of the week, is the day upon which all persons should rest; and is the day that should be observed as holy time by all Christians; in commemoration of the greatest fact in our religion, the resur-

rection of our Lord. But I cannot, and would not if I could, make my conscience the standard of my brother. We are all fallible, and I would not assume the responsibility of forcing him to adopt my faith; for, should I be wrong, my responsibility would then be doubled. And the Legislature intended to refrain from interfering with or coercing the conscience of those who uniformly and conscientiously keep another day than the first day of the week as holy time, by the provisions of Section 2406. And we think this is in harmony with the spirit and genius of our government. And when our legislators exempted persons who uniformly, conscientiously, and religiously keep another day from the penalties of the statute, they intended to give them a substance and not a shadow. Hence we think the Legislature intended to use the word "servile" as synonymous with "secular." And in this we are sustained by *Gladwin v. Lewis*, 6 Conn. 49, 16 Am. Dec. 33. But even without a precedent, we think, no other construction could give vitality to the real legislative intent.

[4] But it is facetiously argued by some courts that to say to these people they shall keep our Sunday does not prevent them from also keeping the day they regard as "holy day." But these courts overlook the fact that under the divine commandment these people are striving to obey it is just as imperative that they work six days as it is that they rest on the seventh. And if their conscience compels them to rest one day, and the law forces them to also rest another, they would thus be forced to violate the first provision of the commandment they are attempting conscientiously to keep.

For these reasons, and others that might be added, we think the judgment should be reversed.

The judgment is therefore reversed and the cause remanded, with directions to dismiss the case.

[Thomas H.] Doyle, P. J., and [James R.] Armstrong, J., concur.

## DISCUSSION

## Sunday Contracts Valid (P. 660)

<sup>1</sup> In *Hiram Bloom v. Cornelius Richards* (see p. 565), Judge Thurman declared: "I am aware that in *Smith v. Sparrow*, 12 English Common Law Reports, 254, Chief Justice Best said 'that he should have considered that if two parties act so indecently as to carry on their business on a Sunday, if there had been no statute on the subject, neither could recover.' But this was a mere dictum, the unsoundness of which is rendered apparent by a multitude of authorities. The Chief Justice cited no case in its support, and I have been unable to discover a single one sufficient to uphold it. Very rarely has it been pretended, even in argument, that a contract, entered into on a Sunday, is, for that reason, void at the common law; and those who have so pretended, placed their chief, if not sole, reliance upon the saying of Lord Coke, that 'the Christian religion is part of the common law;' and upon what appears in 2 Coke's Institutes, 220, where, after citing a Saxon law of King Ethelstan, in these words, '*Die autem dominico nemo mercaturam facito; id quod si quis egerit, et ipsa merce, et triginta præterea solidis mulctator;*' he adds: 'Here note by the way, that no merchandizing should be on the Lord's day.' But, after considering these very observations, Lord Mansfield, in *Drury v. Defontaine*, 1 Tauton's Reports, 135, said that 'it does not appear that the common law ever considered those contracts as void which were made on Sunday.' And, accordingly, he gave a judgment for the price of a horse sold on that day. That he was right, is apparent from numerous cases, among which are *Comyns v. Boyer*, Coke's Reports (Elizabeth), 485; *Rex v. Brotherton*, 1 [2] Strange's Reports, 702; the *King v. Whitnash*, 7 Barnewall and Cresswell's Reports, 596; same case, 14 English Common Law Reports, 100; and *Bloxsome v. Williams*, 3 Barnewall and Cresswell's Reports, 232; same case, 10 English Common Law Reports, 60. Indeed, so uniform are the authorities, that Redfield, Justice, in *Adams v. Gay*, 19 Vermont, 365, said, in effect, that no case could be found holding a contract to be void at common law because executed on a Sunday. This remark, if not literally true, is so nearly so that perhaps the only case that seems opposed to it is *Morgan v. Richards*, decided in one of the inferior courts of Pennsylvania." *Bloom v. Richards*, 2 Ohio State, 389.

### Constitutionality of Sunday Laws (P. 661)

<sup>2</sup> *Shover v. the State* and the *State v. Ambs* are inserted as representatives of those upholding the constitutionality of Sunday laws. In the celebrated New York Supreme Court decision on Sunday laws, Mr. Justice Allen says that "in most States the [Sunday] legislation has been upheld by the courts and sustained by well-reasoned and able opinions"—citing these decisions among others, as the leading decisions. It was originally intended to insert in this work the New York decision also; but since the New York Supreme Court is not a court of last resort and as the decision itself would take thirty to fifty pages, it is omitted. The decision is, however, probably the most able and exhaustive opinion presenting that view of the question. (See *Lindenmuller v. The People*, 33 Barbour, 548-578.) It is a noticeable fact that three of these decisions base the constitutionality of Sunday legislation upon the alleged fact that Christianity is a part of our common law, which, as shown in the Ohio Supreme Court decision (pages 565-567) and elsewhere, is a fallacy.

### Sunday Laws Religious (P. 664)

<sup>3</sup> In this decision the object of Sunday laws is forcibly expressed. The intention is to guard the sanctity of that day, and although, as in this decision, the claim is made that "all the institutions growing out of," "or in any way connected with," the Christian religion, are entitled to state protection—and this would include baptism, the Lord's supper, etc., as well as the so-called Lord's day—yet it is constantly denied that Sunday legislation is religious legislation. No matter how many Sabbatarians go to jail and have their property taken away in fines, still it is claimed that these laws are "civil regulations" for the preservation of the public health by keeping people from working too hard! From this decision it is plain that it is not the deed but the day on which the deed is done that determines the offense under Sunday laws.

On this point Mr. Rufus King, in his argument in the case of *Minor et al. v. Board of Education of Cincinnati et al.*, before the Superior Court of Cincinnati, said: "It is extraordinary that a man of such ability as the Judge [Hon. Allen G. Thurman] who delivered the decision in both cases [*Bloom v. Richards*, 2 Ohio State, 387, and *McGarrick v. Wason*, 4 Ohio State, 566] should have failed to catch the salient hint so quickly taken by Judge Caldwell, dissenting in 18 Ohio, 489 [see pages 660, 665], and Judge Scott, in 9 Ohio State, 439, from

the title and proviso of the act. He hastily overlooked the fact that the very title of the act is to prevent 'immoral practices,' and that the proviso exempts only 'those who do *conscientiously* observe the seventh day of the week *as the Sabbath.*' Why are they exempted? Why, but because they religiously observe another 'Sabbath'? Why, then, does the law of Ohio enforce the observance of Sunday? Manifestly, the motive is religious. Without a doubt, it is reverence for that day as the Christian Sabbath. Stranger still was the learned judge's oversight in failing to observe that this same 'Act for the prevention of immoral practices,' in another section, makes it penal to 'profanely swear by the name of God, Jesus Christ, or the Holy Ghost.' Here he would have found not only the motive and enforcement of a religious duty because it is Christian, but a recognition of the doctrine of the Trinity itself."—*The Bible in the Public Schools*, (Cincinnati, 1870), p. 325.

In the decision of Mr. Justice Scott, referred to above, in which the Sunday law of Canton, Ohio, was declared void, and which received the unanimous approval of the court, it is declared: "The penalty imposed by this section *clearly indicates* the general policy of *discriminating between secular days and Sundays*, and of regarding the latter as a day of rest, upon which *common labor*, sports, and the employments therein named, are prohibited. But the *exceptions* which it contains are *equally expressive* of state policy. The statute proceeds on the principles that works of *necessity* may be performed on any day; that 'it is lawful to do good, *even on the Sabbath days*;' and upon the further principle that *persons who conscientiously observe another day of the week as the Sabbath*, shall not be required to abstain from employments, otherwise lawful, on Sunday." *City of Canton v. Nist*, 9 Ohio State, 441.

Therefore, if a Sunday law could not constitutionally "stand for a moment" as a law of Ohio (or of any other State), if its sole foundation is religious obligation, and as all history and a critical examination of the statutes themselves show most conclusively that their sole foundation is religious obligation (as evidenced by the above quotations), the inevitable conclusion is that Sunday laws cannot constitutionally "stand for a moment" in any State of the Union.

### Interpreting the Constitutions (P. 666)

Just the opposite of this is true. Those who question the constitutionality of our Sunday laws, believe that our Constitutions *are* to be construed in reference to the state and condition of those for whom

they were intended, and that the history of our people and institutions is a powerful confirmation of the wording of our fundamental charters themselves. The wording of our Constitutions, the history of our nation, the teachings of our political philosophers—all unite in declaring that “the words in which they are comprehended” mean just what they say; and the attempt to annul the provisions of our Constitutions for religious liberty and equality by establishing religious preferences, is a flagrant departure from the true American political system.

### Christianity and Civil Power (P. 667)

<sup>5</sup> Lord Macaulay ably points out that Christianity does not need the power of civil law to make it effective:

“The real security of Christianity is to be found in its benevolent morality, in its exquisite adaptation to the human heart, in the facility with which its scheme accommodates itself to the capacity of every human intellect, in the consolation which it bears to the house of mourning, in the light with which it brightens the great mystery of the grave. To such a system it can bring no addition of dignity or of strength, that it is part and parcel of the common law. It is not now for the first time left to rely on the force of its own evidences and the attractions of its own beauty.”—*Essay on “Southey’s Colloquies”* in *Critical and Historical Essays* (London, 1865), vol. 1, p. 115.

### A Violation of Convictions (P. 668)

<sup>6</sup> Nor is it necessary to *compel an act of religious worship* in order to destroy religious liberty. The most veritable despotism can exist, and yet not compel acts of religious worship. To compel a man to *refrain from doing* that which he considers it his duty to do, infringes his rights just as truly as to *compel him to do* that which he considers it his duty to refrain from doing. *In both cases it is compelling him to violate his convictions.* Judge Cooley, on this point, says: “But the Jew [and it is equally true of all Sabbatarians] who is forced to respect the first day of the week, when his conscience requires of him the observance of the seventh also, may plausibly urge that *the law discriminates against his religion*, and by forcing him to keep a second Sabbath in each week, *unjustly*, though by indirection, *punishes him for his belief.*”—*Constitutional Limitations* (15th ed.), p. 589. And Mr. Justice Burnett, in *Ex parte Newman*, 9 California, 514, 515, declared: “When, therefore, the citizen is sought to be compelled by the

Legislature to do any affirmative religious act, or to refrain from doing anything, because it violates simply a religious principle or observance, the act is unconstitutional." (See p. 670.)

### Do Sunday Laws Protect the Poor Laborer? (P. 669)

<sup>1</sup> This is a characteristic appeal of Sunday-rest advocates. Sermons are preached and pages are written pleading for Sunday laws for the benefit of the poor laboring man. But yet one of the most prominent features of the prosecutions for Sunday work is that the laboring man is the victim of these "reform" agitators! A seventh-day Christian in Arkansas, a Mr. Swearingen, with his son, a lad seventeen years of age, was indicted and fined. Not having the money to pay the fine and costs, they were sent to jail. A horse of his was then sold, and afterwards the sheriff levied on his mare, harness, wagon, and a cow and calf to pay the remainder of the fine and costs, and their board while in jail. The bill was paid and the release of his property secured, however, by his brethren. Another victim in Tennessee was helped by the National Religious Liberty Association to the extent of over four hundred dollars. He was confined in a loathsome prison for a considerable period and died not long after his release. Hundreds of dollars have been furnished by this Association and the seventh-day observers to help the poor who have been arrested and fined or imprisoned in various States for conscientiously disregarding these religious laws.

It is not the poor laboring men who are demanding these Sunday laws. It is the churches, and it has been only by the most earnest and untiring efforts on their part that the laboring classes have been prevailed upon to endorse the Sunday bills. Even then failure has sometimes resulted, as is evident from the speech of Master Workman Millard F. Hobbs of the District of Columbia, page 298. Although claiming that the laboring people are so anxious for these laws, the leaders in the movement make the contrary state of affairs a matter of complaint. Rev. Wilbur F. Crafts, who for many years was a leading worker for Sunday legislation, after setting forth in his *Sabbath for Man* what he deems conclusive evidence of the benefit of compulsory Sabbath observance, says:

"Blind to these great facts, a Shoe Lasters' Union in Brooklyn, at the publication of the new Penal Code of New York in 1882, adopted a paper which thus describes the Sabbath laws: 'We learn with regret that the churches are joining hands with tyranny and capital for the purpose of suppressing liberty and oppressing the laborer'—sentiments

representative of many labor organizations, which show that holiday Sundays prevent those who follow them from learning the ABC of political science, and keep them in such ignorance of the true meaning of liberty that they mistake its champions for oppressors.

“Even educated men sometimes make the same blunder from infidel prejudices. John Stuart Mill characterizes ‘Sabbatarian legislation as an illegitimate interference with the rightful liberty of the individual,’ and with strange intellectual perversity affirms that ‘the only ground on which restrictions on Sunday amusements can be defended must be that they are religiously wrong.’”—Page 226.

### Common Sense Dictates Rest Without Law (P. 669)

\* This argument, although generally on a par with arguments for religious legislation, cannot fail to provoke a smile. As though people would not rest unless compelled to do so by law! As though the working proclivities of people were so abnormally developed that the only means on earth of inducing the exhausted individual to stop working was by shutting him up in the dark cell of some jail! If an intelligent and free people do not have common sense enough to rest when they need it, how can they be trusted to eat the proper food, wear the proper clothes, take the proper amount of sleep, etc.? Why not re-enact at once all the former sumptuary laws of England? If the government has a right to take away the individual’s freedom in the matter of rest, so also it has the right to take away his freedom in the matter of eating and sleeping.

Mr. Chief Justice Ruffin of the Supreme Court of North Carolina admits that it is religious and not scientific ground upon which Sunday legislation rests. In the case of the *State v. Williams*, 26 N.C., 313, he said:

“The truth is, that it offends us, not so much because it disturbs us in practicing for ourselves the religious duties, or enjoying the salutary repose or recreation, of that day, as that it is in itself, a breach of God’s law, and a violation of the party’s own religious duty.”

### A Property Right in Time (P. 690)

\* This important principle is not infrequently overlooked when the question of the constitutionality of Sunday laws is under consideration. “All men are created equal.” All men have a right to use their time to acquire property. The legislature can no more deprive a person of the free use of a part of his time, than it can deprive him

of the use of his time altogether. And because the Sabbatarian has enough independence of thought and enough strength of character to differ from the majority in Sabbath observance, it is manifestly unjust to deprive him for that reason of one seventh of his time, to which he has an inalienable right. The innate sense of every man asserts that he has the same right to his opinion that others have to their opinion; that he has the same right to work on such days as he wills, that others have to work on such days as they will. The question is one of individual rights, not one of whether you do or whether you do not agree with the dominant religious party. Any laws interfering with the right to acquire property, like laws interfering with the rights to life and personal liberty, are a flagrant violation of the individual's natural rights.

The principle is as follows: An individual's rights cannot be infringed because he belongs to the minority. If I have a right to work six days, and then rest one, all others have the same right; and if I choose the first day on which to rest, no one has a right to molest me; and if my friend chooses the seventh day on which to rest, no one has a right to molest him. If I work on the day on which he rests without molesting him, no one has a right to stop or hinder me in my work; and, likewise, no one has a right to stop or hinder him if he works on the day on which I rest. This is justice and equality. But it is neither justice nor equality to deprive my friend of one day (Sunday) for work in every week because he chooses the seventh day on which to rest—thus giving him only five days in which to work for a livelihood.

“But,” argues the advocate of Sunday laws, “the minority are not compelled to work on their Sabbath, but simply to refrain from working on our Sabbath.” But if the legislature may compel the minority to “refrain from working” one day in the week, why not two? and if two, why not three? and if three, why not six? Thus there is no time to which the minority has a right; and the legislature (the servant of the people) is empowered to deprive the people entirely of the use of their time, and thus of the very means of sustaining life itself. To this absurd conclusion do the positions of Sunday-law advocates lead us.

### Compulsory Leisure (P. 692)

<sup>10</sup>Since the separation of church and state became an established doctrine in the United States, the courts have generally sought to sustain the validity of Sunday laws upon the ground of their being en-

acted "in the legitimate exercise of the police power of the state," "for the promotion of the moral and physical well-being of the people." (See *Petit v. Minnesota*, 177 U. S. Reports, 164 (1900), and case cited below.) This decision repudiates this idea, at least so far as municipal Sunday laws are concerned.

Seeking to sustain a Georgia Sunday law upon this ground, the supreme court of that State, in 1896, in an opinion delivered by Chief Justice Bleckley, said: "Leisure is no less essential than labor to the well-being of man." *Hennington v. The State*, 90 Ga. 397. Even though the statement be admitted as true, it does not therefore follow that the state has any more right to make leisure than labor compulsory. Compulsory labor would be slavery. Compulsory leisure is no less a tyranny and usurpation of power. And compulsory religious rest, or sabbatizing, is religious tyranny. That Sunday laws are religious, and not mere "police regulations," is shown from the fact that in the case just cited, the court repeatedly referred to Sunday as "the Sabbath," "the Sabbath day," and "the Lord's day."

### Setting Aside Sunday Legislation (P. 693)

<sup>11</sup> The court here anticipates the ground upon which it set the law aside—that of its becoming obsolete through disuse. Upon this ground a large proportion of the Sunday laws of the country could be set aside. A little farther on the court alludes to a far better ground upon which it might have based its decision. It says that if the act "was intended to enforce the observance of the Sabbath as a religious obligation," which it later admits to be the case, "we are of the opinion that it cannot be legally enforced under our present constitutional form of government"; in other words, that it is unconstitutional. But apparently fearing to upset Sunday legislation altogether, the court argues at some length upon the rightful authority of the state, in the exercise of its "police power," to make laws "prohibiting labor on the Sabbath," as "a rule of civil duty," and "for the health, morals, and general welfare of its citizens." And then on the ground that "our nation and the States composing it are Christian in policy," the State has the right to select Sunday, the first day of the week, as such, citing, in support, Mr. Justice Field's dissenting opinion in *Ex parte Newman*, 9 California, 502, and Judge Thurman, in *Bloom v. Richards*, 2 Ohio St., 387, and closing this line of argument with the statement that "the constitutionality of this class of legislation can no longer be questioned."—*Washington Law Reporter*, 36:102, Feb. 14, 1908.

## History Testifies to Nature of Sunday Legislation (P. 695)

<sup>12</sup> Taking the entire history of Sunday legislation into consideration, every honest man is forced to the conclusion that every Sunday law that has ever been made is religious, the Maryland law of 1723 no more so than any other. The primary object of every one of them from the first to last is "to prevent the desecration of" Sunday, and not simply to enforce a day of physical rest, which means simply to enforce a day of idleness. After admitting that the Maryland Sunday law, along with the other laws of this kind, was "the outgrowth of the system of religious intolerance that prevailed in many of the colonies," and that these laws "prescribed religious and not civil duties," is it not a little strange that the court, in the face of the first amendment to the Constitution, to which it alluded, should fail to set this law aside upon the ground of its unconstitutionality?

In order to see clearly that the old Maryland Sunday law of more than two centuries ago is no more religious than more modern Sunday legislation and attempted Sunday legislation, compare it with the Johnston District Sunday bill which passed the Senate, May 15, 1908, and again, with slight modifications, January 27, 1910. One prohibits "bodily labor on the Lord's day, commonly called Sunday"; the other "labor at any trade or secular calling" "on the first day of the week, commonly called Sunday." One prohibits "unlawful pastimes or recreations"; the other "any circus, show, or theatrical performance." One prohibits anyone to suffer his "children, servants, or slaves . . . to do any manner of work or labor on the Lord's day, works of necessity and charity always excepted"; the other forbids anyone to "cause to be employed his apprentice or servant in any labor or business, except in household work or other work of necessity or charity." One forbids anyone to permit anyone under him to "profane the Lord's day"; the other, as first introduced, exempts anyone from keeping Sunday, provided he is a member "of a *religious society* who observe as a *Sabbath* any other day in the week than Sunday," and "observe as a *Sabbath* one day in each seven as *herein provided*." One provides a fine of "two hundred pounds of tobacco," or in default (as per preceding sections of the same act) not above three hours in the stocks or "thirty-nine lashes"; the other a fine of ten dollars or ten days' imprisonment, or both (thirty dollars and thirty days as last passed). Neither requires church attendance. Both are religious. Both prescribe religious and not civil duties. One is intended to enforce a strict religious observance of the Sabbath

day as much as the other. The two are practically the same. To say that the object of one is religious and of the other, civil, is to blind one's eyes and to stultify reason. One is as religious as the other and as much the outgrowth of the system of religious intolerance that prevailed in many of the colonies as the other. Every Sunday law in the United States today is simply a relic of the old colonial religious establishments, which were a relic of the religious establishments of the Old World. To pronounce one religious is to condemn all. They are all of one piece, and all should be repealed, and not left for the courts to declare valid and in force, or obsolete and not enforceable, as they choose.

The setting in which the Old Maryland Sunday law was found compelled the court to recognize its religious character and object. Every other Sunday law, either ancient or modern, *without such setting*, is just as religious. None of them has ever been or ever will be enforced for the "health" of the individual. By prohibiting labor and amusements on Sunday, the state simply enforces a day of idleness. (See "What Is the Equivalent?" on pages 525-527.) The command of the divine Sabbath law is, "Remember the Sabbath day, to keep it *holy*." The religious basis is the only true, effective, or permanent basis for Sabbathkeeping, and this rules the whole question outside the domain of civil law.

### Arguments in the Krieger Case (P. 696)

<sup>13</sup> As noted by Mr. Justice Brett, elaborate briefs were filed by counsel for both the plaintiffs in error and the State. Space forbids the introduction of these. Some oral arguments are offered, however. Attorney Woolman spoke first for the plaintiffs in error, and said in part:

"The plaintiffs in error regularly close their business every Saturday and do not perform any business on that day, nor do they permit their employees to do any business for them. On account of their religious belief, they regard that day as the Sabbath. On Sunday, the first day of the week, it has been their custom to open their store and sell merchandise. Because of this fact, some of the residents of Hitchcock who are not friendly to the Kriegers, had them indicted. The plaintiffs in error offered to prove at the trial that they belong to a class of religionists who conscientiously keep the seventh day for the Sabbath. The trial judge refused to allow the plaintiffs in error to prove their religion as a defense, which was excepted to, and the

ruling of the trial court has been incorporated in the legal brief, and the Honorable Court of Appeals is asked to pass upon the action of the trial court in refusing to allow the accused to prove their religion as a constitutional defense. We hold that the plaintiffs in error are not guilty according to law and the evidence of the case."

Attorney Woolman was followed by Judge Simmons of Knoxville, Tennessee, the other defending attorney, from whose argument we quote the following:

"May it please the Court. We believe the indictment in this case is subject to serious legal criticism. We do not believe that the indictment, according to the statute, legally defines and identifies the offense charged against the plaintiffs in error.

"Section 2404 of the Harris & Day Code, found on page 15 in the brief, reads as follows: 'Sunday to be observed. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community. Any violation of this prohibition is Sabbathbreaking.'

"The indictment charges that the plaintiffs in error, on Sunday, the 20th day of June, A.D. 1915, did knowingly, willfully, unlawfully, intentionally, and publicly expose for sale certain merchandise therein mentioned.

"At common law it is not an offense or a crime to sell merchandise on Sunday. In order for the indictment to legally define and identify the offense complained against, it should not only allege that the plaintiffs in error on a certain Sunday exposed merchandise for sale, but it should further state that such an act was 'deemed useless' and a 'serious interruption of the repose and religious liberty of the community.' This the indictment has failed to do.

"We contend that under this Sunday law it is not a crime simply to expose on Sunday merchandise for sale. It must be alleged in the indictment, and it must be proved at the trial, that such an exposure of merchandise for sale, on the day prohibited, was not only 'useless,' but that it was a 'serious interruption of the repose and religious liberty of the community.'

"The plaintiffs in error are not guilty, because they rightfully come within the exception of the statute.

"Section 2406 of the Harris & Day Code, brief, page 15, reads as follows: 'Persons observing another day as holy. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy

time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.'

"The record shows that the plaintiffs in error 'uniformly keep another day of the week as holy time.' There is no evidence to show that the labor complained of was done in such a manner as to 'interrupt or disturb other persons in observing the first day of the week as holy time.'

"The question for consideration is whether the plaintiffs in error come within the exception of the statute which gives to those who do 'servile labor on the first day of the week' the right to set up their religion as a defense.

"From a logical standpoint what is it that the law wishes to except? Is it the 'servile labor,' or is it the 'religion' of the accused? Evidently it is the religion.

"I do not know when the different sections of the Sunday law of your State were passed, but I do know that all of these sections are kindred legislation, and pertain to the same subject matter, and under the established rule of construction they should be construed in *pari materia*.

"If they are thus construed, the Court will look upon all of the sections of this law as if they were passed at the same time. If that is the case, then it is evident that it was the legislative intent to allow those who 'uniformly keep another day of the week as holy time' to set up their religion as a justifiable defense. This defense should be allowed, irrespective of the kind of labor performed. It would be an absurdity to hold that the legislature intended only to except those who perform 'servile labor.' Should the court take this position, the statute would be subject to the constitutional question of class legislation, and would be void.

"By giving the statute a liberal construction, and by applying the religious defense in all the sections of the statute, where it can be consistently done, all classes of religionists in this commonwealth will have their liberty of conscience.

"When we consider the liberal constitutional guaranty of this State, which provides that 'perfect toleration of religious sentiment shall be secured,' and that 'no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship;' and when we consider that Oklahoma has a law which forbids anyone from maliciously procuring 'any process in a civil action to be served on Saturday upon any person who keeps Saturday

as holy time;’ and when we further consider that criminal statutes are strictly construed, while their exceptions and provisos are liberally construed, it certainly will do no violence to the law under consideration to hold that those sections which prohibit ‘all manner of trades, manufactures, and mechanical employments upon the first day of the week;’ and ‘all manner of public selling, or exposing for sale, publicly, of any commodities’ upon that day—it will be proper, I say, to hold that these sections come under the exemptions of Section 2406 equally with what is termed ‘servile labor’ in the exemption itself.

“Should the law be subject to a restricted construction simply because subsequent sessions of the legislature, in adding different sections, neglected to incorporate in them the exception in favor of those who conscientiously keep another day for the Sabbath? We think not.

“As previously stated, it is a crime for anyone to have a process served on Saturday on one who keeps that day as holy time.

“Consider together that law and the exception in Section 2406, and it is evident that it was the legislative intent to except those people who conscientiously observe the seventh day.”

MR. JUSTICE ARMSTRONG: “That would cover any day, Judge. It would cover anybody who kept any other day in the week, if it covered anything at all. It would not cover necessarily the seventh day alone.”

MR. SIMMONS: “Let it apply as Your Honor suggests, to any day. Let any day be conscientiously observed, and, if Your Honor believes it was the legislative intent that a man’s religion should be excepted, then we contend that this law, pertaining to the service of process on Saturday, should be construed together with the exception in Sec. 2406, which would necessarily include those who keep the seventh day.”

MR. JUSTICE ARMSTRONG: “It would include them and anyone else who keeps another day.”

MR. SIMMONS: “Yes, Your Honor. The object of the legislature was to give the citizen religious liberty, and we insist that all these sections should be construed together. If the law is not construed in this way, then we contend that it is unconstitutional.

“We hold that the supreme law of this State gives every citizen his right of conscience. To this constitutional provision all statutory legislation will have to yield. The plaintiffs in error have done no wrong; they have violated no law; they should be acquitted. They have kept the Sabbath of Jehovah according to His sacred precepts. With the liberal constitutional guaranty of this great commonwealth, under what pretense could a law be enforced that would make a citizen do violence to his conscience?

"The court decisions in the different States have given different reasons for the existence of Sunday laws. Each State has its own peculiar Sunday law, and gives its own peculiar construction for the Constitutionality of the law. Your Honors will observe that the briefs submitted by the plaintiffs in error and by the State both cite authorities that can be read both ways, and in the mechanical construction of the briefs both sides have yielded to the temptation of trying to make the expressions of the court speak as loudly as we can in those paragraphs that are for us, and in trying to make them speak as softly as we can in those paragraphs that are against us. We make our confession in advance, which the reading of the briefs will verify.

"We believe the lack of uniformity in the decisions of the courts in upholding the constitutionality and in declaring the unconstitutionality of Sunday laws, is evidenced by the effort of the courts to avoid as well as to expose the religious features of this kind of legislation. While the decisions are contradictory and irreconcilable, there are certain propositions of law that are well defined in them, and upon which we may confidently rely. The decisions invariably agree upon them, and we can stand upon them as firmly as upon the rock of Gibraltar.

"The propositions are these:

"First: As heretofore stated, according to the common law, it is not a crime to labor, or to expose or to sell merchandise, on Sunday. These acts have to be made illegal by statutory legislation.

"Second: This country has no state religion; there is a separation of church and state, and any law that seeks to make a union of church and state is unconstitutional.

"Let us apply these propositions to the Sunday law of this State.

"This law reads: 'The first day of the week being by very general consent set apart for rest and religious uses.' The very reason for the existence of the statute is shown in its introduction. Its explanation for being a law is because 'the first day of the week is set apart for rest and religious uses.' Your Honors know that both Sunday and Sabbath were born in the church. They are questions of faith on which the applicant decides when he becomes a member of the organization. The observance of Sunday, the first day of the week, or Sabbath, the seventh day of the week, is a test of fellowship in the ecclesiastical bodies that keep the respective days. Neither Sunday nor the Sabbath has any meaning unless related to the duty we owe our God. Labors, pursuits, and business that are licensed and deemed honorable during the weekdays, can be illegalized only by virtue of the religion that is a part of Sunday legislation. Sunday laws have no

meaning unless they are recognized as a statutory way of prescribing religious duties.

“What is the State of Oklahoma doing? It is picking up a church doctrine, a church faith, and incorporating it into the law of the land, and compelling all citizens, regardless of their conscientious convictions, to obey the language of the statute. This law is leaving off the proper administrations of the functions pertaining to the Temple of Justice, where civil rights and civil conduct should be brought for review, and it is entering the very sanctuary of the soul, and standing between the individual and his God. What excuse has the legislature for the passage of such a law? It is because the first day of the week by very general consent is set apart for rest and religious uses.

“Suppose the first day of the week by very general consent was not set apart for rest and religious uses, would there have been a Sunday law? We say there would not, from the reasons assigned in the statute. Therefore, we contend that the law is religious, that it makes a union of church and state, and therefore is unconstitutional. This law is religious and unconstitutional because in its application and in its enforcement it interferes with the plaintiffs in error in being Christians, and it molests them in their persons and property on account of their mode of religious worship.

“We repeat it, Your Honors, it interferes with their being Christians, and we emphasize that statement. Their construction and interpretation of the Scriptures are necessarily and rightfully in harmony with their conscience. The duties they owe their Creator, and the manner of discharging them, are in obedience to the exposition of the Bible according to the sect or denomination to which they belong. Why should they not be allowed to exercise these inalienable rights? Should a law be permitted to remain upon the statute books, the enforcement of which would take away these rights that have never been surrendered by the citizen of the state, and would interfere with their being Christians? How does this law interfere with their being Christians? Why, Your Honor, according to the exegesis of the Bible to which they have subscribed their faith, it was Christ that made the world. In the Bible they turn to the first chapter of John and in the first verses they read these words: ‘In the beginning was the Word, and the Word was with God, and the Word was God. The same was in the beginning with God. All things were made by Him; and without Him was not anything made that was made. . . . He was in the world, and the world was made by Him, and the world knew Him not.’

“In the first chapter of the Colossian letter, the fifteenth and six-

teenth verses read: 'Who is the image of the invisible God, the first-born of every creature: for by Him were all things created, that are in heaven, and that are in earth, visible and invisible, whether they be thrones, or dominions, or principalities, or powers: all things were created by Him, and for Him.'

"It is not a question whether or not their idea of the Scripture is correct. It is not a question, for the purposes of this lawsuit, whether Seventh-day Adventists are right or not. We are not quoting Scripture to exploit their religion, but we are quoting Scripture to show that this Sunday law infringes upon the religious rights of the accused.

"From the above quotations it will be seen, Your Honors, that they believe it was the voice of Christ that spoke the world into existence; 'for He spake, and it was done; He commanded, and it stood fast.'

"They believe He made the first day, the second, the third, etc., in the first weekly cycle; that He made the seventh day, the Sabbath; that He kept the Sabbath, or rested on it; that He blessed it, and sanctified it. They believe from their interpretation of the Bible, that it was the voice of Christ on the trembling peaks of Mt. Sinai that said, 'Remember the Sabbath day, to keep it holy. Six days shalt thou labor, and do all thy work.' They believe that Christ, when on earth, kept the seventh day Sabbath, and that He worked on Sunday, the first day of the week. They believe it was Christ who said: 'The Sabbath was made for man, and not man for the Sabbath: therefore the Son of man is Lord also of the Sabbath.' If the Son of man is Lord of the Sabbath, it is logical to infer that He made the Sabbath; otherwise He could not be Lord of it. And if He is Lord of the Sabbath, then the seventh-day Sabbath is the Lord's day. This is their religion. Give them the benefit of their conscience. Why not let them worship their God without legal molestation?"

MR. JUSTICE ARMSTRONG: "The trouble is that no one is interfering with their Sabbath. They are transacting business on the other man's Sabbath."

MR. SIMMONS: "That is just the point, Your Honor. That is the argument that a great many of the honorable and learned judges make. . . .

"Let us go back to the statement made by Your Honor, to the effect that this law gives our people religious liberty. It is true, as Your Honor has suggested, that the statute permits them to observe the seventh-day Sabbath, but it compels them also to keep Sunday, to legally keep Sunday by cessation from labor, notwithstanding the same

God that enjoins them to keep the seventh-day Sabbath commands them to work six days, which would include Sunday.

"This Sunday law compels them to do the very same thing, or, more properly speaking, to refrain from doing the same thing, in order to legally keep Sunday, that the law of God tells them they shall refrain from doing in order to keep the Sabbath. Thus they are required to give a Sabbath sanctity to Sunday that runs counter to their faith. Is that religious freedom?"

MR. JUSTICE ARMSTRONG: "Conceding that that is correct, has not the majority of the people the right to fix the rule of this country? The majority of the citizens of the United States do not believe as your people, and when the majority makes a law, is it not as much the duty of the members of your church to observe that as anybody else?"

MR. SIMMONS: "Your Honor, it is true the majority rules in civil matters. But is the majority always right? The danger of a despotic government lies in the despot; the danger of a monarchical government lies in the monarch; and the danger of a democratic-republican form of government, like our own, lies in the majority. Can the majority make wrong right? Can the majority make an unconstitutional law constitutional? Can the majority abrogate inalienable rights which belong to the citizen and not the state?"

"James Madison, on this point, writes: 'Wherever the real power in a government lies, there is the danger of oppression. In our government the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to. Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party than by a powerful and interested prince.'

"We should be guardians of the religious liberty of all citizens. If the principle involved in Sunday legislation infringes upon religious liberty, even though the law may be the demand of public opinion and the expression of the majority, it is wrong, and should be so declared. If the principle is wrong, and it is upheld by the court, that same principle may be invoked against the very people who championed it, and like a boomerang, it will return to plague the inventors. If the majority make a mistake, or if the legislature, in representing the opinion of the majority, word a statute so as to

impair or disregard religious rights, then, we contend, when the Honorable Court comes to construe the law, it can, upon broad, equitable principles, disregard its literalism, and make the spirit of the enactment not only express the will of the majority, but preserve the rights of the minority.

"We are not seeking any special privileges for Seventh-day Adventists. We are pleading for the natural rights and liberties of all citizens and classes of religionists."

CHIEF JUSTICE DOYLE: "Your contention is, if I understand you correctly, that you do not object to a rest-day law, provided it does not specify the particular day, and leaves each one free to choose his own day in harmony with his religious belief?"

MR. SIMMONS: "That is our position, Judge. The conscience of the individual must be left free."

CHIEF JUSTICE DOYLE: "Don't you think that our statute fairly meets the principles that you are contending for to the extent of any other State in the Union? Can you recall the law of any other State that is broader or more liberal?"

MR. SIMMONS: "Your Honor, we don't know how you are going to construe that statute.

"In California they have no Sunday law, but a weekly rest law. It is the only State \* that has no law compelling people to refrain from labor or worldly pursuits on Sunday, and yet we are told by reliable authority that Sunday is better kept by the religious class in that State than in any other. This helps to demonstrate the uselessness of Sunday legislation, and to show that if the day is kept at all, it is kept from principle, and not because of statutory coercion.

"You remember there was a time when the state required by law the citizen to support the church. Our fathers, including James Madison and Thomas Jefferson, opposed such a law because, they contended, it was religious legislation; it violated the principles of religious liberty; it made a union of church and state.

"The religious zealots and ultrachurch people became alarmed, and declared that if that law was repealed, the country would go to the devil. They advocated that the people must be compelled to support the church.

"Public opinion against the law became more and more educated and enlightened, and kept on growing until the law was finally repealed; and who would dare say today that these great advocates of

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\* A number of States have greatly modified their Sunday laws since this statement was made.

religious liberty were wrong? Time has demonstrated the wisdom of their position.

"We contend, Your Honors, it was not the legislative intent in the law under discussion, to make a union of church and state, and restrict the religious privileges of the citizens. On the contrary, we hold that this statute should be so construed as not to molest seventh-day observers in their mode of religious worship, so that they may have the right to observe the day of their faith."

Following Judge Simmons, Mr. Boardman, representing the State, spoke. His main argument follows:

"If you permit the Hebrew or Seventh-day Adventist to make an exception to the rule, you are liable to tread on dangerous ground. I can readily see where that would work a hardship if Hebrews or Adventists could keep their stores open while people were passing on their way to church, and they would also have the advantage of other merchants of the town."

MR. JUSTICE ARMSTRONG: "Would you think the man who kept open on Sunday when nobody was in town, had the advantage? It looks as if the advantage would be in favor of the man who kept open on Saturday, when everybody was trading.

"These words, 'servile labor,' have been handed down from the old days, and cannot apply now, because slave labor is past in every respect. The ordinary laboring man does not want to be treated and considered as a servant on the line of master and servant.

"The word 'servile,' as shown in the Minnesota case, is an 'infelicitous expression.' As a matter of fact, it is an obsolete term."

MR. BOARDMAN: "If that be true, it would destroy the entire statute 2406.

"Can you apply 'servile labor' on Sunday to manufacturing, shooting, horse racing, and gaming? This proviso will have to apply to all these acts under the defense they are trying to make."

MR. JUSTICE ARMSTRONG: "I do not think so. I think you are making a broad statement. These people are not engaging in anything that would harm anybody else on the first day of the week. We all concede that shooting and horse racing, and such things would interfere with other people on Sunday."

MR. BOARDMAN: "If there is nothing like 'servile labor' any more, then the whole thing falls. I do not see how any opinion can be written in this case and hold that Section 2406 applies to merchandising when they are not charged with selling anything at all."

MR. JUSTICE ARMSTRONG: "Is there any real horse sense in proving that?"

MR. BOARDMAN: "I don't know whether it would be horse sense or not. It equalizes them as far as the old term 'servile labor' is concerned. Of course these statutes have come down from times when those expressions were used. . . ."

"I have enjoyed very good personal relations with the Seventh-day Adventists, and have some of them as clients. It is more of a cold-blooded legal proposition, whether they are to keep open stores on Sunday, and whether that is servile labor or not.

"I wish the Court to have a thorough understanding of the view that I took at the trial and that I take now of this case; and if the law is held unconstitutional for one reason or another, it will be all right with me. My personal feelings are very broad on that line."

This was followed by a brief word of rebuttal by Mr. Woolman. Judge Simmons gave the closing rebuttal argument.

MR. WOOLMAN: "The legislature was trying to protect not only Seventh-day Adventists, but the Jew and others who worship on any other day of the week. None of the persons living in that town have ever raised a question on the subject. It was a person who was indebted to Mr. Krieger and was indignant, and he was gotten to prosecute this case. Not one of the honorable citizens of the town did this act, but Brown, the man who does not live in that beautiful little town of Hitchcock, did this work. We are simply here to give what light we can.

"We have tried to give the Court the theory upon which we tried the case. We shall be pleased if the Court can see its way clear to give the statute that kind of construction that you think is right and just to these parties. Whatever is decided, of course, will be the law of the State from this on. There are four other cases against these parties. The decision of this case will probably settle them all."

ATTORNEY SIMMONS: "May it please the Court. We have only a few remarks to make in conclusion. I realize that this case depends upon the construction of the words 'servile labor.' When Your Honors come to construe these words and apply to them a broad and equitable principle of construction, the dominant idea of the spirit of the law will prevail over the literalism of the statute, so that the legislative intent may be carried out, irrespective of its wording."

CHIEF JUSTICE DOYLE: "You are asking the Court now to do what the legislature would have done if it had been brought to their attention. The first section of the law was made, and these others were

added without its being broadened out. They forgot to put the saving clauses on the following sections. It should have been carried out. But would that be judicial legislation if we put it in there?"

ATTORNEY SIMMONS: "I think not, Your Honor. This is one of the noble offices of the judiciary. It is not judicial legislation for the Court to do a great right by preventing a great wrong that is being perpetrated against citizens and their property, when it words the statute so as to declare the true legislative intent. One of the greatest acts Your Honors can do is to construe a statute so as to protect the religious rights of citizens in harmony with the supreme law of the State.

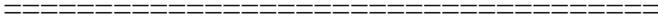
"If the law in question is construed in its literal sense, it would be opposed to the organic law of the State, and unconstitutional. If it is construed as we contend, its integrity will be maintained and all classes of citizens will have their religious rights.

"I thank the Honorable Court for your patient consideration of this case."

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The Bank of Wisdom publishes all works of human interest, we scorn no ideas of serious thought. Ideas and beliefs some may think “dangerous” and would hide, we seek to reproduce and distribute for the consideration and intellectual development of every human mind. When peace and understanding is established throughout the world it might be said that humanity has achieved an acceptable degree of civilization, but until that longed for time we must never cease to search for greater truth and a higher morality for humanity.

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*Part XIV*

Court Decisions—3

Religion and Tax-supported Schools



COURTESY TRANSCONTINENTAL AND WESTERN AIRWAYS

Education in Religion, Necessary as It May Be, Has No Part  
in the Public School System Supported by the State

## Attempts to Inject Dogmatic Religious Teaching Into Public Schools

THOSE who would curtail American liberties to accomplish their own ends are ever alert to find new ways to fetter the conscience. Laws compelling the religious observance of Sunday have long been the favorite avenue of approach to the union of church and state in the United States. And it is evident that these Sunday-law advocates hope to see the church eventually dictate to the state in all matters of morals and religion.

Whether these zealous, though misguided, organizations deem that they have accomplished their object, since there are now Sunday laws on the statute books of a majority of the States; or whether they think they have failed because these State Sunday laws are usually not strictly enforced, and because the National Government steadfastly refuses to enact general religious laws, even for the District of Columbia, we cannot say; but they have been turning in recent years to an entirely different method of committing our Government to legislation favoring certain religious sects above the others. They endeavor to secure public funds to support the teaching of sectarian religion.<sup>1, 2</sup>

This religious infiltration through the secular front has taken various forms, such as prescribing Bible reading and teaching religion in tax-supported schools, using public funds for the support of parochial schools, transporting church school children to their schools in busses provided from public-school tax money, etc. The defenders against these attacks have had a hard fight to maintain the equality of all religions before the law, and to confine state aid to religion to protection only, and not to support.

This Part is replete with legal arguments on both sides of this question and provides excellent material for the help of those who would meet the issue in the future.

TEACHING RELIGION IN OHIO PUBLIC SCHOOLS<sup>8</sup>

## The Supreme Court of Ohio

DECEMBER TERM, 1872

The Board of Education of the City of Cincinnati v. John D. Minor, et al.

23 Ohio State Reports, 211-254

We are told that this word "religion" must mean "Christian religion," because "Christianity is a part of the common law of this country," lying behind and above its constitutions. Those who make this assertion can hardly be serious, and intend the real import of their language. If Christianity is a *law* of the state, like every other law, it must have a *sanction*. Adequate penalties must be provided to enforce obedience to all its requirements and precepts. No one seriously contends for any such doctrine in this country, or, I might almost say, in this age of the world. The only foundation—rather, the only excuse—for the proposition that Christianity is part of the law of this country, is the fact that it is a Christian country, and that its constitutions and laws are made by a Christian people. And is not the very fact that those laws do *not* attempt to *enforce* Christianity, or to place it upon exceptional or vantage ground, itself a strong evidence that they *are* the laws of a Christian people, and that their religion is the best and purest of religions? It is strong evidence that their religion is indeed a religion "without partiality," and *therefore* a religion "without hypocrisy." True Christianity asks no aid from the sword of civil authority. It began without the sword, and wherever it has taken the sword it has perished by the sword. To depend on civil authority for its enforcement is to acknowledge its own weakness, which it can never afford to do. It is able to fight its own battles. Its weapons are moral and spiritual, and not carnal. Armed with these, and these alone, it is not afraid nor "ashamed" to be compared with other religions, and to withstand them single-handed. And the very reason

why it is not so afraid or "ashamed" is, that it is not the "power of *man*," but "the power of God," on which it depends. True Christianity never shields itself behind majorities. Nero, and the other persecuting Roman emperors, were amply supported by majorities; and yet the pure and peaceable religion of Christ in the end triumphed over them all; and it was only when it attempted, itself, to enforce religion by the arm of authority, that it began to wane. A form of religion that cannot live under equal and impartial laws ought to die, and sooner or later must die.

*Legal Christianity* is a solecism, a contradiction of terms. When Christianity asks the aid of government beyond mere *impartial protection*, it denies itself. Its laws are divine, and not human. Its essential interests lie beyond the reach and range of human governments. United with government, religion never rises above the merest superstition; united with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both.

Religion is not—much less is Christianity or any other particular system of religion—named in the preamble to the constitution of the United States as one of the declared *objects* of government; nor is it mentioned in the clause in question, in our own constitution, as being essential to anything *beyond* mere human government. Religion is "essential" to much more than human government. It is essential to man's spiritual interests, which rise infinitely above, and are to outlive, all human governments. It would have been easy to declare this great truth in the constitution; but its framers would have been quite out of their proper sphere in making the declaration. They contented themselves with declaring that religion is essential to good government; providing for the protection of all in its enjoyment, each in his own way, and providing means for the diffusion of general knowledge among the people.

The declaration is, not that government is essential to good

religion, but that religion is essential to good government. Both propositions are true, but they are true in quite different senses. Good government is essential to religion for the purpose declared elsewhere in the same section of the constitution, namely, for the purpose of mere *protection*. But religion, morality, and knowledge are essential to government, in the sense that they have the instrumentalities for *producing and perfecting* a good form of government. On the other hand, no government is at all adapted for producing, perfecting, or propagating a good religion. Religion, in its widest and best sense, has most, if not all, the instrumentalities for producing the best form of government. Religion is the parent, and not the offspring, of good government. Its kingdom is to be *first* sought, and good government is one of those things which will be added thereto. True religion is the sun which gives to government all its true lights, while the latter merely acts upon religion by reflection.

Properly speaking, there is no such thing as "religion of state." What we mean by that phrase is, the religion of some individual, or set of individuals, taught and enforced by the state. The state can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person, or class of persons. If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all? And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies "beyond the scope of sense and reason"—what from its very nature can only be the object of *faith*—that we encounter these difficulties. Especially

is this so when our pupils are children, to whom we are compelled to assume a dogmatical method and manner, and whose faith at last is more a faith in us than in anything else. Suppose the state should undertake to teach Christianity in the broad sense in which counsel apply the term, or the "religion of the Bible," so as also to include the Jewish faith—where would it begin? how far would it go? and what points of disagreement would be omitted?

If it be true that our law enjoins the teaching of the Christian religion in the schools, surely, then, all its teachers should be Christians. Were I such a teacher, while I should instruct the pupils that the Christian religion was true and all other religions false, I should tell them that the law itself was an *unchristian* law. One of my first lessons to the pupils would show it to be unchristian. That lesson would be: "Whatsoever ye would that mén should do to you, do ye even so to them; for this is the *law* and the prophets." I could not look the veriest infidel or heathen in the face, and say that such a law was just, or that it was a fair specimen of Christian republicanism. I should have to tell him that it was an outgrowth of false Christianity, and not one of the "lights" which Christians are commanded to shed upon an unbelieving world. I should feel bound to acknowledge to him, moreover, that it violates the spirit of our constitutional guaranties, and is a state religion in embryo; that if we have no right to tax him to support "worship," we have no right to tax him to support religious instructions; that to tax a man to put down his own religion is of the very essence of tyranny; that however small the tax, it is a first step in the direction of an "establishment of religion"; and I should add, that the first step in that direction is the fatal step, because it logically involves the last step.

But it will be asked, how can religion, in this general sense, be essential to good government? Is atheism, is the religion of Buddha, of Zoroaster, of Lao-tse, conducive to good government? Does not the best government require the best religion? Certainly the best government requires the best religion. It is the

child of true religion, or of truth on the subject of religion, as well as on all other subjects. But the real question here is, not what is the best religion, but how shall this best religion be secured? I answer, it can best be secured by adopting the doctrine of this seventh section in our own bill of rights, and which I summarize in two words, by calling it the doctrine of "hands off." Let the state not only keep its own hands off, but let it also see to it that religious sects keep their hands off each other. Let religious doctrines have a fair field, and a free, intellectual, moral, and spiritual conflict. The weakest—that is, the intellectually, morally, and spiritually weakest—will go to the wall, and the best will triumph in the end. This is the golden truth which it has taken the world eighteen centuries to learn, and which has at last solved the terrible enigma of "church and state." Among the many forms of stating this truth, as a principle of government, to my mind it is nowhere more fairly and beautifully set forth than in our own constitution. Were it in my power, I would not alter a syllable of the form in which it is there put down. It is the true republican doctrine. It is simple and easily understood. It means a free conflict of opinions as to things divine; and it means masterly inactivity on the part of the state, except for the purpose of keeping the conflict free, and preventing the violation of private rights or of the public peace. Meantime, the state will impartially aid all parties in their struggles after religious truth, by providing means for the increase of general knowledge, which is the handmaid of good government, as well as of true religion and morality. It means that a man's right to his own religious convictions, and to impart them to his own children, and his and their right to engage, in conformity thereto, in harmless acts of worship toward the Almighty, are as sacred in the eye of the law as his rights of person or property, and that although in the minority, he shall be protected in the full and unrestricted enjoyment thereof. The "protection" guaranteed by the section in question, means protection to the minority. The majority can protect itself. Constitutions are enacted for

the very purpose of protecting the weak against the strong; the few against the many.

As with individuals, so with governments, the most valuable truths are often discovered late in life; and when discovered, their simplicity and beauty make us wonder that we had not known them before. Such is the character and history of the truth here spoken of. At first sight it seems to lie deep; but on close examination we find it to be only a new phase or application of a doctrine with which true religion everywhere abounds. It is simply the doctrine of conquering an enemy by kindness. Let religious sects adopt it toward each other. If you desire people to fall in love with your religion, make it lovely. If you wish to put down a false religion, put it down by kindness, thus heaping coals of fire on its head. You can't put it down by force; that has been tried. To make the attempt, is to put down your own religion, or to abandon it. Moral and spiritual conflicts cannot be profitably waged with carnal weapons. When so carried on, the enemy of truth and right is too apt to triumph. Even heathen writers have learned and taught this golden truth. Buddha says: "Let a man overcome anger by love, evil by good, the greedy by liberality, and the slanderer by a true and upright life." Christianity is full of this truth, and, as a moral code, might be said to rest upon it. It is *in hoc signo*, by the use of *such weapons*, that Christianity must rule, if it rules at all.

We are all subject to prejudices, deeper and more fixed on the subject of religion than on any other. Each is, of course, unaware of his own prejudices. A change of circumstances often opens our eyes. No Protestant in Spain, and no Catholic in this country, will be found insisting that the government of his residence shall support and teach its own religion to the exclusion of all others, and tax all alike for its support. If it is right for one government to do so, then it is right for all. Were Christians in the minority here, I apprehend no such a policy would be thought of by them. This is the existing policy of most governments in the world. Christian countries, however, are fast de-

parting from it—witness Italy, Prussia, Spain, England. The true doctrine on the subject is the doctrine of peaceful disagreement, of charitable forbearance, and perfect impartiality. Three men—say, a Christian, an infidel, and a Jew—ought to be able to carry on a government for their common benefit, and yet leave the religious doctrines and worship of each unaffected thereby, otherwise than by fairly and impartially protecting each, and aiding each in his searches after truth. If they are sensible and fair men, they will so carry on their government, and carry it on successfully, and for the benefit of all. If they are not sensible and fair men, they will be apt to quarrel about religion, and, in the end, have a bad government and bad religion, if they do not destroy both. Surely, they could well and safely carry on any other business, as that of banking, without involving their religious opinions, or any acts of religious worship. Government is an organization for particular purposes. It is not almighty, and we are not to look to it for everything. The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.

Counsel say that to withdraw all religious instruction from the schools would be to put them under the control of “infidel sects.” This is by no means so. To teach the doctrines of infidelity, and thereby teach that Christianity is false, is one thing; and to give no instructions on the subject is quite another thing. The only fair and impartial method, where serious objection is made, is to let each sect give its own instructions, elsewhere than in the state schools, where of necessity all are to meet; and to put disputed doctrines of religion among other subjects of instruction, for there are many others, which can more conveniently, satisfactorily, and safely be taught elsewhere. Our charitable, punitive, and disciplinary institutions stand on an entirely different footing. There the state takes the place of the parent, and may well act the part of a parent or guardian in directing what religious instructions shall be given.

The principles here expressed are not new. They are the same, so far as applicable, enunciated by this court in *Bloom v. Richards*, 2 Ohio State, 387, and in *McGatrick v. Wason*, 4 *Ibid.*, 566. They are as old as Madison, and were his favorite opinions. Madison, who had more to do with framing the constitution of the United States than any other man, and whose purity of life and orthodoxy of religious belief no one questions, himself says:

“Religion is not within the purview of human government.” And again he says: “Religion is essentially distinct from human government, and exempt from its cognizance. A connection between them is injurious to both. There are causes in the human breast which insure the perpetuity of religion without the aid of law.”

In his letter to Governor Livingston, July 10, 1822, he says: “I observe with particular pleasure the view you have taken of the immunity of religion from civil government, in every case where it does not trespass on private rights or the public peace. This has always been a favorite doctrine with me.”

I have made this opinion exceptionally and laboriously long. I have done so in the hope that I might thereby aid in bringing about a harmony of views and a fraternity of feeling between different classes of society, who have a common interest in a great public institution of the state, which, if managed as sensible men ought to manage it, I have no doubt, will be a principal instrumentality in working out for us what all desire—the best form of government and the purest system of religion.

I ought to observe that, in our construction of the first named of the two resolutions in question, especially in the light of the answer of the board, we do not understand that any of the “readers,” so called, or other books used as mere lesson-books, are excluded from the schools, or that any inconvenience from the necessity of procuring new books will be occasioned by the enforcement of the resolutions.

It follows that the judgment of the superior court will be reversed, and the original petition dismissed. Judgment accordingly.

## COMPULSORY BIBLE READING IN THE PUBLIC SCHOOLS \*

The Supreme Court of Wisconsin

JANUARY TERM, 1890

State ex rel. Weiss et al. v. District Board of School District No. Eight of the City of Edgerton

[DECIDED MARCH 18, 1890]

76 Wisconsin Reports, 177-221

*The Concurring Opinion by Justice H. S. Orton \**

I most fully and cordially concur in the decision and in the opinions of Justices Lyon and Cassoday in this case.

It is not needful that any other opinion should be written, but I thought it proper to state briefly some of the reasons which have induced such concurrence in the decision.

"The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship; . . . nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship." Constitution, article 1, section 18.

"No religious test shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion." Constitution, Article 1, section 19.

The interest of the school fund "and all other revenues derived from the school lands, shall be exclusively applied," etc., "to the support and maintenance of *common schools*, in each school district," etc. Constitution, Article 10, section 2, subdivision 1.

\* Mr. Justice Lyon delivered the opinion of the court, and Messrs. Justice Cassoday and Orton delivered concurring opinions. Of these we select the latter as a typical argument on the case.

“The legislature shall provide by law for the establishment of district schools, which shall be as nearly *uniform* as practicable; and such schools shall be *free*, and without charge for tuition, to *all* children between the ages of four and twenty years; and no *sectarian* instruction shall be allowed therein.” Constitution, Article 10, section 3.

“Each town and city shall be required to raise *by tax* annually for the support of *common schools* therein a sum not less,” etc. Constitution, Article 10, section 4. “Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of the state for the support of *common schools* therein,” etc. Constitution, Article 10, section 5.

These provisions of the Constitution are cited together to show how completely this state, as a civil government, and all its civil institutions, are divorced from all possible connection or alliance with any and all religions, religious worship, religious establishments, or modes of worship, and with everything of a religious character or appertaining to religion; and to show how completely all are protected in their religion and rights of conscience, and that no one shall ever be taxed or compelled to support any religion or place of worship, or to attend upon the same, and more especially to show that our *common schools*, as one of the institutions of the state created by the Constitution, stand, in all these respects, like any other institution of the state, completely excluded from all possible connection or alliance with religion or religious worship or with anything of a religious character, and guarded by the constitutional prohibition that “no sectarian instruction shall be *allowed* therein.” They show also that the common schools are free to all alike, to all nationalities, to all sects of religion, to all ranks of society, and to all complexions. For these equal privileges and rights of instruction in them, all are taxed equally and proportionately. The constitutional name, “common schools,” expresses their equality and universal patronage and support. *Common schools* are not common as being low in character or grade, but *common* to all alike,

to everybody, and to all sects or denominations of religion, but without bringing religion into them. The common schools, like all the other institutions of the state, are protected by the Constitution from all "control or interference with the rights of conscience," and from all preferences given by law to any religious establishments or modes of worship. As the state can have nothing to do with religion except to protect every one in the enjoyment of his own, so the common schools can have nothing to do with religion in any respect whatever. They are as completely *secular* as any of the other institutions of the state, in which all the people alike have equal rights and privileges. The people cannot be taxed for religion in schools more than anywhere else. Religious instruction in the common schools is as clearly prohibited by these general clauses of the Constitution as religious instruction or worship in any other department of the state supported by the revenue derived from taxation. The clause that "no sectarian instruction shall be allowed therein" was inserted *ex industria* to exclude everything pertaining to religion. They are called by those who wish to have not only religion but their own religion, taught therein, "godless schools." They are godless, and the educational department of the government is godless, in the same sense that the executive, legislative, and administrative departments are godless. So long as our Constitution remains as it is, no one's religion can be taught in our common schools. By religion I mean religion as a system; not religion in the sense of natural law. Religion in the latter sense is the source of all law and government, justice, and truth. Religion as a system of belief, cannot be taught without offense to those who have their own peculiar views of religion, no more than it can be without offense to the different sects of religion. How can religion, in this sense, be taught in the common schools without taxing the people for or on account of it? The only object, purpose, or use for taxation by law in this state, must be exclusively *secular*. There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution, and war, and all evil in the state,

as religion. Let it once enter into our civil affairs, our government would soon be destroyed. Let it once enter our common schools, they would be destroyed. Those who made our Constitution, saw this, and used the most apt and comprehensive language in it to prevent such a catastrophe. It is said, if reading the Protestant version of the Bible in school is offensive to the parents of some of the scholars, and antagonistic to their own religious views, *their children can retire*. They ought not to be compelled to go out of the school for such a reason, for one moment. The suggestion itself concedes the whole argument. That version of the Bible is hostile to the belief of many who are taxed to support the common schools, and who have equal rights and privileges in them. It is a source of religious and sectarian strife. That is enough. It violates the letter and spirit of the Constitution. No state constitution ever existed, that so completely excludes and precludes the possibility of religious strife in the civil affairs of the state, and yet so fully protects all alike in the enjoyment of their own religion. All sects and denominations may teach the people their own doctrines in all proper places. Our Constitution protects all, and favors none. But they must keep out of the common schools and civil affairs. It requires but little argument to prove that the Protestant version of the Bible, or any other version of the Bible, is the source of religious strife and opposition, and opposed to the religious belief of many of our people. It is a *sectarian* book. The Protestants were a very small sect in religion at one time, and they are a sect yet, to the great Catholic Church against whose usages they protested, and so is their version of the Bible sectarian, as against the Catholic version of it. The common school is one of the most indispensable, useful, and valuable civil institutions this state has. It is democratic and free to all alike in perfect equality, where all the children of our people stand on a common platform and may enjoy the benefits of an equal and common education. An enemy to our common schools is an enemy to our state government. It is the same hostility that would cause

any religious denomination that had acquired the ascendancy over all others, to remodel our Constitution and change our government and all of its institutions so as to make them favorable only to itself, and exclude all others from their benefits and protection. In such an event religious and sectarian instruction will be given in all schools. Religion needs no support from the state. It is stronger and much purer without it. This case is important and timely. It brings before the courts a case of the plausible, insidious, and apparently innocent entrance of religion into our civil affairs, and of an assault upon the most valuable provisions of the Constitution. Those provisions should be pondered and heeded by all of our people of all nationalities, and of all denominations of religion, who desire the perpetuity, and value the blessings, of our free government. That such is their meaning and interpretation no one can doubt, and it requires no citation of authorities to show. It is religion and sectarian instruction that are excluded by them. Morality and good conduct may be inculcated in the common schools, and should be. The connection of church and state corrupts religion, and makes the state despotic.

## TEACHERS' WEARING RELIGIOUS GARB IN PUBLIC SCHOOL <sup>5</sup>

### The Supreme Court of Pennsylvania

OCTOBER TERM, 1894

John Hysong et al., Appellants, v. Gallitzin Borough School District et al.

[DECIDED NOVEMBER 12, 1894]

164 Pennsylvania Reports, 629-662

[John Hysong and others sought an injunction to prevent the employing of nuns of the Order of St. Joseph (a religious society of the Roman Catholic Church) as teachers in the school district. The majority opinion of the court held that the wearing of distinctive religious garb, of a rosary, and of a crucifix, and the nuns' being known by their religious names and addressed as Sisters, did not in any degree constitute sectarian teaching or sectarian influence. The further fact that these teachers were secured and designated by the mother superior of

the Order of St. Joseph while this order received the benefit of the school funds paid to the nuns, was dismissed as of no importance.

Justice Williams dissented, and it is significant that his dissenting opinion rather than the opinion of the majority has been often followed by courts in other States dealing with similar cases. The following statements set forth the broad principles he enunciated:]

I cordially assent to the proposition that teachers should be selected for the common schools because of their fitness, and not because of their religious belief or their church affiliation. I am glad that in this State and in this country the rights of conscience are no less sacred than the rights of property, and that test oaths and religious disqualifications belong to a period further back than the memory of the present generation can reach. I hope they may never be restored. But the constitution and laws of this commonwealth provide for open free schools, for all children of the proper age, that shall be secular in character; schools in which the consciences and the sectarian bias of both parents and children shall be respected, or at least not interfered with. . . . The question presented . . . is whether a school that is filled with religious or ecclesiastical persons as teachers, who come to the discharge of their daily duties wearing their ecclesiastical robes, and hung about with the rosaries and other devices peculiar to their church and order, is not necessarily dominated by sectarian influences, and obnoxious to the spirit of the constitutional provisions and the school laws. This is not a question about taste or fashion in dress, nor about the color or cut of a teacher's clothing. If it was only this, I would favor the largest liberty. It is deeper and broader than this. It is a question over the true intent and spirit of our common-school system. . . .

But these six teachers in Gallitzin . . . come into the schools, not as common-school teachers or as civilians, but as the representatives of a particular order in a particular church, whose lives have been dedicated to religious work under the direction of that church. Now, the point of the objection is not that their religion disqualifies them. It does not. . . . It is not that holding an ecclesiastical office or position disqualifies, for it does not. It is the introduction

into the schools, as teachers, of persons who are, by their striking and distinctive ecclesiastical robes, necessarily and constantly asserting their membership in a particular church, and in a religious order within that church, and the subjection of their lives to the direction and control of its officers. No priest or bishop in full canonical dress more plainly declares his church, and his office therein, than do these nonsecular and ecclesiastic persons when they come into the schoolroom of a secular public school wearing the peculiar uniform and insignia of their sisterhood. . . . With faces averted from the world they have renounced; wearing their peculiar robes, which tell of their church, their order, and their subordination to the guidance of their ecclesiastical superiors; using their religious names, and addressed by the designation, "sister,"—they direct the studies and the department of the children under their care, as ecclesiastical persons. They cannot, or they will not, attend teachers' institutes. They have no touch with those engaged in the same pursuit about them. They do not attend public examinations; but, examined in the seclusion of the "Mother House" of their order, after having been selected by the "Sister Superior" in compliance with the written request of the directors, they come to their work as a religious duty, and their wages pass, under the operation of their vows, into the treasury of the order. If a school so conducted is not dominated by sectarian influence, and under sectarian control, it is not easy to see how it could be.

TEACHERS' WEARING RELIGIOUS GARB IN PUBLIC SCHOOL<sup>5</sup>

## The Supreme Court of Pennsylvania

MAY TERM, 1910

Commonwealth v. Herr, Appellant

[DECIDED JULY 1, 1910]

229 Pennsylvania Reports, 132-146

The Act of June 27, 1895, P.L. 395, entitled, "An Act to prevent the wearing in the public schools of this Commonwealth, by any of the teachers thereof, of any dress, insignia, marks or emblems indicating the fact that such teacher is an adherent or member of any religious order, sect or denomination, and imposing a fine upon the board of directors of any public school permitting the same," is sufficient in title, and does not violate sec. 3, art. III of the constitution of Pennsylvania [or violate religious freedom and the rights of conscience guaranteed in the Constitution of the United States].

The facts appear in the opinion of the Superior Court, by RICE, P. J., as follows:

It is true the acts prohibited are those which may indicate, and indeed may be dictated by, the religious sentiments of the teacher. Therefore we are led to the broader inquiry whether this constitutes an infringement of the "natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences," or contravenes the accompanying declaration that "no human authority can, in any case whatever, control or interfere with the rights of conscience." No man's religious belief may be interfered with by law. . . .

The system of common school education in this commonwealth is the creature of the state, and its perpetuity and freedom from sectarian control are guaranteed by express constitutional provisions. Subject to these, the power to support and maintain an efficient system of public schools, wherein all the children of the Commonwealth above the age of six years may be educated, is vested in the Legislature. This carries with it the authority to

determine what shall be the qualifications of the teachers, but in prescribing them the Legislature may not make religious belief or church affiliation a test. Nevertheless, the power of the Legislature to make reasonable regulations for the government of their conduct whilst engaged in the performance of their duties must be conceded. Primarily it is the province of the Legislature to determine what regulations will promote efficiency of the system and tend to the accomplishment of the object for which it was established. It is only where such regulations are clearly shown to be in violation of a fundamental law that the courts . . . may annul them. As shown by the preamble of the act under consideration, the Legislature deemed it "important that all appearances of sectarianism should be avoided in the administration of the public schools of this Commonwealth." This was the ostensible object of the legislation, and we can discover no substantial ground for concluding that it was not the sole object which the Legislature had in contemplation. Nor are we able to conclude either that the object was beyond the scope of legislative power, or that the regulation adopted has no just and proper relation to that object.

Judgment affirmed.

## TEACHERS' WEARING RELIGIOUS GARB IN PUBLIC SCHOOL <sup>5</sup>

The Court of Appeals of the State of New York

APRIL TERM, 1906

Nora O'Connor, Appellant, v. Patrick Hendrick, as Trustee of School District No. 9, Town of Lima, Livingston County, et al., Respondents

[DECIDED APRIL 17, 1906]

184 New York Reports, 421-430

APPEAL from a judgment of the Appellate Division of the Supreme Court in the fourth judicial department, entered December 7, 1905, affirming a judgment in favor of defendants entered upon a decision of the court at a Trial Term without a jury.

The plaintiff and Elizabeth E. Dowd, being teachers duly

licenced to teach in the common schools of this state, entered into contracts with the board of trustees of school district No. 9, in the town of Lima, county of Livingston, in the autumn of 1902, to teach in the public school of said district for a term of thirty-six consecutive weeks at a specified rate of compensation. While so engaged in teaching they wore the distinctive dress or costume of a religious society connected with the Roman Catholic church, of which they were members, which society is known as the Order of the Sisterhood of St. Joseph. On May 28th, 1903, the state superintendent of public instruction promulgated a decision made by him upon an appeal under the Consolidated School Law (Laws of 1894, chapter 556, title XIV), in which he declared that the wearing of an unusual dress or garb, worn exclusively by members of one religious denomination for the purpose of indicating membership in that denomination, by the teachers in the public schools during school hours while teaching therein, constitutes a sectarian influence and the teaching of a denominational tenet or doctrine which ought not to be persisted in. The decision further declared it to be the duty of the school authorities to require such teachers to discontinue the wearing of such dress or garb while in the public school room and in the performance of their duties as teachers therein, and it directed Patrick Hendrick, one of the defendants herein, as sole trustee of school district No. 9, in the town of Lima, Livingston county, to notify the plaintiff and Elizabeth E. Dowd forthwith to discontinue, during the school hours of each school day, the wearing of the distinctive dress of the sisterhood to which they belonged, and commanded him to dismiss them if they refused to comply with this requirement. On May 29th, 1903, the said Patrick Hendrick notified the plaintiff and Elizabeth E. Dowd of the contents of the decision. Notwithstanding this notification they continued to teach school wearing the prohibited garb up to June 19th, 1903, which was the end of the school year. Mr. Hendrick, the school trustee, does not appear to have made any effort to remove or dismiss them. The present action was brought against him by the plaintiff in her own

behalf and as assignee of the claim of Elizabeth E. Dowd, to recover a balance of \$79.20 alleged to be due under their contracts with the school district. Mr. Hendrick defended on the ground that the plaintiff and her assignor had lost all right to recover anything under their contracts by reason of the fact that they had continued to wear the distinctive costume of the religious sisterhood to which they belonged, while engaged in teaching, after they had received notice of the aforesaid decision of the state superintendent of public instruction. The other defendants, who were taxpayers allowed to intervene at their own instance, also interposed an answer setting up a similar defense. The case was tried by consent without a jury before a justice of the Supreme Court who held that the plaintiff was entitled to recover \$25.20, being the amount of the compensation of the two teachers which had been earned, but not paid, prior to the time when they were notified of the superintendent's decision. He held, however, that the plaintiff and her assignor were not entitled to recover for any services rendered during the three weeks in which they continued to teach after the decision of the superintendent had been brought to their attention.

From the judgment rendered at the Trial Term, the plaintiff appealed to the Appellate Division, where that judgment has been affirmed by a divided court.

. . . . .

WILLARD BARTLETT, J. The real question in this case is whether the plaintiff and plaintiff's assignor lost their right to any further compensation under their contract of service as teachers, by reason of their refusal to comply with a regulation established by the state superintendent of public instruction which in effect prohibited teachers from wearing a distinctive religious garb while engaged in the work of teaching.

. . . . .

[After discussing the authority of the superintendent to make the regulation complained of, the justice continued:]

We are thus brought to the question whether in this state a regulation is to be deemed unreasonable which prohibits teachers in the common schools from wearing a distinctively religious garb while engaged in the work of teaching. In my opinion it cannot justly be so regarded. "Neither the State," says the Constitution, "nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught." . . . There can be little doubt that the effect of the costume worn by these Sisters of St. Joseph at all times in the presence of their pupils would be to inspire respect if not sympathy for the religious denomination to which they so manifestly belong. To this extent the influence was sectarian, even if it did not amount to the teaching of denominational doctrine. . . .

As to the reasonableness of the regulation prohibiting the use of a distinctly religious garb by teachers in the common schools, some other considerations may be mentioned. It must be conceded that some control over the habiliments of teachers is essential to the proper conduct of such schools. Thus, grotesque vagaries in costume could not be permitted without being destructive of good order and discipline. So, also, it would be manifestly proper to prohibit the wearing of badges calculated on particular occasions to constitute cause of offense to a considerable number of pupils, as, for example, the display of orange ribbons in a public school in a Roman Catholic community on the 12th of July. . . .

It follows that the judgment appealed from should be affirmed, with costs. In reaching this result, however, I do not wish to be understood as acquiescing in . . . the opinion . . . that "these teachers should never be permitted to teach in our public schools." There is no reason either in morals or in law why they or any other qualified persons should not be allowed thus to teach, whatever

may be their religious convictions, provided that they do not by their acts as teachers promote any denominational doctrine or tenet.

CULLEN, Ch. J., GRAY, EDWARD T. BARTLETT, HAIGHT, VANN and CHASE, J. J., concur.

Judgment affirmed.

## TEACHERS' WEARING RELIGIOUS GARB IN PUBLIC SCHOOL<sup>5</sup>

The Supreme Court of the State of North Dakota

G. Gerhardt et al., Appellants, v. Etheline Heid et al., Respondents

[OPINION FILED APRIL 2, 1936]

66 North Dakota Reports, 444-460

CHRISTIANSON, J. This is an action brought by the plaintiffs as electors and taxpayers of Gladstone school district in Stark county against the directors and other officers of said school district and four teachers in the schools in the district. The object of the action is to restrain the teachers from wearing what is denominated "a religious garb or dress" while engaged in teaching; to enjoin the school officers from paying the said teachers any money from the treasury of the school district, and to require the directors of the school district to prohibit the teachers from wearing such religious garb, dress, or insignia while engaged in teaching.

The case was tried to the court without a jury and resulted in findings and conclusions in favor of the defendants. Judgment was entered accordingly and the plaintiffs have appealed.

The material and undisputed facts are substantially as follows: The defendant school district maintains and operates what is known as a town consolidated school in the village of Gladstone in which instruction is given in the grades and in high school subjects. During the term opening in September, 1935, there were six teachers employed in such school; four of these teachers were nuns, members of the Sisterhood of St. Benedict. It is undis-

puted that they were all duly qualified for employment and held proper certificates entitling them to teach in the public schools of Stark county. It does not appear what subjects these teachers taught. It is not claimed that any of them served as superintendent, and upon the record the reasonable inference is that one of the other two teachers employed by the school district served as superintendent. There is no claim and no evidence that any religious instruction was given, or that any religious exercises were conducted.

A Catholic priest, called as a witness by the plaintiffs, testified that the members of the Sisterhood of St. Benedict, as a part of their vows of admission, renounce ownership of personal property; and that they turn over to the Motherhouse the proceeds of any compensation they may receive for services rendered, after their living expenses, clothing and maintenance have been paid. That in turn there rests upon the Motherhouse of the Order to which such moneys or properties are given an obligation to care for the members and that upon retirement they are privileged to return there and be cared for during the remainder of their lives. He further testified that the members of the Sisterhood are required to wear a certain garb, but that they may be released from this requirement; that the members of the Order do not all wear the same garb, but that ordinarily those engaged in the same type of work wear the same type of garb. . . . He further testified that the garb worn by the Sisters in question here was of a dark color, and that the members of the Sisterhood ordinarily wear a rosary hanging from their sides from a belt, but that this is not obligatory. He further testified that the Sisters, while employed as teachers, will be and are governed by the rules of the particular school authorities, by whom they are employed, in the conduct of the schools.

The evidence in this case is to the effect that the teachers in question wore the habit customarily worn by them as members of the Sisterhood but that they wore no other religious insignia except during the first four days when they carried a rosary hanging from their sides from a belt, but that this practice was discon-

tinued. There was testimony by a girl who stated she attended school in all four days, that at one time she observed one of the teachers wearing a cross appended to a chain around her neck; that she observed this as the teacher bent over a desk but that it was not discernible when she stood erect.

There is no evidence that the teachers in question were wearing rosaries or any religious insignia other than their distinctive dress at the time this action was brought.

The question in the case therefore resolves itself to whether the fact that the teachers in question contribute to the Order a large part of their earnings and wear their particular religious garb during school hours constitutes a violation of the constitution and laws of North Dakota and infringes the rights of the plaintiffs so as to entitle them to injunctive relief.

The right of religious liberty is guaranteed and safeguarded by the constitutions, both of the nation and of the state. The first amendment to the Federal Constitution provides:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.”

This amendment merely restricts the power of Congress, and is not restrictive of the states. . . . It was left to the several states to make provision in their constitutions for the protection of the citizens of the state in their religious liberty against action by the state government. . . .

The questions in controversy and presented for determination here therefore resolve themselves to these:

- (1) Is the school in question here a sectarian school?
- (2) Is it free from sectarian control; or is it under sectarian control?

The answer to these questions involves a consideration of the meaning of the term “sectarian” as used in our constitution; or

specifically what is meant by the terms "sectarian school" and "sectarian control."

The term "sect" as applied to religious bodies, refers to the adherents collectively of a particular creed or confession. . . . The term "sectarian" when used as an adjective means, "denominational; devoted to, peculiar to, pertaining to, or promotive of, the interest of a sect, or sects." . . . A "sectarian institution" is "an institution affiliated with a particular religious sect or denomination, or under the control or governing influence of such sect or denomination." . . .

Obviously the school in question here is not a "sectarian school" within the meaning of §152 of the constitution. It is not affiliated with any particular religious sect or denomination. It is not governed or managed, nor are its policies directed or controlled, by such sect or denomination. It is one of the public schools of North Dakota, operated under the supervision, direction and control of the public officers of the state, county and district who, under the constitution and laws of the state, are charged with the administration, management and government of such public schools. The courses of study therein are prescribed by public officers and employees whose duty it is under our laws to prescribe such courses. The teachers in the school have received the certificates authorizing them to teach in the public schools of North Dakota upon compliance with the laws of the state; and they are as much subject to the control and direction of the superintendent of the school in which they teach, and of the county superintendent of schools and the state superintendent of public instruction as are other teachers in similar schools in the state.

The North Dakota constitution, however, does not merely inhibit the state from aiding or supporting sectarian schools; it further provides that all public schools shall "remain under the absolute and exclusive control of the state," and "shall be open to all children of the state of North Dakota and free from sectarian control." And it is contended by the plaintiffs that the

school in question here is not free from "sectarian control"; but that, on the contrary, it is being conducted under sectarian influence and control in violation of the above quoted provisions of the constitution.

Questions relating to alleged infringement of analogous or somewhat similar constitutional provisions have come before the courts in many cases; but the precise questions presented here, namely, whether such provisions are infringed because a teacher in a public school, who is a member of a religious order, wears the distinctive religious garb of such order, while engaged in teaching, and contributes a substantial portion of her earnings to such order, have arisen only in relatively few cases. . . .

In this case there is no evidence and no claim that any of the teachers departed in any manner from their line of duty and gave or sought to give instruction in religious or sectarian subjects or that they conducted or attempted to conduct any religious exercises, or that they sought to impress their own religious beliefs while acting as teachers. So far as the record discloses they were subject to and obeyed all orders given by the district school board, the superintendent of the school in which they taught, the county superintendent of schools, and of the state superintendent of public instruction. The sole complaints are: (1) that while giving instruction they wore the habit of their order; and (2) that they contributed a large portion of their earnings to the order of which they are members.

We are all agreed that the wearing of the religious habit described in the evidence here does not convert the school into a sectarian school, or create sectarian control within the purview of the constitution. Such habit, it is true, proclaimed that the wearers were members of a certain denominational organization, but so would the wearing of the emblem of the Christian Endeavor Society or the Epworth League. The laws of the state do not prescribe the fashion of dress of the teachers in our schools. Whether it is wise or unwise to regulate the style of dress to be worn by teachers in our public schools or to inhibit the wearing

of dress or insignia indicating religious belief is not a matter for the courts to determine. The limit of our inquiry is to determine whether what has been done infringes upon and violates the provisions of the constitution.

The fact that the teachers contributed a material portion of their earnings to the religious order of which they are members is not violative of the constitution. A person in the employ of the state or any of its subdivisions is not inhibited from contributing money, which he or she has earned by service so performed, for the support of some religious body of which he or she is a member. To deny the right to make such contribution would in itself constitute a denial of that right of religious liberty which the constitution guarantees.

It follows from what has been said that the judgment appealed from is right. It must be and it is affirmed.

BURKE, Ch. J., and MORRIS, NUESSE and BURR, J. J., concur.

## FREEDOM TO MAINTAIN PAROCHIAL SCHOOLS

### Supreme Court of the United States

OCTOBER TERM, 1924

Pierce, Governor of Oregon, et al. v. Society of Sisters

Pierce, Governor of Oregon, et al. v. Hill Military Academy\*

[DECIDED JUNE 1, 1925]

268 U.S., 510-536

Mr. Justice McReynolds delivered the opinion of the Court:

These appeals are from decrees, based upon undenied allegations, which granted preliminary orders restraining appellants from threatening or attempting to enforce the Compulsory Education Act adopted November 7, 1922,\* under the initiative provision of her Constitution by the voters of Oregon. Jud. Code, Sec. 266. They present the same points of law; there are no con-

\* The Society of Sisters and the Hill Military Academy constituted the appellees, but the American Jewish Committee, the Seventh-day Adventists, and the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States, by special leave of the Court, filed briefs of *amici curiae* with the appellees.

troverted questions of fact. Rights said to be guaranteed by the federal Constitution were specially set up, and appropriate prayers asked for their protection.

The challenged Act, effective September 1, 1926, requires every parent, guardian or other person having control or charge or custody of a child between eight and sixteen years to send him "to a public school for the period of time a public school shall be held during the current year" in the district where the child resides; and failure so to do is declared a misdemeanor. There are exemptions—not specially important here—for children who are not normal or who have completed the eighth grade, or who reside at considerable distances from any public school, or whose parents or guardians hold special permits from the County Superintendent. The manifest purpose is to compel general attendance at public schools by normal children, between eight and sixteen, who have not completed the eighth grade. And without doubt enforcement of the statute would seriously impair, perhaps destroy, the profitable features of appellees' business and greatly diminish the value of their property.

Appellee, the Society of Sisters, is an Oregon corporation, organized in 1880, with power to care for orphans, educate and instruct the youth, establish and maintain academies or schools, and acquire necessary real and personal property. It has long devoted its property and effort to the secular and religious education and care of children, and has acquired the valuable good will of many parents and guardians. It conducts interdependent primary and high schools and junior colleges, and maintains orphanages for the custody and control of children between eight and sixteen. In its primary schools many children between those ages are taught the subjects usually pursued in Oregon public schools during the first eight years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church are also regularly provided. All courses of study, both temporal and religious, contemplate continuity of training under appellee's charge; the primary schools are essential

to the system and the most profitable. It owns valuable buildings, especially constructed and equipped for school purposes. The business is remunerative—the annual income from primary schools exceeds thirty thousand dollars—and the successful conduct of this requires long time contracts with teachers and parents. The Compulsory Education Act of 1922 has already caused the withdrawal from its schools of children who would otherwise continue, and their income has steadily declined. The appellants, public officers, have proclaimed their purpose strictly to enforce the statute.

After setting out the above facts the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of the measure is enjoined the corporation's business and property will suffer irreparable injury.

Appellee, Hill Military Academy, is a private corporation organized in 1908 under the laws of Oregon, engaged in owning, operating and conducting for profit an elementary, college preparatory and military training school for boys between the ages of five and twenty-one years. The average attendance is one hundred, and the annual fees received for each student amount to some eight hundred dollars. The elementary department is divided into eight grades, as in the public schools; the college preparatory department has four grades, similar to those of the public high schools; the courses of study conform to the requirements of the State Board of Education. Military instruction and training are also given, under the supervision of an Army officer. It owns considerable real and personal property, some useful only for school purposes. The business and incident good will are very valuable. In order to conduct its affairs long-time contracts must be made for supplies, equipment, teachers, and pupils. Ap-

pellants, law officers of the State and County, have publicly announced that the Act of November 7, 1922, is valid and have declared their intention to enforce it. By reason of the statute and threat of enforcement appellee's business is being destroyed and its property depreciated; parents and guardians are refusing to make contracts for the future instruction of their sons, and some are being withdrawn.

The Academy's bill states the foregoing facts and then alleges that the challenged Act contravenes the corporation's right guaranteed by the Fourteenth Amendment and that unless appellants are restrained from proclaiming its validity and threatening to enforce it irreparable injury will result. The prayer is for an appropriate injunction.

No answer was interposed in either cause, and after proper notices they were heard by three judges (Jud. Code, sec. 266) on motions for preliminary injunctions upon the specifically alleged facts. The court ruled that the Fourteenth Amendment guaranteed appellees against the deprivation of their property without due process of law consequent upon the unlawful interference by appellants with the free choice of patrons, present and prospective. It declared the right to conduct schools was property and that parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places. Also, that these schools were not unfit or harmful to the public, and that enforcement of the challenged statute would unlawfully deprive them of patronage and thereby destroy their owners' business and property. Finally, that the threats to enforce the act would continue to cause irreparable injury; and the suits were not premature.

No question is raised concerning the power of the State reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that

nothing be taught which is manifestly inimical to the public welfare.

The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. These parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education.

Under the doctrine of *Meyer v. Nebraska*, 262 U. S. 390, we think it entirely plain that the Act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Appellees are corporations and therefore, it is said, they cannot claim for themselves the liberty which the Fourteenth Amendment guarantees. Accepted in the proper sense, this is true. *Northwestern Life Ins. Co. v. Riggs*, 203 U. S. 243, 255; *Western Turf Association v. Greenberg*, 204 U. S. 359, 363. But they have business and property for which they claim protection. These are threatened with destruction through the unwarranted compulsion which appellants are exercising over present and prospective patrons of their schools. And this court has gone very

far to protect against loss threatened by such action. *Truax v. Raich*, 239 U. S. 33; *Truax v. Corrigan*, 257 U. S. 312; *Terrace v. Thompson*, 263 U. S. 197.

The courts of the State have not construed the Act, and we must determine its meaning for ourselves. Evidently it was expected to have general application and cannot be construed as though merely intended to amend the charters of certain private corporations, as in *Berea College v. Kentucky*, 211 U. S. 45. No argument in favor of such view has been advanced.

Generally it is entirely true, as urged by counsel, that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the State upon the ground that he will be deprived of patronage. But the injunctions here sought are not against the exercise of any *proper* power. Plaintiffs asked protection against arbitrary, unreasonable and unlawful interference with their patrons and the consequent destruction of their business and property. Their interest is clear and immediate, within the rule approved in *Truax v. Raich*, *Truax v. Corrigan* and *Terrace v. Thompson*, *supra*, and many other cases where injunctions have issued to protect business enterprises against interference with the freedom of patrons or customers. *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184; *Nebraska District v. McKelvie*, 262 U. S. 404; *Truax v. Corrigan*, *supra*, and cases there cited.

The suits were not premature. The injury to appellees was present and very real, not a mere possibility in the remote future. If no relief had been possible prior to the effective date of the Act, the injury would have become irreparable. Prevention of impending injury by unlawful action is a well-recognized function of courts of equity.

The decrees below are affirmed.

THE USE OF PUBLIC FUNDS TO SUPPORT A  
PAROCHIAL SCHOOL <sup>1</sup>

## The Supreme Court of Iowa

Sheldon Knowlton, Appellee, v. Henry Baumhover et al., Appellants <sup>b</sup>

[DECIDED JANUARY 18, 1918]

182 Iowa Reports, 691-738

*Appeal from Carroll District Court.*—F. M. Powers, Judge.

Suit in equity to enjoin the defendants, directors and officers of a school corporation, from appropriating, contributing, or paying out public school funds for the support, or in aid of the maintenance or support, of a parochial school, and for other equitable relief. The defendants denied the allegations of the petition; and, on trial to the court, a decree was entered substantially as prayed, and defendants appeal.—*Affirmed.*

. . . . .

[Mr. Justice Weaver gave the opinion of the court.]

WEAVER, J.—Maple River Township District is a school corporation of Carroll County. One of its subdistricts includes a small village bearing the name Maple River, and is spoken of in the record as “Maple River District,” or “Maple District,” and sometimes as “No. 4.” For many years prior to March, 1905, a schoolhouse had been provided for the use of this subdistrict, and a public school regularly maintained therein. At the March, 1905, meeting of the board of directors, a resolution was adopted to the effect that, because of the “inadequacy” of the school building, and for the “saving of expense,” it was advisable to rent for school purposes “the north room of the second story of the building standing on lot 11, block 7, in the town of Maple River, for a period of ten years at a yearly rental of two dollars and fifty cents and that the president of the board be authorized to enter into such a lease with Joseph Kuemper.” This was done, and the schoolhouse property was sold and disposed of. From that time forward, the only public school, if any, in Maple District, has been main-

tained in the place described in the lease above mentioned. In the year 1914, this suit was brought by the plaintiff, a resident taxpayer of the district, alleging that the school so maintained is not a public school, within the meaning of the law, but is, in fact, a parochial or religious school, which was established and has been and still is being conducted by and in behalf of the religious organization known as the Roman Catholic Church, and that the board of directors and the treasurer of the district have paid out and expended, and, if not restrained from so doing, will continue to pay out and expend, the public funds of the district for the benefit and support of the said parochial school. Upon this showing, an injunction was prayed, forbidding all such use of the public funds, and for other equitable relief. . . .

The trial court, after hearing the evidence, found for the plaintiff, and entered a decree perpetually enjoining the defendants and their successors in office from using or appropriating the moneys of the district to such end, and commanding the board of directors to provide a school building for the use of the subdistrict, and meanwhile, until such building could be provided, that a suitable room be rented for that purpose elsewhere than in connection with the parochial school. From this decree, the defendants have appealed.

While there is dispute at several points concerning certain matters of fact, very much of the testimony, and enough to fairly determine the merits of the case, is either undisputed or thoroughly well established by a clear preponderance of the evidence. It appears that the school township and subdistrict in question are peopled very largely by families of the Roman Catholic faith, and that parents of that communion prefer, whenever it is possible, that their children be trained or taught in parochial or religious schools of that faith, until they have finished a course which is comparable to that which is covered by the first eight grades in public schools. A Roman Catholic house of worship, known as the "St. Francis Church," had been erected in that vicinity, and there religious services were regularly conducted by priests

to whom the pastoral charge of that parish was, from time to time, committed. By its side was also erected a building in which a parochial school was maintained. This building was of two stories, each having a schoolroom. The teachers in these rooms were Catholic sisters, wearing the characteristic garb and regalia of their order, who gave daily instruction to their pupils, not only in branches of secular learning, but also in the Catholic catechism and in the elementary principles of Catholic faith. The building as a whole was, to all intents and purposes, a single schoolhouse, and the classes taught therein constituted a single school of two departments, established and maintained for the express purpose of giving religious training to its pupils, and at the same time affording such pupils, as nearly as practicable, the equivalent of a common school education. Therefore, when we say that the property described in the resolution adopted by the board of directors as the "north room of the second story of the building standing on Lot 11, Block 7, in the town of Maple River," was in fact the upper room of the parochial school building which we have described, and the nominal lessor, "Joseph Kuemper," was the priest in charge of St. Francis Church, which had the parochial school under its fostering care, the inevitable certainty of this controversy is plainly seen, and should have been visible to the parties to the transaction.

Let us now look briefly into the practical working of the arrangement thus made. Miss Martin, whose religious name is Sister Estella, and who was in charge of the upper room of the parochial school, was employed by the board of directors as teacher of the subdistrict school, and she took charge, or rather she remained in charge, of that room, while the lower room remained in charge of another sister of the same order, who continued to conduct it as an avowedly church school. The pupils in both rooms were organized and graded after the manner of a single school of two departments, the younger children being taught in the lower room, and the older ones in the upper. From the beginning, and for a period of more than nine years, the study of a Catholic cate-

chism and the giving of religious instruction were part of the daily program of instruction in both rooms. The walls were hung with pictures of the Holy Virgin, of Christ crowned with thorns, of the Crucifixion, and others, all unmistakably appealing to Catholic sentiment, and the teachers were invariably arrayed in the striking robes of their order. Every influence of association and environment, and of precept and example, to say nothing of authority, was thus contrived to keep those of Catholic parentage loyal to their faith, and to bias in the same direction those of non-Catholic parentage. In short, so far as its immediate management and control were concerned, the manner of imparting instruction, both secular and religious, and the influence and leadership exercised over the minds of the pupils, it was as thoroughly and completely a religious parochial school as it could well have been had it continued in name, as well as in practice, the school of the parish under the special charge and supervision of the church, its clergy, and religious orders. The act of the board in thus surrendering its proper functions and duties is not to be explained as a mere change in the location of the public school, or the mere exercise of the discretion which the law gives to the board to rent a schoolroom when circumstances render it necessary. It was a practical elimination of the public school as such, and a transfer of its name and its revenues to the upper department of the parochial school. . . .

We can and do hold in high respect the convictions of those who believe it desirable that secular and religious instruction should go hand in hand, and that the school which combines mental and spiritual training is best adapted to the proper development of character in the young. The loyalty to their professed principles which leads such persons to found and maintain schools of this class at their private expense, while at the same time bearing their equal burden of taxation for the support of public schools, is worthy of admiration, and convincing proof of their sincerity. But it is doubtless true that this double burden (double only because voluntarily assumed) sometimes renders

those who bear it susceptible to the misleading argument that, because they thus carry an extra load for conscience' sake, there is something wrong in the policy which forbids them to make the public school a means for accomplishing the end for which the parochial school is designed. If that feeling be allowed to prevail in a school district or a community where there is little or no sentiment to the contrary, ecclesiastic encroachment upon the legal nonreligious character of the public school is quite sure to become apparent. But, as we have before intimated, the right of a controversy of this kind is not to be decided by a count of the number of adherents on either side. The law and one are a majority, and must be allowed to prevail. The spirit which would make the state sponsor for any form of religion or worship, and the religion, whether Protestant or Catholic, which would make use of any of the powers or functions of the state to promote its own growth or influence, are un-American; they are not native to the soil; they are inconsistent with the equality of right and privilege and the freedom of conscience which are essential to the existence of a true democracy. We have no criticism to offer of the great religious organization a local branch of which happens to figure, to some extent, in the transaction here in controversy, a transaction which we have condemned on legal grounds alone. . . . What we have said with reference to this case we would repeat with no less emphasis if the parochial school in question were under the patronage of the followers of Martin Luther or John Calvin or John Wesley or other Protestant leadership. The cry which is sometimes heard against the so-called "Godless school" is raised not by Catholics alone, and in not a few Protestant quarters there are manifestations at times of a disposition to wear away constitutional and legal restrictions by constant attrition, and bring about, in some greater or less degree, a union of church and state. But from whatever source they appear, such movements and influences should find the courts vigilantly on guard for the protection of every guaranty provided by Constitution or

statute for keeping our common school system true to its original purpose. . . .

Let any other become a settled law of the State, and the day of the destruction of our system of nonsectarian public education will be far advanced. Let it be once understood that it is possible by any scheme or device to lawfully compass any public school about with religious influences in the interest of any sect or denomination, and you will have offered a tempting prize to the propagandist and proselyter of every creed; and wherever the adherents of any particular creed can command a majority of any school board, it may abandon the schoolhouse provided for the common and equal use of all the people, move the school into some church or some parochial or private building established for sectarian use, put in charge of it trained ecclesiastics, bound by solemn vows to devote their lives, their services, and all their God-given powers to the advancement of the interests of their church, fill the schoolroom with distinctive emblems of their faith, and by a multitude of influences, silent as well as expressed, shape the plastic minds and characters of the young children committed to their care in accordance with their own religious views, and saddle the expense of this sectarian education upon the taxpayers. We do not believe that the people of this country are ready for such a surrender of one of the most distinctive features of a free government to ecclesiastical domination, and we are sure that, when properly construed, the law will not fail to place upon it the seal of condemnation. . . .

As thus modified, the decree of the district court must be affirmed at the cost of the appellant.—*Affirmed.*

LADD, EVANS, GAYNOR, and STEVENS, J. J., concur.  
[SALINGER, J., and PRESTON, C. J., dissenting.]

THE USE OF PUBLIC FUNDS TO SUPPORT A  
PAROCHIAL SCHOOL

The Supreme Court of the State of Indiana

MAY TERM, 1940

State ex rel. Johnson, et al. v. Boyd, et al.<sup>8</sup>

State ex rel. Johnson, et al. v. Viets, et al.

State ex rel. Johnson, et al. v. Krack, et al.

[Nos. 27, 378, 27, 377, 27, 379, respectively. Filed June 28, 1940.]

217 Indiana Reports, 348-373

SWAIM, J.—Separate actions were filed in the name of the State of Indiana on the relation of Joseph M. Johnson and Sarah E. Johnson, taxpayers of the school city of Vincennes, Indiana, for the benefit of themselves and all other taxpayers of said school city, seeking to recover for the use and benefit of the said school city on the school treasurer bonds given by Claudius L. Boyd, as principal, and United States Fidelity & Guaranty Company as surety; by William A. Viets, as principal, and American Employers' Insurance Company of Boston, Massachusetts, as surety; and by Raymond J. Krack, as principal, and American Employers' Insurance Company of Boston, Massachusetts, and The Metropolitan Casualty Insurance Company of New York, as sureties. Said Boyd was the treasurer of said school city during the school year 1933-34, said Viets during the school year 1934-1935, and said Krack during the school years of 1935-36, 1936-37.

Each of said complaints was the same in all essentials except as to the defendants and as to the amounts alleged to have been illegally paid by said respective treasurers from the school funds of said school city.

In each complaint it was alleged that the particular defendant treasurer had "improperly, unlawfully, wrongfully and in violation of the covenants of his said bonds, diverted, misappropriated, paid out, disbursed and expended from the common school funds and other school revenues of said school city," large amounts of money; that said monies were "paid out and disbursed, in aid of

certain private, religious, sectarian and theological institutions, to-wit; private Roman Catholic parochial schools within said city of Vincennes"; that said payments in specified amounts were made to certain individuals who were Catholic Sisters; that none of said Sisters "to whom said payments were made, as aforesaid, were employed as teachers, or otherwise, in any of the lawfully, properly and regularly constituted public schools of said school city; that all of said expenditures were misappropriated, diverted and paid in the aid, benefit and support of said parochial schools; that said schools now are, and at the time of all of said payments to them were, private, sectarian and denominational institutions controlled by, and maintained under, the creed and influence of the religious organization known as the Roman Catholic Church; that said schools are directed and controlled through the clerical government of said church, exercised by and through the Bishop thereof, as the titular head of the Indianapolis diocese of said church; that said sisters, to whom said payments were made, neither received nor retained said payments as their own secular or private property or income, or any part thereof; . . . that the payment of said moneys to said sisters was a mere subterfuge to subsidize said schools and make donations from the school treasury to said church through said schools and through said sisters; that said disbursements were made in furtherance of an unlawful scheme to accomplish, indirectly, that which . . . could not be done directly; that all of said payments were withdrawals from the school treasury of the City of Vincennes, as subsidies for the aid and support of said private and religious institutions; that all of said disbursements complained of gave preference to a sectarian creed and religious societies and prevented the administration of a general and uniform system of public schools in said city of Vincennes and extended special privileges to children of a particular religious faith."

Said complaint prayed judgment for and on behalf of the taxpayers of said school city for the use and benefit of said school city against the said defendant treasurers, as principals, and against

their sureties, as such, for all of said sums so expended together with certain interest and penalties thereon.

The defendants in each of said cases filed answers in general denial and special answers alleging that the amounts claimed by the plaintiffs to have been illegally paid were paid as teachers' salaries to teachers who were hired to and did teach in the public schools of said school city, under written contracts with the board of school trustees.

The three cases were consolidated for trial. There were special findings of fact and conclusions of law and the judgment in each case was for the defendants, from which judgments these three separate appeals are prosecuted.

The assignments of error and propositions in support thereof are the same in each appeal and we shall, therefore, discuss them as if they constituted one appeal.

The facts essential to the determination of the questions presented by this appeal, as disclosed by the special findings are substantially as follows: On July 28, 1933, a committee of priests of the Roman Catholic Parishes in the school city of Vincennes, advised the Board of School Trustees of said city that the Catholic Parochial Schools within the said school city would not be opened by the churches for the ensuing school year and asked said school trustees to provide necessary school facilities for the eight hundred school children who had theretofore attended the said parochial schools, to-wit: St. Francis Xavier, St. John's Sacred Heart, St. Rose Academy, and Gibault. Thereupon the Board of Trustees of said school city passed a motion that they "assume the administrative and instructional obligation for the Catholic Parochial Schools included within the limits of said School City, in accordance with the constitutional and statutory laws of the state, the rules and regulations of the State Department of the Board of Education and the existing rules and regulations of the Board of School Trustees of the City of Vincennes with a definite understanding that the school city of Vincennes assumes no outstanding, existing or future financial obligations, either bonded temporary

loans or other evidences of indebtedness, or the operation, maintenance and capital outlay costs for buildings and grounds belonging to the Catholic Parochial Schools"; and at the same time the board authorized the superintendent to proceed at once and work out the administrative details of the proposed plan of incorporation. On March 18, 1935, said board adopted a resolution, to be effective at the close of the school year 1934-1935, rescinding said original motion. On August 25, 1935, said board of school trustees adopted a resolution reconsidering and amending the resolution of July 28, 1933, as follows:

"Be it resolved by the Board of School Trustees of the School City of Vincennes, Indiana, that whereas the effects of the depression have brought about an economical condition in our city by reason of which an emergency exists regarding the operation and maintenance of the parochial schools of Vincennes and whereas the Board of School Trustees of said School City are of the opinion that the patrons of our parochial schools are entitled to public aid and assistance during these extraordinary times in which we are living; therefore, be it resolved by the Board of School Trustees of the School City of Vincennes that the School City of Vincennes assume the administrative and instructional obligation for the school children of the parochial schools included within the limits of said School City in accordance with the constitution and the statutory laws of the state, the rules and regulations of the State Department of the Board of Education and existing rules and regulations of the Board of School Trustees of the School City of Vincennes, for all grades in said parochial schools to and including the sixth grade with a definite understanding that the School City of Vincennes assumes no outstanding, existing or future financial obligation, either bonded temporary loans or other evidences of indebtedness or the operation, maintenance and capital outlay costs for buildings and grounds belonging to the parochial schools."

On October 2, 1935, the board adopted the following resolution:

“Whereas, heretofore, the St. Francis Xavier School, the St. John School and Sacred Heart School, because of lack of funds were not going to open for the school year 1935-1936, and whereas notice had been given to this Board that such schools would not operate during said school year, and whereas the children formerly attending such schools could not in the opinion of this Board be properly cared for in the school buildings owned by the School City it was deemed advisable and necessary to take over and make a part of the public schools and the school system of this school city the St. Francis Xavier School, St. John School, and Sacred Heart School, and whereas, a resolution was passed by this Board on the fifth day of August, 1935, which was not full and complete and did not express the intention of the Board nor the purpose intended by the adoption of said resolution, now, therefore, be it resolved by this Board that the St. Francis Xavier School, the St. John's School, and Sacred Heart School of Vincennes up to and including the sixth grade be and they are hereby made a part of the public schools and the public school system of the School City of Vincennes and subject to all of the rules and regulations of the public school system. The course of study pursued and to be pursued in said schools and the textbooks used and to be used therein arranged and to be arranged to conform to the curriculum now in effect in all the other public schools in the school city.

“Be it further resolved that no sectarian instruction shall be permitted during school hours in said schools; be it also further resolved that the buildings and equipment formerly used by the said St. Xavier, St. John and Sacred Heart Schools shall be used by this School City but it shall pay no rent for such use.”

The Superintendent of the Vincennes City Schools, acting under authority given him by said board of school trustees procured recommendations for teachers for said schools from various Roman Catholic colleges. All teachers so recommended were Sisters and Brothers in various Catholic orders. The Board of School Trustees of said school city employed as teachers in said schools the teachers so recommended for the school year 1933-34

and for each subsequent year. Each teacher so employed was regularly licensed to teach school agreeable with the laws of the State of Indiana. The teachers taught in said schools the course of study prescribed by the State Board of Education. The school city of Vincennes at no time obtained a lease, rental contract or contract of any kind or character authorizing it to use the buildings of said parochial schools, but without any contract or other obligation to the school city of Vincennes to do so the Roman Catholic authorities have provided the several school buildings used by said schools, together with all seats, desks, furniture and furnishings, heat, light, water, fuel and janitor service for each building during the school years 1933-34 to and including the school years 1938-39, all without expense to or obligation upon the school city of Vincennes.

The Gibault High School was discontinued at the close of the school year 1934-35.

In addition to other pictures the school rooms in each of said buildings had hanging on the walls, in view of said students, a picture of Jesus, The Holy Family, The Crucifixion, and George Washington. They also each have an American Flag and a Holy Water fount, in which is kept Holy Water for the use of the pupils. While teaching the teachers wore the characteristic robes of the order to which they belonged and the sisters always wore a rosary and crucifix in view of the pupils.

On the grounds near each of said schools there is located a Roman Catholic Church, a rectory or priests' home and a sisters' home. Each morning, immediately prior to the beginning of the school, the pupils of each room were caused to attend at the nearby church where they were given religious instructions for thirty minutes by the parish priest. This particular service is said to be voluntary. So far as shown no pupil attending any of said schools has refused or failed to attend such morning services for religious instruction.

Prior to the school year 1933-34 the school city of Vincennes owned, maintained and operated nine public schools. Prior to

the beginning of said school year the school authorities had divided said school city into school districts and assigned all the pupils below high school grades living in each district to a certain school, which they were required to attend unless transferred elsewhere. Beginning with the school year 1933-34 the children of the Roman Catholic families living within the school city of Vincennes were not required to attend the school assigned to the district in which they lived nor were they transferred elsewhere. They continued to attend the same schools that they had been attending theretofore, without regard to the boundaries of the school district in which they lived.

Since the beginning of the school year 1933-34 the schools in question have been visited, occasionally, by the Superintendent of the Vincennes City Schools and, frequently, by the director of instruction in the elementary grades of the city schools. Throughout the period in question the school city of Vincennes "has paid the administrative and instructional obligations" of all of the schools mentioned from public school funds.

Upon these facts the court stated conclusions of law as follows:

"1. That throughout the period complained of in plaintiff's complaint said schools, to-wit, St. Francis Xavier, St. John's Sacred Heart, St. Rose Academy and Gibault were Roman Catholic Parochial schools, and not public or common schools of the State of Indiana within the Constitution and laws of the state.

"2. That in paying the administrative and instructional obligations of said schools during the time that such payments have been made the Board of Trustees of the School City of Vincennes accomplished a governmental purpose and duly imposed upon it by the law, though the method of its accomplishment is forbidden by law.

"3. That the law is with the defendant, and the plaintiff should take nothing herein."

The principal question presented by this appeal is whether, under the facts in this case, the payments made by said school

treasurers to said teachers are legal. The appellants contend that such payments were illegal and that the amount thereof should be returned to the school city because, according to the allegations of said complaint, the schools continued to be parochial schools, under the domination and control of the Roman Catholic Church, and the payments to said teachers were a mere subterfuge by which donations were actually made to said church.

Our state constitution expressly provides, "No money shall be drawn from the treasury, for the benefit of any religious or theological institution." (Article 1, § 6), and § 4 of said Article provides that, "No preference shall be given by law, to any creed, religious society or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent." Neither of these provisions may be legally violated, either directly or indirectly and any public official knowingly paying money from the public treasury in violation of these provisions would be required to reimburse said treasury for any amounts so paid. Have the appellants proved that the appellees, either directly or indirectly, violated either or both of these constitutional provisions? . . .

The church authorities provided the several school buildings, in which said schools were conducted, together with the furniture, utilities and janitor services, during the school years 1933-34 to 1938-39, both inclusive. This was done without any lease or rental contract. Our statutes provide that the "school trustees shall take charge of the educational affairs of their respective townships, towns and cities. They shall employ teachers, establish and locate, conveniently, a sufficient number of schools for the education of children therein, and build, or otherwise provide, suitable houses, furniture, apparatus and other articles and educational appliances necessary for the thorough organization and efficient managements of said schools." . . . In this case we find the Board of Trustees faced with an emergency to provide school facilities for more than 800 additional school children. In the opinion of the trustees they could not be properly cared for in the buildings

owned by the school city. There is no statutory provision in this state prohibiting school trustees under such circumstances from leasing for school purposes any buildings and equipment which are suitable for such purposes. Nor is there any statutory limitation as to the persons or societies from whom such buildings and equipment may be leased. We see no valid reason why the said school trustees should not have leased the buildings and equipment furnished by the church authorities.

Acting within their discretion, the Board of Trustees may well have assumed that the emergency was temporary and that they would not be justified in buying or building new buildings or in making additions to the buildings which the school city then owned, even if the finances of the school city had made it possible for them to do so. They may well have assumed that as soon as the churches became financially able to do so the parochial schools would be re-established; and that the parents of the pupils in question would then desire their children to attend such parochial schools. . . .

The fact that the church contributed the use of the buildings and equipment used for these schools does not make the schools conducted therein parochial schools. . . . Since the teachers in said schools were employed by the Board of School Trustees, teaching the course prescribed for the public schools, such teachers were the employees of the school city and their possession of said premises was the possession of the school city. . . . The fact that a church, a rectory or Priests' home, and a Sisters' home were located on the grounds near each of said schools does not affect the right of the school city to use said school buildings.

The appellants also stress the fact that in the school rooms in each of said buildings, in addition to other pictures in view of the pupils, there were the pictures of Jesus, The Holy Family, the Crucifixion and George Washington and that each room was also provided with an American Flag and with a Holy Water fount, in which Holy Water was kept for the use of the pupils. Such pictures and furnishings do not constitute sectarian teachings in

the schools. No secret was made of the fact that the equipment and buildings belonged to the Catholic Church and we see no valid reason why all evidence of that fact should have been concealed.

The appellant also complains of the fact that the teachers employed by the said school trustees were Catholic Sisters and Brothers, recommended for such positions by the authorities of various Catholic colleges, and that such teachers, while teaching, wore the dress of their religious orders. The fact that these teachers were recommended by various Catholic normal schools cannot be considered an important factor. The teachers were employed by the Board of School Trustees. They were chosen from persons regularly qualified and licensed to teach school agreeable to the laws of the State of Indiana. It is the duty of school trustees to investigate the character and fitness of teachers. The trustees may do this in any proper manner which they may choose, including the procuring of recommendations. Recommendations from any reliable normal college should be helpful. . . .

No statute or rule prohibiting the employment of teachers belonging to a certain religious denomination or sect could be held valid. The employment of the teachers in this case certainly could not be held invalid because such teachers belonged to certain orders of the Catholic Church. The employment of teachers is within the discretion of the school trustees so long as such teachers meet the qualifications required by law. Membership in any particular church can neither legally qualify nor disqualify a teacher.

Nor does the fact that these teachers in question, while teaching, wore the robes of various orders to which they belonged constitute sectarian teaching or make it illegal for them to be paid their salaries as teachers. . . .

The appellants also contend that it is significant that each morning, immediately prior to the beginning of school, the pupils were caused to attend at the nearby Roman Catholic Church where they were given religious instructions for thirty minutes by the

Parish Priests. The findings do not disclose by whom the children were "caused" to attend. The finding does disclose that the service was said to be voluntary. Since the children in question were children of Catholic parents and the service was voluntary and not within the school hours we fail to see that this amounts to sectarian teaching within the schools or that it could be held to make the schools parochial schools rather than public schools.

Although it was alleged in the complaint that these schools were directed and controlled through the clerical government of the church exercised by and through the Bishop, there was no such finding by the court. Whether these schools, during the period in question, were parochial or public schools is determined by their control. They were in charge of teachers employed by the board of trustees of said school city. The teachers were regularly licensed under the laws of the State of Indiana. The course of study was that prescribed by the Board of Education. The schools were visited and supervised by the Superintendent of City Schools and the Director of Instruction of the city schools. The teachers were paid from the public funds. The space occupied by the schools was in the possession of the school city through its employed teachers. It is our opinion that the board of school trustees of the said school city by their course of action did establish public schools in the buildings formerly occupied by the parochial schools and that the payment, by the various treasurers of the school city, to said teachers of salaries provided by their contracts of employment was valid.

Finding no reversible error the judgment in each of said three cases is affirmed.

## THE USE OF PUBLIC FUNDS TO SUPPORT A PAROCHIAL SCHOOL

The Supreme Court of Missouri

Division Number One

JULY, 1942

Alfred Harfst et al., Appellants, v. A. J. Hoegan et al.<sup>8</sup>

349 Mo., 808-817

This is a suit by parents of public school children, against members of a school board, seeking an injunction against the use of school funds for purposes alleged to be sectarian and religious. From a decree granting part of the relief sought, and refusing to grant more, plaintiffs have appealed. The suit involves the Missouri constitutional guaranties of religious liberty and presents questions which have never before been considered or decided by our appellate courts.

Some years ago in the town of Meta, in Osage County, the Catholic Parish of St. Cecelia established its usual parish or parochial school, which was conducted under the direction of the parish priest. The teachers were members of the Sisters of the Most Precious Blood, a Catholic teaching order, who came from St. Mary's Institute of O'Fallon, at O'Fallon, Missouri, the mother house and novitiate for the training of teachers for parochial schools. The school building adjoined the parish church and had two schoolrooms on the first floor and a schoolroom and a chapel on the second. After some time, and about ten years ago, this parish school was taken into the State public school system by the school board of the Meta school district as a public grade school. From then on it has been and is now supported by public funds. At that time the textbooks and the course of study prescribed by the State Superintendent of Schools were adopted, but otherwise the school seems to have been conducted as a parochial school in the same manner as before its inclusion in the public school system. It was continued under the same name, the St. Cecelia School, and in the same building, the three schoolrooms

being rented from the parish priest by the school board. The same teachers or other Sisters of the same religious order were engaged and are paid by the school board and now constitute the teaching staff of the school. It is still referred to as the "Catholic school."

Harmony prevailed among the people of the school district about the conduct of this school until 1939 at which time there was a consolidation of another school district with the Meta district and the abandonment of the school in the other district. This action seems to have culminated in some bitterness between the peoples of the two districts and led to the filing of this suit. Almost all of the persons engaged in this controversy are of the same religion, Catholic. The questions involved do not arise from a strife between persons of opposing religious beliefs, but come from a dispute between those of the same faith.

We find the usual school day commencing with prayer in the morning. After prayer the pupils are marched, one room at a time, to the Catholic church next door for Holy Mass. After Mass the pupils are marched back to their schoolrooms where they receive religious instruction. In this they study the Catholic catechism and the child's Catholic Bible. On one or two days of each week the parish priest gives religious instruction to the pupils in the midmorning, either at the church or in the school-house chapel. On Friday afternoons the pupils are again marched to the church for confession. In the quarterly "Teacher's Report to the Parents" the subject "Religion" is included under "Branches Pursued" and a grade in this subject is given to each pupil.

Sister M. Berchmans, one of the present teachers, testified that the Sisters of the Most Precious Blood dedicate their lives to teaching the young which includes the teaching of the Catholic faith as well as the teaching of the usual secular educational subjects. She had been previously and was then teaching the Catholic faith to her pupils in the St. Cecelia public school. As accessories to the religious instruction, the schoolrooms have in them pictures and symbols of the Catholic faith, and there are holy-water fountains

for the benefit of the pupils at the doors of the schoolrooms. The one hundred or more pupils at this school are usually all of the Catholic faith, but in some years there have been one or two Protestant children enrolled there.

The school board maintains a second grade school in Meta which is attended entirely by Protestant children. The enrollment there is about one-half the number in the St. Cecelia school. The manner in which this school is conducted is not here in controversy, but the evidence shows that its facilities are not equal to those of the St. Cecelia school, and that Catholic children have been ordered by the school board to leave it and attend the St. Cecelia school.

Plaintiffs, who are parents of school children, taxpayers and residents of the school district, after stating the facts set out above allege that the members of the school board, the defendants, are maintaining a parochial school at public expense, contrary to our Constitution. They ask that the board be enjoined from using public funds: in support of a parochial school; in employing as teachers persons garbed in the habiliments of a religious order; in employing sectarian teachers. The answer of the school board is a general denial.

The chancellor found that sectarian religion was being taught in the school by the Sisters and also by the parish priest with the knowledge of the board members. However, in his decree he fails to give the broad relief asked for but confines himself to enjoining what appellants contend are mere side issues. He enjoined the use of religious textbooks and accessories such as pictures and symbols and the holy-water fonts, but he did not enjoin the teaching of sectarian religion. He did not enjoin the maintenance of a sectarian school by public officials at public expense. He did enjoin the parish priest from teaching within the school building, but he did not enjoin the payment of public funds to the teachers of religion. Under the decree as it now stands it is argued that defendants may continue to ignore the constitutional provision ensuring the freedom of worship.

Plaintiffs have appealed. They have first assigned as error the failure of the chancellor to enjoin the school board from paying public funds to the teachers of what the chancellor found to be a sectarian school. In passing on this particular assignment we are compelled to review briefly our constitutional guaranties of religious freedom which are necessarily involved in deciding this case, and which are alleged to have been openly violated, for the reason we hear this case *de novo* and determine what decree should have been entered.

With the adoption of the Federal Bill of Rights\* the whole power over the subject of religion, at that time, was left exclusively to the State governments.†

Previously there had been controversies in the various colonies over the governmental support of the church, and the complete separation of the church from the state did not really come until the formation of our Federal system of government,‡ although the Virginia Bill of Rights had earlier guaranteed freedom of worship. At that time there was declared the principle which is of the warp and woof of democracy; namely, the people must enjoy religious freedom and religious equality. This principle has stood out as a guiding star in the growth and development of our form of government and has contributed to its solidarity. It is as vital to our people as the guaranty of civil liberty and political equality. Because of it, devotion to religious beliefs according to the dictates only of one's conscience without molestation of forcible direction became possible, thus permitting an unhampered growth of religious conviction of any sort and of every denomination. There could be no governmental discrimination in favor of or against any sect; each became entitled

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\* Amd. 1. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." Now absorbed in the Fourteenth Amendment: *Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, 268 U. S. 510; *Cantwell v. Connecticut*, 310 U. S. 296; *Minersville District v. Gobitis* 310 U. S. 586.

† Story, [Commentaries on the] *Const. of the U. S.* (1891), Sec. 1879.

‡ *Reynolds v. United States*, 98 U. S. 145; Goddard, *The Law in Its Relation to Religion*, X Mich. Law Review, l. c. 164.

under the law to enjoy equal rights in a broad field. Yet, religion was in no way taken away from the individual. It has been recognized in the courts that generally we acknowledge with reverence the duty of obedience to the will of God.\* In the preamble to our Constitution the people of our State acknowledge our "profound reverence for the Supreme Ruler of the Universe" and our gratitude for His goodness.† But yet, beginning with our first Constitution,‡ we have persistently declared "that all men have a natural and indefeasible right to worship Almighty God, according to the dictates of their own consciences;" and, "that no human authority can control or interfere with the rights of conscience."

The fact that this is a case of first impression in this State is of itself an evidence that the policy separating religion from government can be maintained. It also demonstrates unusual restraint both on the part of church and state in view of the important roles played by the various pioneers of religion in the settlement of our State and in its transition from the frontier. A history starting with the first Jesuit Missionaries, followed in time by the frontiersman generally with a scorn of religion, and, finally, a period of Protestant revivals, has no doubt presented opportunities for vigorous controversy.§ But where such have occurred, settlement must have been made without resort to law. In other states numerous cases involving many phases of such controversies have reached the courts. There are decisions on public aid to a sectarian school, employment of a sectarian teacher, use of a church for school purposes, permitting the Bible in a school library, reading of the Bible with or without comment in a school, and so on. Each case necessarily turns on the par-

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\* *United States v. MacIntosh*, 283 U.S. 605; see also Cooley, "Constitutional Limitations" (1927), p. 976.

† Missouri Constitution, 1875.

‡ Missouri Constitution, 1820, Art. XIII, sec. 4.

§ See Houck, "History of Missouri," chap. 28; and "Religion," Missouri Guide Book, Federal Writers' Project.

ticular constitutional provision of the state in which the case arises.\*

Missouri follows generally the usual pattern of religious guaranties and safeguards in its Constitution.† We have, as mentioned above, the provision for freedom of worship according to one's own conscience without control or interference of his rights of conscience. It is apparent therefore, that under our system of education the inclusion of the St. Cecelia school in the public school system and its maintenance as a part of and an adjunct to the parish church in its religious teaching and where children of every faith may be compelled to attend and have attended, constitutes a denial of our guaranty of religious freedom. The fact that attendance at Mass is customarily before school hours or that religious instruction may be given during recess periods or that the participation of a non-Catholic child in these services may not be required does not make such conduct lawful in view of this provision.‡ Particularly is this true under circumstances as in this case where the pupils must arrive and leave at the same time in the school buses. This court has already said that "it certainly could not have been the design of the legislature to take from the parent the control of his child while not at school, and invest it in a board of directors or teacher of

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\* See cases reported and annotations thereto on "Sectarianism in Schools" in 5 A. L. R. 841; 20 A. L. R. 1334; 31 A. L. R. 1121; 57 A. L. R. 185; see also 16 C. J. S., "Const. Law," Sec. 206c.

† Art. II, sec. 5. "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate, on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of this State, or with the rights of others."

Art. II, sec. 6. "That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same."

‡ *Knowlton v. Baumhover*, 182 Iowa, 691; 166 N. W. 202; 5 A. L. R. 841.

a school." And we asked: "May they not prescribe a rule which would forbid the parent from allowing the child to attend a particular church, or any church at all?"—assuming that the question answered itself and reduced the argument to absurdity.\* By the common law, control of children is parental and the father could "delegate part of his parental authority to the tutor or schoolmaster," said Blackstone. 1 Com. 452, 3. Now by statute the school board has been given certain powers, and it behooves the board to point to a statute, when its will and that of the parent conflict.† This it has failed to do. And certainly the school board may not employ its power to enforce religious worship by children even in the faith of their parents. Furthermore, the segregation of the Catholic from the non-Catholic children and their mandatory attendance at one or the other of the two grade schools according to their religion, whether the schools be of equal or of unequal facilities, likewise constitutes a denial of complete religious freedom. The cases relied on by respondents may be distinguished on the facts; one involved only the garb of the teacher and two were about reading the Bible.‡

There is another constitutional inhibition which respondents do not observe. It forbids a school district to make payments from any public fund to sustain any private or public school controlled by any sectarian denomination.§ Respondents might

\* *Dritt v. Snodgrass*, 66 Mo. 286.

† *Wright v. Board of Education*, 295 Mo. 466; 246 S. W. 43.

‡ *Gerhardt v. Heid*, 66 N. D. 444; 267 N. W. 128; *Kaplan v. School District*, 171 Minn. 142; 214 N. W. 18; 57 A. L. R. 185; *Wilkerson v. Rome*, 152 Ga. 762; 110 S. E. 895; 20 A. L. R. 1334.

§ Art. XI, sec. II. "Neither the General Assembly nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever."

argue that the St. Cecelia school is controlled by the school board and not by the church, but we find from the record that the nominal supervision by the school board is but an indirect means of accomplishing that which the Constitution forbids.\* The statement of the county superintendent of schools that "we put the St. Cecelia parochial school in the public school system" is fully borne out by the facts in evidence. It was not only put there but it was maintained there with public funds.†

But our Constitution goes even farther than those of some other states. In addition to the provisions already mentioned we have still another. Art. II, Sec. 7, says: "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion or any form of religious faith or worship." Thus, we have an explicit interdiction of the use of public money for a *teacher* or religion *as such* which has been violated by the Board. In the instant case it is true that the Sisters followed the course of secular instruction prescribed for public schools but in addition they also instructed in the faith of their religious belief as their obligation required them to do. The Sister Superior testified that the members of her order have dedicated their lives to teaching and to the Catholic faith; to both the religious training and education of children; to teach no other faith but that of their religion; to devote themselves to a religious life. She also testified that before coming to the St. Cecelia school she had taught in parochial schools and that the teaching was the same in them as in the St. Cecelia

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\* See *Knowlton v. Baumhover*, supra; *Cook County v. Chicago Industrial School for Girls*, 125 Ill. 540; 18 N. E. 183; 1 L. R. A. 437; see also "Schools," 24 R. C. L. Sec. 49.

† *Millard v. Board of Education*, 121 Ill. 297; 10 N. E. 669, cited by respondents, held that under the evidence there was no ground for equitable relief under the Illinois constitutional provisions and *Dunn v. Chicago Industrial School*, 280 Ill. 613; 117 N. E. 735, also cited, held that in effect no aid was given by the State.

school except that in the parochial schools there was even more time devoted to instruction in religion. "I couldn't teach any differently," she stated. She then told of the religious instruction she was giving to her pupils in the St. Cecelia public school using the Catholic catechism and the child's Catholic Bible as texts.

From her testimony we must conclude that the members of her religious order, their lives dedicated to the training of children both in religion and education, come within this constitutional interdiction as teachers of religion and payment to them from public school funds is forbidden.

In reaching this conclusion we recognize that the members of these noble teaching orders are inspired only by the most unselfish and highest motives; that parochial education is an embodiment of one of the highest ideals that man may enjoy. The Supreme Court of the United States found that parochial education has been "long regarded as useful and meritorious." \* In the instant case it is admitted by all parties that the sisters are fully qualified according to the standards set by the superintendent of instruction as teachers of a public school. We know of the great educational institutions conducted by the Jesuits and other Catholic orders and of their high standards of excellence, St. Louis University being a leader among them. We recognize as well the great need of spiritual training not only in our own country, but throughout this troubled world. The right of freedom of worship, which at this time is being denied to the peoples of two foreign governments in particular, must be restored before the world is again secure. Nevertheless, the question confronting us is one only of law; of upholding our Constitution as it is written which, as lawyers and judges, we have dedicated our professional life to do. The constitutional policy of our State has decreed the absolute separation of church and state, not only in governmental matters but in educational ones

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\* *Pierce v. Society of Sisters*, 268 U. S. 534.

as well. Public money, coming from taxpayers of every denomination, may not be used for the help of any religious sect in education or otherwise. If the management of this school were approved, we might next have some other church gaining control of a school board and have its pastor and teachers introduced to teach its sectarian religion. Our schools would soon become the centers of local political battles which would be dangerous to the peace of society where there must be equal religious rights to all and special religious privileges to none. The faithful observance of our constitutional provisions happily makes such a condition impossible.

It is of no purpose to discuss or decide other questions raised except to point out that the long acquiescence of appellants in the management of the school cannot make such management proper.\* No one may waive the public interest;† the constitutional provisions are mandatory and must be obeyed.‡

The members of the school board have unintentionally but unquestionably violated our constitutional provisions in the respects noted. We commend the candor of all parties and it has eased the labors of the Court. . . .

This case must be remanded with directions to the chancellor to supplement the decree for plaintiffs, giving them additional injunctive relief in conformity with the views expressed in this opinion.

It is so ordered.

JAMES M. DOUGLAS,  
Judge.

All concur except Gantt, J., absent.

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\* *Knowlton v. Baumhover, supra.*

† *DeMay v. Liberty Foundry Co.*, 495; 37 S. W. (2d) 640; 16 C. J. S. Const. 327 Mo. Law, Sec. 89.

‡ *State ex rel. United Railways Co. v. Public Service Comm.*, 270 Mo. 429; 192 S. W. 958.

PAROCHIAL SCHOOL CHILDREN AND TAX-SUPPORTED  
TRANSPORTATION <sup>o</sup>

## The Supreme Court of Wisconsin

JANUARY TERM, 1923

State ex rel. Van Straten, Respondent, v. Milquet, School District  
Treasurer, Appellant

[FEBRUARY 7—MARCH 6, 1923]

180 Wisconsin Reports, 109-117

APPEAL from a judgment of the circuit court for Brown county: HENRY GRAASS, Circuit Judge. *Reversed.*

*Mandamus.* The defendant is treasurer of school district No. 2 of the town of De Pere, Brown county. In 1921, at the annual school meeting, the electors of that district voted not to hold school. In that situation the school board entered into a contract with one Al De Cleene to transport the children to an adjoining public school, the contract containing a provision that no bills would be audited or paid for transporting children to any other than a public school. Shortly after entering into the contract De Cleene died and his contract was continued by his brother. A controversy then arose as to whether or not the district should pay for the transportation of children to a parochial school. On October 14th a special school district meeting was held in an endeavor to settle the controversy. At this meeting a resolution was adopted authorizing the payment of \$89.75 to De Cleene, the amount due under his contract. The resolution further provided:

"And the said school board is also hereby authorized and directed to enter into a contract for the transportation of the said children of school age in said district for the balance of the ensuing year from such point or points in said school district to such point or points in the city of De Pere, Wisconsin, as may be agreed upon, and that the said school board is hereby authorized and directed to pay out of the general fund of said school district such funds as may be necessary to properly compensate such

person as may be so employed for the said purpose of transporting such children.”

Pursuant to this resolution a contract was entered into with the relator by which it was agreed:

“That the said *Peter Van Straten* is to transport personally, or by an agent of suitable age and discretion, approved by the party of the first part, the following named persons of school age, residing in said school district No. 2, town of De Pere, Brown county, Wisconsin, regularly, promptly, and comfortably from their respective homes in said school district to the public school grounds located on the corner of George and Michigan streets, in the city of De Pere, Wisconsin, for a term of six months, beginning December 6, 1921, for a consideration of \$90 per month, to be paid at the end of each month by order drawn upon the funds in the district treasury of said district.”

Then follow the names of thirty pupils. There were other provisions in the contract as to the route, time of departure, etc., statement and consideration of which is not necessary to a determination of the issues raised in this case. The relator gave a bond and entered upon the performance of his contract and fully performed upon his part the terms of the contract. The court found:

“That the said *Peter J. Van Straten* under his said contract conveyed a number of pupils from said district who attended the public school exclusively in the city of De Pere, and a number who attended the public school part of the time for domestic science and manual training, and attended the parochial school the balance of said time, and also some pupils who attended the parochial schools exclusively.”

It appeared upon the trial that out of twenty-seven children actually carried two attended the public schools, the remainder going to the parochial school; four of the pupils attending the parochial school in the city of De Pere and transported by the relator were taking forty minutes each of domestic science and

two were taking forty minutes each of manual training in the public schools.

After the relator had rendered services under the contract for two months the director and clerk issued two orders to the relator, but the defendant refused to pay the same, and this action was begun to compel the defendant, as treasurer of school district No. 2, to honor the orders drawn upon him by the director and clerk and pay the same from the funds of the district. From the judgment in favor of the relator, awarding a peremptory writ of *mandamus*, the defendant appeals. . . .

ROSENBERY, J. Sec. 3 of art. X of the constitution of the state of Wisconsin provides:

“The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed therein.” . . .

It was pursuant to the power conferred by sub. (1) (c) that the district board acted in making a contract with the relator. It is the contention of the appellant that the contract was in fact made for securing the transportation of children of school age from the district to a private school; that the district board had no authority under the law to make such a contract, and that the contract between the relator and the district is therefore void. It appears without dispute that the relator knew that more than three fourths of the children transported did not, and did not intend to, attend the public school. Five of the children were members of his own family.

A special meeting of the electors was held July 28, 1921. At that meeting the county superintendent of schools was present. The following is an extract from the minutes of that meeting:

“E. A. Seymour [the county superintendent] explained how transportation could be carried on, if two go to the public school, the rest can ride in the bus and the contractor can receive full pay.”

While the first contract with De Cleene contained a provision that bills for transportation would not be audited or allowed except for transportation of pupils attending the public school of the city of De Pere, the second contract contained no such clause and the defendant refused to sign the contract for that reason. The first recital of the contract, not set out in the statement of facts, is in part as follows:

“Whereas, the electors of school district No. 2 of the town of De Pere, Brown county, Wisconsin, at the annual school district meeting held in the school house of said district on the 5th day of July, 1921, voted and determined not to hold school in said district for the ensuing year, but instead to arrange for the free transportation of all of the children of school age in said district to the city of De Pere, . . .”

This recital shows quite conclusively that the transportation was not limited or intended to be limited to children who attended the public schools. In view of these and other facts appearing in the record this court cannot close its eyes to the fact that the contract in question was intended to secure the transportation of pupils at public expense to a private school under cover of transporting two pupils to the public school. The question is, Did the school district board have power to make such a contract?

The school district board purported to act under that portion of sub. (1) (c) italicised above. It would seem to require no argument to show that it was the legislative intent that, in the event the district should vote to suspend all schools in the district, the tuition of all children of school age, resident in the district, who desired to attend school, should be paid in some adjoining district school and that the italicized provision authorized the district board to provide transportation to the school where the tuition was paid.

Under the constitutional mandate it was the duty of the legislature to provide a free school. This it had done by providing for the organization of a school district. School districts were organized so as to comply with the constitutional mandate and in

the districts provision was made for the maintenance of a free school. Under the statutes referred to, the school district might, in lieu thereof, close the school, pay the tuition of resident pupils desiring to attend an adjoining district school, and provide for their transportation. The whole scope and purpose of the statute is to comply with the provisions of the constitutional mandate and that requires that free, non-sectarian instruction be provided for all persons of school age. The board is not authorized to expend public funds for any other purpose. The contract made by the district board whereby it attempted to provide transportation of pupils to a private school was an act beyond its authority and therefore invalid. The fact that two pupils transported were within the statutory class for whom the district board was authorized to provide transportation does not save the contract. . . . A contention that a contract of the kind involved in this case is valid wholly ignores the underlying fundamental purpose of our educational system as set forth in the constitution.

It is also contended that the order issued in this case to the relator was not authorized at a legal meeting of the school district board. . . .

The order having been issued by the clerk, countersigned by the director without the direction of the school district board, the order was invalid, and the defendant, as treasurer of the district, was under no obligation to honor it. The contract between the relator and the school district being invalid, the board having no statutory authority to execute a contract for the transportation of persons of school age to a private school, and the issuance of the order not having been authorized by the school district board, a peremptory writ of *mandamus* should not have been granted.

*By the Court.*—Judgment of the circuit court reversed, with directions to dismiss the petition.

PAROCHIAL SCHOOL CHILDREN AND TAX-SUPPORTED  
TRANSPORTATION °

The Supreme Court of Oklahoma

DECEMBER 2, 1941

Mike Gurney et al., v. J. R. Ferguson et al.

190 Okla., 254-256

WELCH, C. J.

The question is whether article 11, chapter 34, S. L. 1939, is constitutional.

The same provides:

“That whenever any school board shall, pursuant to this section or to any law of the State of Oklahoma, provide for transportation for pupils attending public schools, all children attending any private or parochial school under the compulsory school attendance laws of this State shall, where said private or parochial school is along or near the route designated by said board, be entitled equally to the same rights, benefits and privileges as to transportation that are so provided for by such district school board.”

It is here sought to compel the school district officials, in conformity with said act, and by use of the public school bus and at the expense of the public school funds, to transport certain pupils on their way to and from a certain admittedly parochial school for the purpose of attending such school.

We examine the law to determine whether the trial court erred in its conclusions that the legislative act is violative of section 5, article 2, of the Oklahoma Constitution.

Such constitutional provision is quoted as follows:

“No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.”

Plaintiffs in error base a goodly portion of their argument upon the premise that the above quoted provision of our Constitution says nothing about schools. The suggestion is made that therein lies a material distinction between such provision of our Constitution and certain constitutional provisions of other states which have there been considered in connection with similar questions. The net result of the suggestion would seem to be that the term "sectarian institution" does not include a sectarian or parochial school, leading to the ultimate result that our said constitutional provision did not inhibit the use of public funds directly for the maintenance of such a school.

We would not be inclined to accept that premise even if compelled to rely solely upon the phraseology of this particular provision. It seems to us that it would be commonly understood that the term "sectarian institution" includes a school or institution of learning which is owned and controlled by a church and which is avowedly maintained and conducted so that the children of parents of that particular faith would be taught in that school in the religious tenets of the church.

When the interpretation suggested by plaintiffs in error leads to the result that the framers of our Constitution did not intend to prohibit the direct expenditure of public funds in support of sectarian schools, then the complete error of that contention is demonstrated. It is provided in section 5, article 1, of the Constitution that the schools which the State is authorized and directed to establish and maintain shall be "free from sectarian control." We feel there is no doubt that section 5, article 2 supra, prohibits the use of public money or property for sectarian or parochial schools.

It is urged that the present legislative act does not result in the use of public funds for the benefit or support of this sectarian institution or school "as such;" that such benefit as flows from these acts accrues to the benefit of the individual child or to a group of children as distinguished from the school as an organization. That argument is not impressive. A similar argument

was said to be "utterly without substance" in *Judd v. Board of Education* 278 N. Y. 200, 15 N. E. 2d 576. It is true this use of public money and property aids the child, but it is no less true that practically every proper expenditure for school purposes aids the child. We are convinced that this expenditure, in its broad and true sense, and as commonly understood, is an expenditure in furtherance of the constitutional duty or function of maintaining schools as organizations or institutions. The State has no authority to maintain a sectarian school. Surely the expenditure of public funds for the erection of school buildings, the purchasing and equipping and the upkeep of same; the payment of teachers, and for other proper related purposes is expenditure made for schools as such. Yet the same argument is equally applicable to those expenditures as to the present one.

If the cost of the school bus and the maintenance and operation thereof was not in aid of the public schools, then expenditures therefor out of the school funds would be unauthorized and illegal. Yet, we assume it is now acquiesced in by all that such expenditures are properly in aid of the public schools and are authorized and legal expenditures. If the maintenance and operation of the bus and the transportation of pupils is in aid of the public schools, then it would seem necessarily to follow that when pupils of a parochial school are transported such service would likewise be in aid of that school.

The expenditure of the public funds for the purpose here shown is confined to children attending school. Thus refuting any argument that such transportation is for the benefit of children generally and not for schools or that such transportation is furnished in regulating traffic within the police power, or primarily in promoting the health and safety of the children of the State. In *Consolidated School Dist. v. Wright*, 128 Okla. 193, 261 P. 953, it was held that transportation of pupils is an act done in carrying into effect the educational program contemplated by the Constitution and statutes.

The appropriation and directed use of public funds in trans-

portation of public school children is openly in direct aid to public schools "as such." When such aid is purported to be extended to a sectarian school, there is, in our judgment, a clear violation of the above quoted provisions of our Constitution. It is our duty only to read the applicable provisions of the Constitution and analyze them and apply to the question here the intent and purpose disclosed by the expressions in the Constitution. That document embraces the fundamental and basic law of the state, and courts and judges, like everybody else, are bound to follow it. "It is not the province of the courts to circumvent it because of private notions of justice or because of personal inclination," as was said in the Judd case, *supra*.

The case of *Oklahoma Railway Company v. St. Joseph's Parochial School, et al.*, 33 Okla. 755, 127 P. 1087, did not involve the expenditure of public funds and is merely an example of the exercise of the state's function of regulating transportation companies, and the case was one of construction of certain provisions of the railway company's contract and franchise. We do not believe that case is authority for the assertion that a private or parochial school is a part of the state's public school system or equivalent thereto, so as to authorize the maintenance thereof from public funds.

Our conclusion here is fully supported by the reasoning and conclusion in *Judd et al. v. Board of Education et al.*, *supra*. Therein that court had before it a case involving the same essential facts and questions, and considered constitutional provisions of no material difference from our own in the instant respect. That court very ably collected and discussed most of the present available authorities on the several questions presented here, and in our view is acceptable as precedent herein.

Other authorities which support our present opinion and which are likewise relied upon in the Judd case, *supra*, are *State ex rel. Traub v. Brown*, 6 Harr. (Del.) 181, 172 Atl. 835; *Synod of Dakota v. State*, 2 S. D. 366, 50 N. W. 632; *State ex rel. Van Straten v. Milquet*, School Treas., 180 Wis., 109, 192 N. W. 392;

*Williams, et al., v. Board of Trustees, Stanton Common School Dist.* 173 Ky. 708, 191 S. W. 507.

The brief for plaintiffs in error emphasizes the wholesomeness of the rule and policy of separation of the church and the state, and the necessity for the churches to continue to be free of any state control, leaving the churches and all their institutions to function and operate under church control exclusively. We agree. In that connection we must not overlook the fact that if the legislature may directly or indirectly aid or support sectarian or denominational schools with public funds, then it would be a short step forward at another session to increase such aid, and only another short step to some regulation and at least partial control of such schools by successive legislative enactment. From partial control to an effort at complete control might well be the expected development. The first step in any such direction should be promptly halted, and is effectively halted, and is permanently barred by our Constitution.

The judgment is affirmed.

CORN, V. C. J., RILEY, OSBORN, BAYLESS, HURST, AND  
 DAVISON, J. J. CONCUR.  
 GIBSON, J. DISSENTS.  
 ARNOLD, J. NOT PARTICIPATING.

## PAROCHIAL SCHOOL CHILDREN AND TAX-SUPPORTED TRANSPORTATION °

Supreme Court of the United States

OCTOBER TERM, 1946

Arch R. Everson, Appellant, v. Board of Education of the  
 Township of Ewing, et al.

[DECIDED FEBRUARY 10, 1947]

MR. JUSTICE BLACK delivered the opinion of the Court.

A New Jersey statute authorizes its local school districts to make rules and contracts for the transportation of children to

and from schools.\* The appellee, a township board of education, acting pursuant to this statute authorized reimbursement to parents of money expended by them for the bus transportation of their children on regular busses operated by the public transportation system. Part of this money was for the payment of transportation of some children in the community to Catholic parochial schools. These church schools give their students, in addition to secular education, regular religious instruction conforming to the religious tenets and modes of worship of the Catholic Faith. The superintendent of these schools is a Catholic priest.

The appellant, in his capacity as a district taxpayer, filed suit in a State court challenging the right of the Board to reimburse parents of parochial school students. He contended that the statute and the resolution passed pursuant to it violated both the State and the Federal Constitutions. That court held that the legislature was without power to authorize such payment under the State constitution. 132 N. J. L. 98. The New Jersey Court of Errors and Appeals reversed, holding that neither the statute nor the resolution passed pursuant to it was in conflict with the State constitution or the provisions of the Federal Constitution in issue. 133 N. J. L. 350. The case is here on appeal under 28 U. S. C. § 344 (a).

Since there has been no attack on the statute on the ground that a part of its language excludes children attending private schools operated for profit from enjoying State payment for their transportation, we need not consider this exclusionary language; it

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\* "Whenever in any district there are children living remote from any school-house, the board of education of the district may make rules and contracts for the transportation of such children to and from school, including the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part.

"When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part." New Jersey Laws, 1941, c. 191, p. 581; N. J. Rev. Stat. 18: 14-8.

has no relevancy to any constitutional question here presented.\* Furthermore, if the exclusion clause had been properly challenged, we do not know whether New Jersey's highest court would construe its statutes as precluding payment of the school transportation of any group or pupils, even those of a private school run for profit.† Consequently, we put to one side the question as to the validity of the statute against the claim that it does not authorize payment for the transportation generally of school children in New Jersey.

The only contention here is that the State statute and the resolution, insofar as they authorized reimbursement to parents of children attending parochial schools, violate the Federal Constitution in these two respects, which to some extent, overlap. *First.* They authorize the State to take by taxation the private property of some and bestow it upon others, to be used for their own private purposes. This, it is alleged, violates the due process clause of the Fourteenth Amendment. *Second.* The statute and the resolution forced inhabitants to pay taxes to help support

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\* Appellant does not challenge the New Jersey statute or the resolution on the ground that either violates the equal protection clause of the Fourteenth Amendment by excluding payment for the transportation of any pupil who attends a "private school run for profit." Although the township resolution authorized reimbursement only for parents of public and Catholic school pupils, appellant does not allege, nor is there anything in the record which would offer the slightest support to an allegation, that there were any children in the township who attended or would have attended, but for want of transportation, any but public and Catholic schools. It will be appropriate to consider the exclusion of students of private schools operated for profit when and if it is proved to have occurred, is made the basis of a suit by one in a position to challenge it, and New Jersey's highest court has ruled adversely to the challenger. Striking down a state law is not a matter of such light moment that it should be done by a federal court *ex mero motu* on a postulate neither charged nor proved, but which rests on nothing but a possibility. Cf. *Liverpool N. Y. & P. Steamship Co. v. Comm'rs. of Emigration*, 113 U. S. 33, 39.

† It might hold the excepting clause to be invalid, and sustain the statute with that clause excised. Section 1:10 N. J. Rev. Stat. provides with regard to any statute that if "any provision thereof shall be declared unconstitutional . . . in whole or in part, by a court of competent jurisdiction, such article shall, to the extent it is not unconstitutional, . . . be enforced . . ." The opinion of the Court of Errors and Appeals in this very case suggests that state law now authorizes transportation of *all* pupils. Its opinion stated: "Since we hold that the legislature may appropriate general state funds or authorize the use of local funds for the transportation of pupils to any school, we conclude that such authorization of the use of local funds is likewise authorized by *Pamph. L.* 1941, Ch. 191, and *R. S.* 18:7-78." 133 N. J. L. 350, 354. (Italics supplied.)

and maintain schools which are dedicated to, and which regularly teach, the Catholic Faith. This is alleged to be a use of State power to support church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the states.

*First.* The due process argument that the State law taxes some people to help others carry out their private purposes is framed in two phases. The first phase is that a state cannot tax A to reimburse B for the cost of transporting his children to church schools. This is said to violate the due process clause because the children are sent to these church schools to satisfy the personal desires of their parents, rather than the public's interest in the general education of all children. This argument, if valid, would apply equally to prohibit state payment for the transportation of children to any non-public school, whether operated by a church, or any other non-government individual or group. But, the New Jersey legislature has decided that a public purpose will be served by using tax-raised funds to pay the bus fares of all school children, including those who attend parochial schools. The New Jersey Court of Errors and Appeals has reached the same conclusion. The fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised the public need.

It is true that this Court has, in rare instances, struck down state statutes on the ground that the purpose for which tax-raised funds were to be expended was not a public one. *Loan Association v. Topeka*, 20 Wall. 655; *Parkersburg v. Brown*, 106 U. S. 487; *Thompson v. Consolidated Gas Utilities Corp.*, 300 U. S. 55. But the Court has also pointed out that this far-reaching authority must be exercised with the most extreme caution. *Green v. Frazier*, 253 U. S. 233, 240. Otherwise, a state's power to legislate for the public welfare might be seriously curtailed, a power which is a primary reason for the existence of states. Changing local conditions create new local problems which may lead a state's

people and its local authorities to believe that laws authorizing new types of public services are necessary to promote the general well-being of the people. The Fourteenth Amendment did not strip the states of their power to meet problems previously left for individual solution. *Davidson v. New Orleans*, 96 U. S. 97, 103-104; *Barbier v. Connolly*, 113 U. S. 27, 31-32; *Fallbrook Irrigation District v. Bradley*, 164 U. S. 112, 157-158.

It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran v. Louisiana State Board of Education*, 281 U. S. 370; Holmes, J., in *Interstate Ry. v. Massachusetts*, 207 U. S. 79, 87. See opinion of Cooley, J., in *Stuart v. School District No. 1 of Kalamazoo*, 30 Mich. 69 (1878). The same thing is no less true of legislation to reimburse needy parents, or all parents, for payment of the fares of their children so that they can ride in public busses to and from schools rather than run the risk of traffic and other hazards incident to walking or "hitch-hiking." See *Barbier v. Connolly*, *supra* at 31. See also cases collected 63 A. L. R. 413; 118 A. L. R. 806. Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 518. Subsidies and loans to individuals such as farmers and home owners, and to privately owned transportation systems, as well as many other kinds of businesses, have been commonplace practices in our state and national history.

Insofar as the second phase of the due process argument may differ from the first, it is by suggesting that taxation for transportation of children to church schools constitutes support of a religion by the State. But if the law is invalid for this reason, it is because it violates the First Amendment's prohibition against the establishment of religion by law. This is the exact question raised by appellant's second contention, to consideration of which we now turn.

*Second.* The New Jersey statute is challenged as a "law respecting the establishment of religion." The First Amendment, as made applicable to the states by the Fourteenth, *Murdock v. Pennsylvania*, 319 U. S. 105, commands that a state "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." These words of the First Amendment reflected in the minds of early Americans a vivid mental picture of conditions and practices which they fervently wished to stamp out in order to preserve liberty for themselves and for their posterity. Doubtless their goal has not been entirely reached; but so far has the Nation moved toward it that the expression "law respecting the establishment of religion," probably does not so vividly remind present-day Americans of the evils, fears, and political problems that caused that expression to be written into our Bill of Rights. Whether this New Jersey law is one respecting the "establishment of religion" requires an understanding of the meaning of that language, particularly with respect to the imposition of taxes. Once again,\* therefore, it is not inappropriate briefly to review the background and environment of the period in which that constitutional language was fashioned and adopted.

A large proportion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy. With the power of government supporting them, at various times and places, Catholics had persecuted Protestants, Protestants had persecuted Catholics, Protestant sects had persecuted other Protestant sects, Catholics of one shade of belief had persecuted Catholics of another shade of belief, and all of these had from time to time persecuted Jews. In efforts to force loyalty

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\* See *Reynolds v. United States*, 98 U. S. 145, 162; cf. *Knowlton v. Moore*, 178 U. S. 41, 89, 106.

to whatever religious group happened to be on top and in league with the government of a particular time and place, men and women had been fined, cast in jail, cruelly tortured, and killed. Among the offenses for which these punishments had been inflicted were such things as speaking disrespectfully of the views of ministers of government-established churches, non-attendance at those churches, expressions of nonbelief in their doctrines, and failure to pay taxes and tithes to support them.\*

These practices of the old world were transplanted to and began to thrive in the soil of the new America. The very charters granted by the English Crown to the individuals and companies designated to make the laws which would control the destinies of the colonials authorized these individuals and companies to erect religious establishments which all, whether believers or non-believers, would be required to support and attend.† An exercise of this authority was accompanied by a repetition of many of the old world practices and persecutions. Catholics found themselves hounded and proscribed because of their faith; Quakers who followed their conscience went to jail; Baptists were peculiarly

\* See *e. g.* Macaulay, *History of England* (1849) I, cc. 2, 4; *The Cambridge Modern History* (1908) V, cc. V, IX, XI; Beard, *Rise of American Civilization* (1937) I, 60; Cobb, *Religious Liberty in America* (1902) c. II; Sweet, *The Story of Religion in America* (1939) c. II; Sweet, *Religion in Colonial America* (1942) 320-322.

† See *e. g.* the charter of the colony of Carolina which gave the grantees the right of "patronage and avowdsons of all the churches and chapels . . . together with licence and power to build and found churches, chapels and oratories . . . and to cause them to be dedicated and consecrated, according to the ecclesiastical laws of our kingdom of England." Poore, *Constitutions* (1878) II, 1390, 1391. That of Maryland gave to the grantee Lord Baltimore "the Patronages and Avowdsons of all Churches which . . . shall happen to be built, together with Licence and Faculty of erecting and founding Churches, Chapels, and Places of Worship . . . and of causing the same to be dedicated and consecrated according to the Ecclesiastical Laws of our Kingdom of England, with all, and singular such, and as ample Rights, Jurisdictions, Privileges, . . . as any Bishop . . . in our Kingdom of England ever . . . hath had. . . ." McDonald, *Documentary Source Book of American History* (1934) 31, 33. The Commission of New Hampshire of 1680, Poore, *supra*, II, 1277, stated: "And above all things We do by these presents will, require and command our said Council to take all possible care for ye discountenancing of vice and encouraging of virtue and good living; and that by such examples ye infidle may be invited and desire to partake of ye Christian Religion, and for ye greater ease and satisfaction of ye sd loving subjects in matters of religion, We do hereby require and command yt liberty of conscience shall be allowed unto all protestants; yt such especially as shall be conformable to ye rites of ye Church of Engd shall be particularly countenanced and encouraged." See also *Pawlett v. Clark*, 9 Cranch 292.

obnoxious to certain dominant Protestant sects; men and women of varied faiths who happened to be in a minority in a particular locality were persecuted because they steadfastly persisted in worshiping God only as their own consciences dictated.\* And all of these dissenters were compelled to pay tithes and taxes† to support government-sponsored churches whose ministers preached inflammatory sermons designed to strengthen and consolidate the established faith by generating a burning hatred against dissenters.

These practices became so commonplace as to shock the freedom-loving colonials into a feeling of abhorrence.‡ The imposition of taxes to pay ministers' salaries and to build and maintain churches and church property aroused their indignation.§ It was these feelings which found expression in the First Amendment. No one locality and no one group throughout the Colonies can rightly be given entire credit for having aroused the sentiment that culminated in adoption of the Bill of Rights' provisions embracing religious liberty. But Virginia, where the established church had achieved a dominant influence in political affairs and where many excesses attracted wide public attention, provided a great stimulus and able leadership for the movement. The people there, as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which

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\* See *e. g.* Semple, *Baptists in Virginia* (1894); Sweet, *Religion in Colonial America*, *supra* at 131-152, 322-339.

† Almost every colony exacted some kind of tax for church support. See *e. g.* Cobb, *op. cit. supra*, note 5 [note \*, p. 797], 110 (Virginia); 131 (North Carolina); 169 (Massachusetts); 270 (Connecticut); 304, 310, 339 (New York); 386 (Maryland); 295 (New Hampshire).

‡ Madison wrote to a friend in 1774: "That diabolical, hell-conceived principle of persecution rages among some. . . . This vexes me the worst of anything whatever. There are at this time in the adjacent country not less than five or six well-meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all." *I Writings of James Madison* (1900) 18, 21.

§ Virginia's resistance to taxation for church support was crystallized in the famous "Parson's Case" argued by Patrick Henry in 1763. For an account see Cobb, *op. cit., supra*, note 5 [note \*, p. 797], 108-111.

was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group.

The movement toward this end reached its dramatic climax in Virginia in 1785-86 when the Virginia legislative body was about to renew Virginia's tax levy for the support of the established church. Thomas Jefferson and James Madison led the fight against this tax. Madison wrote his great Memorial and Remonstrance against the law.\* In it, he eloquently argued that a true religion did not need the support of law; that no person, either believer or non-believer, should be taxed to support a religious institution of any kind; that the best interest of a society required that the minds of men always be wholly free; and that cruel persecutions were the inevitable result of government-established religions. Madison's Remonstrance received strong support throughout Virginia,† and the Assembly postponed consideration of the proposed tax measure until its next session. When the proposal came up for consideration at that session, it not only died in committee, but the Assembly enacted the famous "Virginia Bill for Religious Liberty" originally written by Thomas Jefferson.‡ The preamble to that Bill stated among other things that

"Almighty God hath created the mind free; that all attempts to influence it by temporal punishments, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our

\* II Writings of James Madison, 183.

† In a recently discovered collection of Madison's papers, Madison recollected that his Remonstrance "met with the approbation of the Baptists, the Presbyterians, the Quakers, and the few Roman Catholics, universally; of the Methodists in part; and even of not a few of the Sect formerly established by law." Madison, *Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments*, in Fleet, *Madison's "Detached Memorandum,"* 3 William and Mary Q. (1946) 534, 551, 555.

‡ For accounts of background and evolution of the Virginia Bill for Religious Liberty see e. g. James, *The Struggle for Religious Liberty in Virginia* 1900; Thom, *The Struggle for Religious Freedom in Virginia; the Baptists* (1900); Cobb, *op. cit.*, *supra*, note 5, 74-115; Madison, *Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments, op. cit.*, *supra*, note 12 [note †], 554, 556.

religion who being Lord both of body and mind, yet chose not to propagate it by coercions on either . . . ; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern. . . .”

And the statute itself enacted

“That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . .” \*

This Court has previously recognized that the provisions of the First Amendment, in the drafting and adoption of which Madison and Jefferson played such leading roles, had the same objective and were intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute. *Reynolds v. United States*, *supra* at 164; *Watson v. Jones*, 13 Wall. 679; *Davis v. Beason*, 133 U. S. 333, 342. Prior to the adoption of the Fourteenth Amendment, the First Amendment did not apply as a restraint against the states.† Most of them did soon provide similar constitutional protections for religious liberty.‡ But some states persisted for about half a century in imposing restraints upon the free exercise of religion and in discriminating against particular religious groups.§ In recent years, so far as the provision against the establishment of a religion is concerned,

\* 12 Hening, Statutes of Virginia (1823) 84; Commager, Documents of American History (1944) 125.

† *Permoli v. New Orleans*, 3 How. 589. Cf. *Barron v. Baltimore*, 7 Pet. 243.

‡ For a collection of state constitutional provisions on freedom of religion see Gavel, Public Funds for Church and Private Schools (1937) 148-149. See also 2 Cooley, Constitutional Limitations (1927) 960-985.

§ Test provisions forbade office holders to “deny . . . the truth of the Protestant religion,” e. g. Constitution of North Carolina (1776) § XXXII, II Poore, *supra*, 1413. Maryland permitted taxation for support of the Christian religion and limited civil office to Christians until 1818, *id.*, I, 819, 820, 832.

the question has most frequently arisen in connection with proposed state aid to church schools and efforts to carry on religious teachings in the public schools in accordance with the tenets of a particular sect.\* Some churches have either sought or accepted state financial support for their schools. Here again the efforts to obtain state aid or acceptance of it have not been limited to any one particular faith.† The state courts, in the main, have remained faithful to the language of their own constitutional provisions designed to protect religious freedom and to separate religions and governments. Their decisions, however, show the difficulty in drawing the line between tax legislation which provides funds for the welfare of the general public and that which is designed to support institutions which teach religion.‡

The meaning and scope of the First Amendment, preventing establishment of religion or prohibiting the free exercise thereof, in the light of its history and the evils it was designed forever to suppress, have been several times elaborated by the decisions of this Court prior to the application of the First Amendment to the states by the Fourteenth.§ The broad meaning given the Amendment by these earlier cases has been accepted by this Court in its decisions concerning an individual's religious freedom rendered since the Fourteenth Amendment was interpreted to make the prohibitions of the First applicable to state action abridging religious freedom.¶ There is every reason to give the same application and broad interpretation to the "establishment of religion" clause. The interrelation of these complementary clauses was well summarized in a statement of the Court of Appeals of

\* See Note 50 Yale L. J. (1941) 917; see also cases collected 14 L. R. A. 418; 5 A. L. R. 879; 141 A. L. R. 1148.

† See cases collected 14 L. R. A. 418; 5 A. L. R. 879; 141 A. L. R. 1148.

‡ *Ibid.* See also Cooley, *op. cit.*, *supra*, note 16 [note ‡, p. 800].

§ *Terrett v. Taylor*, 9 Cranch 43; *Watson v. Jones*, 13 Wall 679; *Davis v. Beason*, 133 U. S. 333; *Cf. Reynolds v. U. S.*, *supra*, 162; *Reuben Quick Bear v. Leupp*, 210 U. S. 50.

¶ *Cantwell v. Conn.*, 310 U. S. 296; *Jamison v. Texas*, 318 U. S. 413; *Largent v. Texas*, 318 U. S. 418; *Murdock v. Pennsylvania*, *supra*; *West Virginia State Board of Education v. Barnette*, 319 U. S. 624; *Follett v. McCormick* 321 U. S. 573; *Marsh v. Alabama*, 327 U. S. 501. *Cf. Bradfield v. Roberts*, 175 U. S. 291.

South Carolina,\* quoted with approval by this Court in *Watson v. Jones*, 13 Wall. 679, 730: "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasions of the civil authority."

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State." *Reynolds v. United States*, *supra* at 164.

We must consider the New Jersey statute in accordance with the foregoing limitations imposed by the First Amendment. But we must not strike that State statute down if it is within the State's constitutional power even though it approaches the verge of that power. See *Interstate Ry. v. Massachusetts*, Holmes, J., *supra* at 85, 88. New Jersey cannot consistently with the "establishment of religion clause" of the First Amendment contribute tax-raised funds to the support of an institution which teaches the tenets and faith of any church. On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently,

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\* *Harmon v. Dreher*, 2 Speer's Equity Reports (S. C., 1843), 87, 120.

it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of their faith, or lack of it*, from receiving the benefits of public welfare legislation. While we do not mean to intimate that a state could not provide transportation only to children attending public schools, we must be careful, in protecting the citizens of New Jersey against state-established churches, to be sure that we do not inadvertently prohibit New Jersey from extending its general State law benefits to all its citizens without regard to their religious belief.

Measured by these standards, we cannot say that the First Amendment prohibits New Jersey from spending tax-raised funds to pay the bus fares of parochial school pupils as a part of a general program under which it pays the fares of pupils attending public and other schools. It is undoubtedly true that children are helped to get to church schools. There is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State. The same possibility exists where the state requires a local transit company to provide reduced fares for school children including those attending parochial schools,\* or where a municipally owned transportation system undertakes to carry all school children free of charge. Moreover, state-paid policemen, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose and accomplish much the same result as state provisions intended to guarantee free transportation of a kind which the state deems to be best for the school children's welfare. And parents might refuse to risk their children

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\* New Jersey long ago permitted public utilities to charge school children reduced rates. See *Public S. R. Co. v. Public Utility Comm'rs*, 81 N. J. L. 363 (1911); see also *Interstate Ry. v. Mass.*, *supra*. The District of Columbia Code requires that the new charter of the District public transportation company provide a three cent fare "for school children . . . going to and from public, parochial or like schools. . . ." 47 Stat. 752, 759.

to the serious danger of traffic accidents going to and from parochial schools, the approaches to which were not protected by policemen. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks. Of course, cutting off church schools from these services, so separate and so indisputably marked off from the religious function, would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

This Court has said that parents may, in the discharge of their duty under state compulsory education laws, send their children to a religious rather than a public school if the school meets the secular educational requirements which the state has power to impose. See *Pierce v. Society of Sisters*, 268 U. S. 510. It appears that these parochial schools meet New Jersey's requirements. The State contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.

*Affirmed.*

MR. JUSTICE JACKSON, dissenting.

I find myself, contrary to first impressions, unable to join in this decision. I have a sympathy, though it is not ideological,

with Catholic citizens who are compelled by law to pay taxes for public schools, and also feel constrained by conscience and discipline to support other schools for their own children. Such relief to them as this case involves is not in itself a serious burden to taxpayers and I had assumed it to be as little serious in principle. Study of this case convinces me otherwise. The Court's opinion marshals every argument in favor of state aid and puts the case in its most favorable light, but much of its reasoning confirms my conclusions that there are no good grounds upon which to support the present legislation. In fact, the undertones of the opinion, advocating complete and uncompromising separation of Church from State, seem utterly discordant with its conclusion yielding support to their commingling in educational matters. The case which irresistibly comes to mind as the most fitting precedent is that of *Julia* who, according to Byron's reports, "whispering 'I will ne'er consent,'—consented."

## I.

The Court sustains this legislation by assuming two deviations from the facts of this particular case; first, it assumes a state of facts the record does not support, and secondly, it refuses to consider facts which are inescapable on the record.

The Court concludes that this "legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools," and it draws a comparison between "state provisions intended to guarantee free transportation" for school children with services such as police and fire protection, and implies that we are here dealing with "laws authorizing new types of public services. . . ." This hypothesis permeates the opinion. The facts will not bear that construction.

The Township of Ewing is not furnishing transportation to the children in any form; it is not operating school busses itself or contracting for their operation; and it is not performing any public service of any kind with this taxpayer's money. All school

children are left to ride as ordinary paying passengers on the regular busses operated by the public transportation system. What the Township does, and what the taxpayer complains of, is at stated intervals to reimburse parents for the fares paid, provided the children attend either public schools or Catholic Church schools. This expenditure of tax funds has no possible effect on the child's safety or expedition in transit. As passengers on the public busses they travel as fast and no faster, and are as safe and no safer, since their parents are reimbursed as before.

In addition to thus assuming a type of service that does not exist, the Court also insists that we must close our eyes to a discrimination which does exist. The resolution which authorizes disbursement of this taxpayer's money limits reimbursement to those who attend public schools and Catholic schools. That is the way the Act is applied to this taxpayer.

The New Jersey Act in question makes the character of the school, not the needs of the children determine the eligibility of parents to reimbursement. The Act permits payment for transportation to parochial schools or public schools but prohibits it to private schools operated in whole or in part for profit. Children often are sent to private schools because their parents feel that they require more individual instruction than public schools can provide, or because they are backward or defective and need special attention. If all children of the state were objects of impartial solicitude, no reason is obvious for denying transportation reimbursement to students of this class, for these often are as needy and as worthy as those who go to public or parochial schools. Refusal to reimburse those who attend such schools is understandable only in the light of a purpose to aid the schools, because the state might well abstain from aiding a profit-making private enterprise. Thus, under the Act and resolution brought to us by this case children are classified according to the schools they attend and are to be aided if they attend the public schools or private Catholic schools, and they are not allowed to be aided if they attend private secular schools or private religious schools of other faiths.

Of course, this case is not one of a Baptist or a Jew or an Episcopalian or a pupil of a private school complaining of discrimination. It is one of a taxpayer urging that he is being taxed for an unconstitutional purpose. I think he is entitled to have us consider the Act just as it is written. The statement by the New Jersey court that it holds the Legislature may authorize use of local funds "for the transportation of pupils to any school," 133 N. J. L. 350, 354, in view of the other constitutional views expressed, is not a holding that this Act authorizes transportation of *all* pupils to *all* schools. As applied to this taxpayer by the action he complains of, certainly the Act does not authorize reimbursement to those who choose any alternative to the public school except Catholic Church schools.

If we are to decide this case on the facts before us, our question is simply this: Is it constitutional to tax this complainant to pay the cost of carrying pupils to Church schools of one specified denomination?

## II.

Whether the taxpayer constitutionally can be made to contribute aid to parents of students because of their attendance at parochial schools depends upon the nature of those schools and their relation to the Church. The Constitution says nothing of education. It lays no obligation on the states to provide schools and does not undertake to regulate state systems of education if they see fit to maintain them. But they cannot, through school policy any more than through other means, invade rights secured to citizens by the Constitution of the United States. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. One of our basic rights is to be free of taxation to support a transgression of the constitutional command that the authorities "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const., Amend. I; *Cantwell v. Connecticut*, 310 U. S. 296.

The function of the Church school is a subject on which this

record is meager. It shows only that the schools are under superintendence of a priest and that "religion is taught as part of the curriculum." But we know that such schools are parochial only in name—they, in fact, represent a world-wide and age-old policy of the Roman Catholic Church. Under the rubric "Catholic Schools," the Canon Law of the Church by which all Catholics are bound, provides:

"1215. Catholic children are to be educated in schools where not only nothing contrary to Catholic faith and morals is taught, but rather in schools where religious and moral training occupy the first place. . . . (Canon 1372.)"

"1216. In every elementary school the children must, according to their age, be instructed in Christian doctrine.

"The young people who attend the higher schools are to receive a deeper religious knowledge, and the bishops shall appoint priests qualified for such work by their learning and piety. (Canon 1373.)"

"1217. Catholic children shall not attend non-Catholic, indifferent, schools that are mixed, that is to say, schools open to Catholics and non-Catholics alike. The bishop of the diocese only has the right, in harmony with the instructions of the Holy See, to decide under what circumstances, and with what safeguards to prevent loss of faith, it may be tolerated that Catholic children go to such schools. (Canon 1374.)"

"1224. The religious teaching of youth in any schools is subject to the authority and inspection of the Church.

"The local Ordinaries have the right and duty to watch that nothing is taught contrary to faith or good morals, in any of the schools of their territory.

"They, moreover, have the right to approve the books of Christian doctrine and the teachers of religion, and to demand, for the sake of safeguarding religion and morals, the removal of teachers and books. (Canon 1381.)" (Woywod, Rev. Stanislaus, *The New Canon Law*, under imprimatur of Most Rev. Francis J. Spellman, Archbishop of New York and others, 1940.)

It is no exaggeration to say that the whole historic conflict in temporal policy between the Catholic Church and non-Catholics comes to a focus in their respective school policies. The Roman Catholic Church, counseled by experience in many ages and many lands and with all sorts and conditions of men, takes what, from the viewpoint of its own progress and the success of its mission, is a wise estimate of the importance of education to religion. It does not leave the individual to pick up religion by chance. It relies on early and indelible indoctrination in the faith and order of the Church by the word and example of persons consecrated to the task.

Our public school, if not a product of Protestantism, at least is more consistent with it than with the Catholic culture and scheme of values. It is a relatively recent development dating from about 1840.\* It is organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. The assumption is that after the individual has been instructed in worldly wisdom he will be better fitted to choose his religion. Whether such a disjunction is possible, and if possible whether it is wise, are questions I need not try to answer.

I should be surprised if any Catholic would deny that the parochial school is a vital, if not the most vital, part of the Roman Catholic Church. If put to the choice, that venerable institution, I should expect, would forego its whole service for mature persons before it would give up education of the young, and it would be a wise choice. Its growth and cohesion, discipline and loyalty, spring from its schools. Catholic education is the rock on which the whole structure rests, and to render tax aid to its Church school is indistinguishable to me from rendering the same aid to the Church itself.

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\* See Cubberley, *Public Education in the United States* (1934) ch. VI; Knight, *Education in the United States* (1941) ch. VIII.

## III.

It is of no importance in this situation whether the beneficiary of this expenditure of tax-raised funds is primarily the parochial school and incidentally the pupil, or whether the aid is directly bestowed on the pupil with indirect benefits to the school. The state cannot maintain a Church and it can no more tax its citizens to furnish free carriage to those who attend a Church. The prohibition against establishment of religion cannot be circumvented by a subsidy, bonus or reimbursement of expense to individuals for receiving religious instruction and indoctrination.

The Court, however, compares this to other subsidies and loans to individuals and says, "Nor does it follow that a law has a private rather than a public purpose because it provides that tax-raised funds will be paid to reimburse individuals on account of money spent by them in a way which furthers a public program. See *Carmichael v. Southern Coal & Coke Co.*, 301 U. S. 495, 518." Of course, the state may pay out tax-raised funds to relieve pauperism, but it may not under our Constitution do so to induce or reward piety. It may spend funds to secure old age against want, but it may not spend funds to secure religion against skepticism. It may compensate individuals for loss of employment, but it cannot compensate them for adherence to a creed.

It seems to me that the basic fallacy in the Court's reasoning, which accounts for its failure to apply the principles it avows, is in ignoring the essentially religious test by which beneficiaries of this expenditure are selected. A policeman protects a Catholic, of course—but not because he is a Catholic; it is because he is a man and a member of our society. The fireman protects the Church school—but not because it is a Church school; it is because it is property, part of the assets of our society. Neither the fireman nor the policeman has to ask before he renders aid "Is this man or building identified with the Catholic Church." But before these school authorities draw a check to reimburse for a student's fare they must ask just that question, and if the school is a Catholic one they may render aid because it is such, while if it is of any

other faith or is run for profit, the help must be withheld. To consider the converse of the Court's reasoning will best disclose its fallacy. That there is no parallel between police and fire protection and this plan of reimbursement is apparent from the incongruity of the limitation of this Act if applied to police and fire service. Could we sustain an Act that said the police shall protect pupils on the way to or from public schools and Catholic schools but not while going to and coming from other schools, and firemen shall extinguish a blaze in public or Catholic school buildings but shall not put out a blaze in Protestant Church schools or private schools operated for profit? That is the true analogy to the case we have before us and I should think it pretty plain that such a scheme would not be valid.

The Court's holding is that this taxpayer has no grievance because the state has decided to make the reimbursement a public purpose and therefore we are bound to regard it as such. I agree that this Court has left, and always should leave to each state, great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character. There is no answer to the proposition more fully expounded by MR. JUSTICE RUTLEDGE that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. That is a difference which the Constitution sets up between religion and almost every other subject matter of legislation, a difference which goes to the very root of religious freedom and which the Court is overlooking today. This freedom was first in the Bill of Rights because it was

first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. It was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state, and above all, to keep bitter religious controversy out of public life by denying to every denomination any advantage from getting control of public policy or the public purse. Those great ends I cannot but think are immeasurably compromised by today's decision.

This policy of our Federal Constitution has never been wholly pleasing to most religious groups. They all are quick to invoke its protections; they all are irked when they feel its restraints. This Court has gone a long way, if not an unreasonable way, to hold that public business of such paramount importance as maintenance of public order, protection of the privacy of the home, and taxation may not be pursued by a state in a way that even indirectly will interfere with religious proselyting. See dissent in *Douglas v. Jeannette*, 319 U. S. 157, 166; *Murdock v. Pennsylvania*, 319 U. S. 105; *Martin v. Struthers*, 319 U. S. 141; *Jones v. Opelika*, 316 U. S. 584, reversed on rehearing, 319 U. S. 103.

But we cannot have it both ways. Religious teaching cannot be a private affair when the state seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all. If these principles seem harsh in prohibiting aid to Catholic education, it must not be forgotten that it is the same Constitution that alone assures Catholics the right to maintain these schools at all when predominant local sentiment would forbid them. *Pierce v. Society of Sisters*, 268 U. S. 510. Nor should I think that those who have done so well without this aid would want to see this separation between Church and State broken down. If the state may aid these religious schools, it may therefore regulate them. Many groups have sought aid from tax funds only to find that it carried political controls with it. Indeed this Court has declared that "It is hardly lack of due process

for the Government to regulate that which it subsidizes." *Wickard v. Filburn*, 317 U. S. 111, 131.

But in any event, the great purposes of the Constitution do not depend on the approval or convenience of those they restrain. I cannot read the history of the struggle to separate political from ecclesiastical affairs, well summarized in the opinion of MR. JUSTICE RUTLEDGE in which I generally concur, without a conviction that the Court today is unconsciously giving the clock's hands a backward turn.

MR. JUSTICE FRANKFURTER joins in this opinion.

. . . . .

MR. JUSTICE RUTLEDGE, with whom MR. JUSTICE FRANKFURTER, MR. JUSTICE JACKSON and MR. JUSTICE BURTON agree, dissenting.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." U. S. Const., Am. Art. I.

. . . . .

"Well aware that Almighty God hath created the mind free; . . . that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; . . .

"*We, the General Assembly, do enact, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief. . . .*" \*

I cannot believe that the great author of those words, or the men who made them law, could have joined in this decision. Neither so high nor so impregnable today as yesterday is the wall raised between church and state by Virginia's great statute of religious freedom and the First Amendment, now made ap-

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\* "A Bill for Establishing Religious Freedom," enacted by the General Assembly of Virginia, January 19, 1786. See 1 Randall, *The Life of Thomas Jefferson* (1858) 219-220; XII Hening's Statutes of Virginia (1823) 84.

plicable to all the states by the Fourteenth.\* New Jersey's statute sustained is the first, if indeed it is not the second breach to be made by this Court's action. That a third, and a fourth, and still others will be attempted, we may be sure. For just as *Cochran v. Board of Education*, 281 U. S. 370, has opened the way by oblique ruling † for this decision, so will the two make wider the breach for a third. Thus with time the most solid freedom steadily gives way before continuing corrosive decision.

This case forces us to determine squarely for the first time ‡ what was "an establishment of religion" in the First Amendment's conception; and by that measure to decide whether New Jersey's action violates its command. The facts may be stated shortly, to give setting and color to the constitutional problem.

By statute New Jersey has authorized local boards of education to provide for the transportation of children "to and from school other than a public school" except one operated for profit wholly or in part, over established public school routes, or by other means when the child lives "remote from any school." § The school board of Ewing Township has provided by resolution for "the transportation of pupils of Ewing to the Trenton and

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\* *Schneider v. State*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296; *Murdock v. Pennsylvania*, 319 U. S. 105; *Prince v. Massachusetts*, 321 U. S. 158; *Thomas v. Collins*, 323 U. S. 516, 530. See note 48 [note \*, p. 835.]

† The briefs did not raise the First Amendment issue. The only one presented was whether the state's action involved a public or an exclusively private function under the due process clause of the Fourteenth Amendment. See Part IV *infra*. On the facts, the cost of transportation here is inseparable from both religious and secular teaching at the religious school. In the *Cochran* case the state furnished secular textbooks only. But see text *infra* at note 40 [note †, p. 827] *et seq.*, and Part IV [not included in this book].

‡ Cf. note 3 [note † *supra*] and text Part IV; see also note 35 [note \*, p. 825]

§ The statute reads: "Whenever in any district there are children living remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of school children to and from school other than a public school, except such school as is operated for profit in whole or in part.

"When any school district provides any transportation for public school children to and from school, transportation from any point in such established school route to any other point in such established school route shall be supplied to school children residing in such school district in going to and from school other than a public school, except such school as is operated for profit in whole or in part." Laws of New Jersey (1941) c. 191.

Pennington High Schools and Catholic Schools by way of public carrier. . . .” \*

Named parents have paid the cost of public conveyance of their children from their homes in Ewing to three public high schools and four parochial schools outside the district.† Semi-annually the Board has reimbursed the parents from public school funds raised by general taxation. Religion is taught as part of the curriculum in each of the four private schools, as appears affirmatively by the testimony of the superintendent of parochial schools in the Diocese of Trenton.

The Court of Errors and Appeals of New Jersey, reversing the Supreme Court’s decision, 132 N. J. L. 98, has held the Ewing board’s action not in contravention of the state constitution or statutes or of the Federal Constitution 133 N. J. L. 350. We have to consider only whether this ruling accords with the prohibition of the First Amendment implied in the due process clause of the Fourteenth.

### I.

Not simply an established church, but any law respecting an establishment of religion is forbidden. The Amendment was broadly but not loosely phrased. It is the compact and exact summation of its author’s views formed during his long struggle for religious freedom. In Madison’s own words characterizing Jefferson’s Bill for Establishing Religious Freedom, the guaranty he put in our national charter, like the bill he piloted through the Virginia Assembly, was “a Model of technical precision, and

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\* The full text of the resolution is given in note 59 *infra* [note †, p. 840].

† The public schools attended were the Trenton Senior High School, the Trenton Junior High School and the Pennington High School. Ewing Township itself provides no public high schools, affording only elementary public schools which stop with the eighth grade. The Ewing school board pays for both transportation and tuitions of pupils attending the public high schools. The only private schools, all Catholic, covered in application of the resolution are St. Mary’s Cathedral High School, Trenton Catholic Boys High School, and two elementary parochial schools, St. Hedwig’s Parochial School and St. Francis School. The Ewing board pays only for transportation to these schools, not for tuitions. So far as the record discloses the board does not pay for or provide transportation to any other elementary school, public or private. See notes 58, 59 [notes †, ‡, p. 840] and text *infra*.

perspicuous brevity.”\* Madison could not have confused “church” and “religion,” or “an established church” and “an establishment of religion.”

The Amendment’s purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. In proof the Amendment’s wording and history unite with this Court’s consistent utterances whenever attention has been fixed directly upon the question.

“Religion” appears only once in the Amendment. But the word governs two prohibitions and governs them alike. It does not have two meanings, one narrow to forbid “an establishment” and another, much broader, for securing “the free exercise thereof.” “Thereof” brings down “religion” with its entire and exact content, no more and no less, from the first into the second guaranty, so that Congress and now the states are as broadly restricted concerning the one as they are regarding the other.

No one would claim today that the Amendment is constricted, in “prohibiting the free exercise” of religion, to securing the free exercise of some formal or creedal observance, of one sect or of many. It secures all forms of religious expression, creedal, sectarian or nonsectarian wherever and however taking place, except conduct which trenches upon the like freedoms of others or clearly and presently endangers the community’s good order and security.† For the protective purposes of this phase of the

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\* IX Writings of James Madison (ed. by Hunt, 1904) 288; Padover, *Jefferson* (1942) 74. Madison’s characterization related to Jefferson’s entire revision of the Virginia Code, of which the Bill for Establishing Religious Freedom was part. See note 15 [note \*, p. 819].

† See *Reynolds v. United States*, 98 U. S. 145; *Davis v. Beason*, 133 U. S. 333; *Mormon Church v. United States*, 136 U. S. 1; *Jacobson v. Massachusetts*, 197 U. S.

basic freedom street preaching, oral or by distribution of literature, has been given "the same high estate under the First Amendment as . . . worship in the churches and preaching from the pulpits." \* And on this basis parents have been held entitled to send their children to private, religious schools. *Pierce v. Society of Sisters*, 268 U. S. 510. Accordingly, daily religious education commingled with secular is "religion" within the guaranty's comprehensive scope. So are religious training and teaching in whatever form. The word connotes the broadest content, determined not by the form or formality of the teaching or where it occurs, but by its essential nature regardless of those details.

"Religion" has the same broad significance in the twin prohibition concerning "an establishment." The Amendment was not duplicitous. "Religion" and "establishment" were not used in any formal or technical sense. The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes.

## II.

No provision of the Constitution is more closely tied to or given content by its generating history than the religious clause of the First Amendment. It is at once the refined product and the terse summation of that history. The history includes not only Madison's authorship and the proceedings before the First Congress, but also the long and intensive struggle for religious

11; *Prince v. Massachusetts*, 321 U. S. 158; also *Cleveland v. United States*, Nos. 12-19, October Term, 1946.

Possibly the first official declaration of the "clear and present danger" doctrine was Jefferson's declaration in the Virginia Statute for Establishing Religious Freedom: "That it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt acts against peace and good order." 1 Randall, *The Life of Thomas Jefferson* (1858) 220; Padover, *Jefferson* (1942) 81. For Madison's view to the same effect, see note 28 *infra* [note †, p. 822].

\* *Murdock v. Pennsylvania*, 319 U. S. 105, 109; *Martin v. Struthers*, 319 U. S. 141; *Jamison v. Texas*, 318 U. S. 413; *Marsh v. Alabama*, 326 U. S. 501; *Tucker v. Texas*, 326 U. S. 517.

freedom in America, more especially in Virginia,\* of which the Amendment was the direct culmination.† In the documents of the times, particularly of Madison, who was leader in the Virginia struggle before he became the Amendment's sponsor, but also in the writings of Jefferson and others and in the issues which engendered them is to be found irrefutable confirmation of the Amendment's sweeping content.

For Madison, as also for Jefferson, religious freedom was the crux of the struggle for freedom in general. Remonstrance, Par. 15, Appendix hereto. Madison was coauthor with George Mason of the religious clause in Virginia's great Declaration of Rights of 1776. He is credited with changing it from a mere statement of the principle of tolerance to the first official legislative pronouncement that freedom of conscience and religion are inherent rights of the individual.‡ He sought also to have the Declaration expressly condemn the existing Virginia establishment.§ But the forces supporting it were then too strong.

Accordingly Madison yielded on this phase but not for long.

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\* Conflicts in other states, and earlier in the colonies, contributed much to generation of the Amendment, but none so directly as that in Virginia or with such formative influence on the Amendment's content and wording. See Cobb, *Religious Liberty in America* (1902); Sweet, *The Story of Religion in America* (1939). The Charter of Rhode Island of 1663, II Poore, *Constitutions* (1878) 1595, was the first colonial charter to provide for religious freedom.

The climactic period of the Virginia struggle covers the decade 1776-1787, from adoption of the Declaration of Rights to enactment of the Statute for Religious Freedom. For short accounts see Padover, *Jefferson* (1942) c. V; Brant, *James Madison, The Virginia Revolutionist* (1941) cc. XII, XV; James, *The Struggle for Religious Liberty in Virginia* (1900) cc. X, XI; Eckenrode, *Separation of Church and State in Virginia* (1910). These works and Randall, see note I, will be cited in this opinion by the names of their authors. Citations to "Jefferson" refer to *The Works of Thomas Jefferson* (ed. by Ford, 1904-1905); to "Madison," to *The Writings of James Madison* (ed. by Hunt, 1901-1910).

† Brant, cc. XII, XV; James, cc. X, XI; Eckenrode.

‡ See Brant, c. XII, particularly at 243. Cf. Madison's Remonstrance, Appendix to this opinion. Jefferson of course held the same view. See note 15 [note \*, p. 819].

§ "Madison looked upon . . . religious freedom, to judge from the concentrated attention he gave it, as the fundamental freedom." Brant, 243; and see Remonstrance, Par. 1, 4, 15, Appendix.

¶ See Brant, 245-246. Madison quoted liberally from the Declaration in his Remonstrance and the use made of the quotations indicates that he considered the Declaration to have outlawed the prevailing establishment in principle, if not technically.

At once he resumed the fight, continuing it before succeeding legislative sessions. As a member of the General Assembly in 1779 he threw his full weight behind Jefferson's historic Bill for Establishing Religious Freedom. That bill was a prime phase of Jefferson's broad program of democratic reform undertaken on his return from the Continental Congress in 1776 and submitted for the General Assembly's consideration in 1779 as his proposed revised Virginia code.\* With Jefferson's departure for Europe in 1784, Madison became the Bill's prime sponsor.† Enactment failed in successive legislatures from its introduction in June, 1779, until its adoption in January, 1786. But during all this time the fight for religious freedom moved forward in Virginia on various fronts with growing intensity. Madison led through-out, against Patrick Henry's powerful opposing leadership until Henry was elected governor in November, 1784.

The climax came in the legislative struggle of 1784-1785 over the Assessment Bill. See Supplemental Appendix hereto. This was nothing more nor less than a taxing measure for the support of religion, designed to revive the payment of tithes suspended since 1777. So long as it singled out a particular sect for preference it incurred the active and general hostility of dissentient groups. It was broadened to include them, with the result that some sub-

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\* Jefferson was chairman of the revising committee and chief draftsman. Co-revisers were Wythe, Pendleton, Mason and Lee. The first enacted portion of the revision, which became known as Jefferson's Code, was the statute barring entailments. Primogeniture soon followed. Much longer the author was to wait for enactment of the Bill for Religious Freedom; and not until after his death was the corollary bill to be accepted in principle which he considered most important of all, namely, to provide for common education at public expense. See V Jefferson, 153. However, he linked this with disestablishment as corollary prime parts in a system of basic freedoms. I Jefferson, 78.

Jefferson, and Madison by his sponsorship, sought to give the Bill for Establishing Religious Freedom as nearly constitutional status as they could at the time. Acknowledging that one legislature could not "restrain the acts of succeeding Assemblies and that therefore to declare this act to be irrevocable would be of no effect in law," the Bill's concluding provision as enacted nevertheless asserted: "Yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operations, such act will be an infringement of natural right." I Randall, 220.

† See I Jefferson, 70-71; XII Jefferson, 447; Padover, 80.

sided temporarily in their opposition.\* As altered, the bill gave to each taxpayer the privilege of designating which church should receive his share of the tax. In default of designation the legislature applied it to pious uses.† But what is of the utmost significance here, "in its final form the bill left the taxpayer the option of giving his tax to education." ‡

Madison was unyielding at all times, opposing with all his vigor the general and nondiscriminatory as he had the earlier particular and discriminatory assessments proposed. The modified Assessment Bill passed second reading in December, 1784, and was all but enacted. Madison and his followers, however, maneuvered deferment of final consideration until November, 1785. And before the Assembly reconvened in the fall he issued his historic Memorial and Remonstrance.§

This is Madison's complete, though not his only, interpretation of religious liberty.¶ It is a broadside attack upon all forms of "establishment" of religion, both general and particular, non-discriminatory or selective. Reflecting not only the many legislative conflicts over the Assessment Bill and the Bill for Establish-

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\* Madison regarded this action as desertion. See his letter to Monroe of April 12, 1785; II Madison, 129, 131-132; James, cc. X, XI. But see Eckenrode, 91, suggesting it was surrender to the inevitable.

The bill provided: "That for every sum so paid, the Sheriff or Collector shall give a receipt, expressing therein to what society of Christians the person from whom he may receive the same shall direct the money to be paid. . . ." See also notes 19, 43 *infra* [note ‡ *sub*, note \*, p. 832].

A copy of the Assessment Bill is to be found among the Washington manuscripts in the Library of Congress. Papers of George Washington, Vol. 231. Because of its crucial role in the Virginia struggle and bearing upon the First Amendment's meaning, the text of the Bill is set forth in the Supplemental Appendix to this opinion.

† Eckenrode, 99, 100.

‡ *Id.*, 100; II Madison, 113. The bill directed the sheriff to pay "all funds which . . . may not be appropriated by the person paying the same . . . into the public Treasury, to be disposed of under the direction of the General Assembly, for the encouragement of seminaries of learning within the Counties whence such sums shall arise, and to no other use or purpose whatsoever." Supplemental Appendix.

§ See generally Eckenrode, c. V; Brant, James, and other authorities cited in note 11 above [note \*, p. 818].

¶ II Madison, 133; and the Appendix to this opinion. Eckenrode, 100 ff. See also Fleet, Madison's "Detached Memoranda" (1946) III William & Mary Q. (3d Series) 534, 554-562.

ing Religious Freedom but also, for example, the struggles for religious incorporations and the continued maintenance of the glebes, the Remonstrance is at once the most concise and the most accurate statement of the views of the First Amendment's author concerning what is "an establishment of religion." Because it behooves us in the dimming distance of time not to lose sight of what he and his coworkers had in mind when, by a single sweeping stroke of the pen, they forbade an establishment of religion and secured its free exercise, the text of the Remonstrance is appended at the end of this opinion for its wider current reference, together with a copy of the bill against which it was directed.

The Remonstrance, stirring up a storm of popular protest, killed the Assessment Bill.\* It collapsed in committee shortly before Christmas, 1785. With this, the way was cleared at last for enactment of Jefferson's Bill for Establishing Religious Freedom. Madison promptly drove it through in January of 1786, seven years from the time it was first introduced. This dual victory substantially ended the fight over establishments, settling the issue against them. See note 33 [note †, p. 824].

The next year Madison became a member of the Constitutional Convention. Its work done, he fought valiantly to secure the ratification of its great product in Virginia as elsewhere, and nowhere else more effectively.† Madison was certain in his own mind that under the Constitution "there is not a shadow of right in the general government to intermeddle with religion" ‡ and that "this subject is, for the honor of America, perfectly free and unshackled. The Government has no jurisdiction over it. . . ." §

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\* The major causes assigned for its defeat include the elevation of Patrick Henry to the governorship in November of 1784; the blunder of the proponents in allowing the Bill for Incorporations to come to the floor and incur defeat before the Assessment Bill was acted on; Madison's astute leadership, taking advantage of every "break" to convert his initial minority into a majority, including the deferment of action on the third reading to the fall; the Remonstrance, bringing a flood of protesting petitions; and the general poverty of the time. See Eckenrode, c. V, for an excellent short, detailed account.

† See James, Brant, *op. cit. supra* note 11 [note \*, p. 818].

‡ V Madison, 176. Cf. notes 33, 37 [Note †, p. 824; note ‡, p. 825].

§ V Madison, 132.

Nevertheless he pledged that he would work for a Bill of Rights, including a specific guaranty of religious freedom, and Virginia, with other states, ratified the Constitution on this assurance.\*

Ratification thus accomplished, Madison was sent to the first Congress. There he went at once about performing his pledge to establish freedom for the nation as he had done in Virginia. Within a little more than three years from his legislative victory at home he had proposed and secured the submission and ratification of the First Amendment as the first article of our Bill of Rights.†

All the great instruments of the Virginia struggle for religious liberty thus became warp and woof of our constitutional tradition, not simply by the course of history, but by the common unifying force of Madison's life, thought and sponsorship. He epitomized the whole of that tradition in the Amendment's compact, but nonetheless comprehensive, phrasing.

As the Remonstrance discloses throughout, Madison opposed every form and degree of official relation between religion and civil authority. For him religion was a wholly private matter beyond the scope of civil power either to restrain or to support.‡ Denial or abridgment of religious freedom was a violation of rights both of conscience and of natural equality. State aid was no less obnoxious or destructive to freedom and to religion itself

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\* Brant, 250. The assurance made first to his constituents was responsible for Madison's becoming a member of the Virginia Convention which ratified the Constitution. See James, 154-158.

† The amendment with respect to religious liberties read, as Madison introduced it: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed." 1 Annals of Congress 434. In the process of debate this was modified to its present form. See especially 1 Annals of Congress 729-731, 765; also note 34 [note †, p. 824].

‡ See text of the Remonstrance, Appendix; also notes 13, 15, 24, 25 *supra* and text [note †, p. 818; note \*, p. 819; notes †, ‡, p. 821].

Madison's one exception concerning restraint was for "preserving public order." Thus he declared in a private letter, IX Madison, 484, 487, written after the First Amendment was adopted: "The tendency to a usurpation on one side or the other, or to a corrupting coalition or alliance between them, will be best guarded agst. by an entire abstinence of the Govt. from interference in any way whatever, beyond the necessity of preserving public order, & protecting each sect agst. trespasses on its legal rights by others." Cf. note 9 [note †, p. 816].

than other forms of state interference. "Establishment" and "free exercise" were correlative and coextensive ideas, representing only different facets of the single great and fundamental freedom. The Remonstrance, following the Virginia statute's example, referred to the history of religious conflicts and the effects of all sorts of establishments, current and historical, to suppress religion's free exercise. With Jefferson, Madison believed that to tolerate any fragment of establishment would be by so much to perpetuate restraint upon that freedom. Hence he sought to tear out the institution not partially but root and branch, and to bar its return forever.

In no phase was he more unrelentingly absolute than in opposing state support or aid by taxation. Not even "three pence" contribution was thus to be exacted from any citizen for such a purpose. Remonstrance, Par. 3.\* Tithes had been the life blood of establishment before and after other compulsions disappeared. Madison and his coworkers made no exceptions or abridgments to the complete separation they created. Their objection was not to small tithes. It was to any tithes whatsoever. "If it were lawful to impose a small tax for religion the admission would pave the way for oppressive levies." † Not the amount but "the principle of assessment was wrong." And the principle was as much to prevent "the interference of law in religion" as to restrain religious intervention in political matters. ‡ In this field the authors

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\* The third ground of remonstrance, see the Appendix, bears repetition for emphasis here: "Because, it is proper to take alarm at the first experiment on our liberties. . . . The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it. Who does not see that . . . the same authority which can force a citizen to *contribute three pence* only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" (Emphasis added.) II Madison 183, 185-186.

† Eckenrode, 105, in summary of the Remonstrance.

‡ "Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth, or that he may employ Religion as an engine of Civil policy. The first is an arrogant pretention falsified by the contradictory opinion of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation." Remonstrance, Appendix, Par. 5; II Madison 183, 187,

of our freedom would not tolerate "the first experiment on our liberties" or "wait till usurped power had strengthened itself by exercise, and entangled the question in precedents." Remonstrance, Par. 3. Nor should we.

In view of this history no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. But if more were called for, the debates in the First Congress and this Court's consistent expressions, whenever it has touched on the matter directly,\* supply it.

By contrast with the Virginia history, the congressional debates on consideration of the Amendment reveal only sparse discussion, reflecting the fact that the essential issues had been settled.† Indeed the matter had become so well understood as to have been taken for granted in all but formal phrasing. Hence, the only enlightening reference shows concern, not to preserve any power to use public funds in aid of religion, but to prevent the Amendment from outlawing private gifts inadvertently by virtue of the breadth of its wording.‡ In the margin are noted also the principal de-

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\* As is pointed out above, note 3 [note †, p. 814], and in Part IV *infra*, *Cochran v. Board of Education*, 281 U. S. 370, was not such a case.

† See text *supra* at notes 24, 25 [notes †, §, p. 821]. Madison, of course, was but one of many holding such views, but nevertheless agreeing to the common understanding for adoption of a Bill of Rights in order to remove all doubt engendered by the absence of explicit guaranties in the original Constitution.

By 1791 the great fight over establishments had ended, although some vestiges remained then and later, even in Virginia. The glebes, for example, were not sold there until 1802. Cf. Eckenrode, 147. Fixing an exact date for "disestablishment" is almost impossible, since the process was piecemeal. Although Madison failed in having the Virginia Bill of Rights declare explicitly against establishment in 1776, cf. note 14 [note §, p. 818] and text *supra*, in 1777 the levy for support of the Anglican clergy was suspended. It was never resumed. Eckenrode states: "This act, in effect, destroyed the establishment. Many dates have been given for its end, but it really came on January 1, 1777, when the act suspending the payment of tithes became effective. This was not seen at the time. . . . But in freeing almost half of the taxpayers from the burden of the state religion the state religion was at an end. Nobody could be forced to support it, and an attempt to levy tithes upon Anglicans alone would be to recruit the ranks of dissent." P. 53. See also pp. 61, 64. The question of assessment however was revived "with far more strength than ever, in the summer of 1784." *Id.*, 64. It would seem more factual therefore to fix the time of disestablishment as of December, 1785-January, 1786, when the issue in large was finally settled.

‡ At one point the wording was proposed: "No religion shall be established by law, nor shall the rights of conscience be infringed." 1 Annals of Congress 729. Cf.

cisions in which expressions of this Court confirm the Amendment's broad prohibition.\*

### III.

Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies.† Test oaths and religious qualification for office followed later.‡ These things none devoted to our great tradition of religious liberty would think of bringing back. Hence today, apart from efforts to inject religious training or exercises and sectarian issues into the public

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note 27 [note †, p. 822]. Representative Huntington of Connecticut feared this might be construed to prevent judicial enforcement of private pledges. He stated "that he feared . . . that the words might be taken in such latitude as to be extremely hurtful to the cause of religion. He understood the amendment to mean what had been expressed by the gentleman from Virginia; but others might find it convenient to put another construction upon it. The ministers of their congregations to the Eastward were maintained by the contributions of those who belonged to their society; the expense of building meeting-houses was contributed in the same manner. These things were regulated by by-laws. If an action was brought before a Federal Court on any of these cases, the person who had neglected to perform his engagements could not be compelled to do it; for a support of ministers or building of places of worship might be construed into a religious establishment." 1 Annals of Congress 730.

To avoid any such possibility, Madison suggested inserting the word "national" before "religion," thereby not only again disclaiming intent to bring about the result Huntington feared but also showing unmistakably that "establishment" meant public "support" of religion in the financial sense. 1 Annals of Congress 731. See also IX Madison, 484-487.

\* The decision most closely touching the question, where it was squarely raised, is *Quick Bear v. Leupp*, 210 U. S. 50. The Court distinguished sharply between appropriations from public funds for the support of religious education and appropriations from funds held in trust by the Government essentially as trustee for private individuals, Indian wards, as beneficial owners. The ruling was that the latter could be disbursed to private, religious schools at the designation of those patrons for paying the cost of their education. But it was stated also that such a use of public moneys would violate both the First Amendment and the specific statutory declaration involved, namely, that "it is hereby declared to be the settled policy of the government to hereafter make no appropriation whatever for education in any sectarian school." 210 U. S. at 79. Cf. *Ponce v. Roman Catholic Apostolic Church*, 210 U. S. 296, 322. And see *Bradfield v. Roberts*, 175 U. S. 291, an instance of highly artificial grounding to support a decision sustaining an appropriation for the care of indigent patients pursuant to a contract with a private hospital. Cf. also the authorities cited in note 9 [note †, p. 816].

† See text at note 1 [note \*, p. 813].

‡ ". . . but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." Const., Art. VI, § 3. See also the two forms prescribed for the President's Oath or Affirmation. Const., Art. II, § 1. Cf. *Ex parte Garland*, 4 Wall. 333; *Cummings v. Missouri*, 4 Wall. 277; *Lovett v. United States*, 328 U. S. —.

schools, the only serious surviving threat to maintaining that complete and permanent separation of religion and civil power which the First Amendment commands is through use of the taxing power to support religion, religious establishments, or establishments having a religious foundation whatever their form or special religious function.

Does New Jersey's action furnish support for religion by use of the taxing power? Certainly it does, if the test remains undiluted as Jefferson and Madison made it, that money taken by taxation from one is not to be used or given to support another's religious training or belief, or indeed one's own.\* Today as then the furnishing of "contributions of money for the propagation of opinions which he disbelieves" is the forbidden exaction; and the prohibition is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end.

The funds used here were raised by taxation. The Court does not dispute, nor could it, that their use does in fact give aid and encouragement to religious instruction. It only concludes that this aid is not "support" in law. But Madison and Jefferson were concerned with aid and support in fact, not as a legal conclusion "entangled in precedents." Remonstrance, Par. 3. Here parents pay money to send their children to parochial schools and funds raised by taxation are used to reimburse them. This not only helps the children to get to school and the parents to send them. It aids them in a substantial way to get the very thing which they are sent to the particular school to secure, namely, religious training and teaching.

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\*In the words of the Virginia statute, following the portion of the preamble quoted at the beginning of this opinion; "... even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind." Cf. notes 29, 30, 31 [notes \*, †, ‡, p. 823] and text *supra*.

Believers of all faiths, and others who do not express their feeling toward ultimate issues of existence in any creedal form, pay the New Jersey tax. When the money so raised is used to pay for transportation to religious schools, the Catholic taxpayer to the extent of his proportionate share pays for the transportation of Lutheran, Jewish and otherwise religiously affiliated children to receive their non-Catholic religious instruction. Their parents likewise pay proportionately for the transportation of Catholic children to receive Catholic instruction. Each thus contributes to "the propagation of opinions which he disbelieves" in so far as their religions differ, as do others who accept no creed without regard to those differences. Each thus pays taxes also to support the teaching of his own religion, an exaction equally forbidden since it denies "the comfortable liberty" of giving one's contribution to the particular agency of instruction he approves.\*

New Jersey's action therefore exactly fits the type of exaction and the kind of evil at which Madison and Jefferson struck. Under the test they framed it cannot be said that the cost of transportation is no part of the cost of education or of the religious instruction given. That it is a substantial and a necessary element is shown most plainly by the continuing and increasing demand for the state to assume it. Nor is there pretense that it relates only to the secular instruction given in religious schools or that any attempt is or could be made toward allocating proportional shares as between the secular and the religious instruction. It is precisely because the instruction is religious and relates to a particular faith, whether one or another, that parents send their children to religious schools under the *Pierce* doctrine. And the very purpose of the state's contribution is to defray the cost of conveying the pupil to the place where he will receive not simply secular, but also and primarily religious, teaching and guidance.

Indeed the view is sincerely avowed by many of various faiths,†

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\* See note 38 [note \*, p. 826].

† See Bower, *Church and State in Education* (1944) 58: ". . . the fundamental division of the education of the whole self into the secular and the religious could not

that the basic purpose of all education is or should be religious, that the secular cannot be and should not be separated from the religious phase and emphasis. Hence, the inadequacy of public or secular education and the necessity for sending the child to a school where religion is taught. But whatever may be the philosophy or its justification, there is undeniably an admixture of religious with secular teaching in all such institutions. That is the very reason for their being. Certainly for purposes of constitutionality we cannot contradict the whole basis of the ethical and educational convictions of people who believe in religious schooling.

Yet this very admixture is what was disestablished when the First Amendment forbade "an establishment of religion." Commingling the religious with the secular teaching does not divest the whole of its religious permeation and emphasis or make them of minor part, if proportion were material. Indeed, on any other view, the constitutional prohibition always could be brought to naught by adding a modicum of the secular.

An appropriation from the public treasury to pay the cost of transportation to Sunday school, to weekday special classes at the church or parish house, or to the meetings of various young people's religious societies, such as the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., the Epworth League, could not withstand the constitutional attack. This would be true, whether or not secular activities were mixed with the religious. If such an appropriation could not stand, then it is hard to see how one becomes valid for the same thing upon the more extended scale of daily instruction. Surely constitutionality does not turn on where or how often the mixed teaching occurs.

Finally, transportation, where it is needed, is as essential to education as any other element. Its cost is as much a part of the

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be justified on the grounds of either a sound educational philosophy or a modern functional concept of the relation of religion to personal and social experience." See also Vere, *The Elementary School*, in *Essays on Catholic Education in the United States* (1942) 110-111; Gabel, *Public Funds for Church and Private Schools* (1937) 737-739.

total expense, except at times in amount, as the cost of textbooks, of school lunches, of athletic equipment, of writing and other materials; indeed of all other items composing the total burden. Now as always the core of the educational process is the teacher-pupil relationship. Without this the richest equipment and facilities would go for naught. See *Judd v. Board of Education*, 278 N. Y. 200, 212. But the proverbial Mark Hopkins conception no longer suffices for the country's requirements. Without buildings, without equipment, without library, textbooks and other materials, and without transportation to bring teacher and pupil together in such an effective teaching environment, there can be not even the skeleton of what our times require. Hardly can it be maintained that transportation is the least essential of these items, or that it does not in fact aid, encourage, sustain and support, just as they do, the very process which is its purpose to accomplish. No less essential is it, or the payment of its cost, than the very teaching in the classroom or payment of the teacher's sustenance. Many types of equipment, now considered essential, better could be done without.

For me, therefore, the feat is impossible to select so indispensable an item from the composite of total costs, and characterize it as not aiding, contributing to, promoting or sustaining the propagation of beliefs which it is the very end of all to bring about. Unless this can be maintained, and the Court does not maintain it, the aid thus given is outlawed. Payment of transportation is no more, nor is it any the less essential to education, whether religious or secular, than payment for tuitions, for teachers' salaries, for buildings, equipment and necessary materials. Nor is it any the less directly related, in a school giving religious instruction, to the primary religious objective all those essential items of cost are intended to achieve. No rational line can be drawn between payment for such larger, but not more necessary, items and payment for transportation. The only line that can be so drawn is one between more dollars and less. Certainly in this realm such a line can be no valid constitutional measure. *Murdock v. Pennsylvania*,

319 U. S. 105; *Thomas v. Collins*, 323 U. S. 516.\* Now, as in Madison's time, not the amount but the principle of assessment is wrong. Remonstrance, Par. 3.

#### IV.

But we are told that the New Jersey statute is valid in its present application because the appropriation is for a public, not a private purpose, namely, the promotion of education, and the majority accept this idea in the conclusion that all we have here is "public welfare legislation." If that is true and the Amendment's force can be thus destroyed, what has been said becomes all the more pertinent. For then there could be no possible objection to more extensive support of religious education by New Jersey.

If the fact alone be determinative that religious schools are engaged in education, thus promoting the general and individual welfare, together with the legislature's decision that the payment of public moneys for their aid makes their work a public function, then I can see no possible basis, except one of dubious legislative policy, for the state's refusal to make full appropriation for support of private, religious schools, just as is done for public instruction. There could not be, on that basis, valid constitutional objection.†

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\* It would seem a strange ruling that a "reasonable," that is, presumably a small, license fee cannot be placed upon the exercise of the right of religious instruction, yet that under the correlative constitutional guaranty against "an establishment" taxes may be levied and used to aid and promote religious instruction, if only the amounts so used are small. See notes 30, 31 *supra* [notes †, ‡, p. 823] and text.

Madison's objection to "three pence" contributions and his stress upon "denying the principle" without waiting until "usurped power had . . . entangled the question in precedents," note 29 [note \*, p. 823], were reinforced by his further characterization of the Assessment Bill: "Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance." Remonstrance, Par. 9; II Madison 183, 188.

† If it is part of the state's function to supply to religious schools or their patrons the smaller items of educational expense, because the legislature may say they perform a public function, it is hard to see why the larger ones also may not be paid. Indeed, it would seem even more proper and necessary for the state to do this. For if one class of expenditures is justified on the ground that it supports the general cause of education or benefits the individual, or can be made to do so by legislative declaration, so even more certainly would be the other. To sustain payment for transportation to school, for textbooks, for other essential materials, or

Of course paying the cost of transportation promotes the general cause of education and the welfare of the individual. So does paying all other items of educational expense. And obviously, as the majority say, it is much too late to urge that legislation designed to facilitate the opportunities of children to secure a secular education serves no public purpose. Our nation-wide system of public education rests on the contrary view, as do all grants in aid of education, public or private, which is not religious in character.

These things are beside the real question. They have no possible materiality except to obscure the all-pervading, inescapable issue. *Cf. Cochran v. Board of Education, supra.* Stripped of its religious phase, the case presents no substantial federal question. *Ibid.* The public function argument, by casting the issue in terms of promoting the general cause of education and the welfare of the individual, ignores the religious factor and its essential connection with the transportation, thereby leaving out the only vital element in the case. So of course do the "public welfare" and "social legislation" ideas, for they come to the same thing.

We have here then one substantial issue, not two. To say that New Jersey's appropriation and her use of the power of taxation for raising the funds appropriated are not for public purposes but are for private ends, is to say that they are for the support of religion and religious teaching. Conversely, to say that they are for public purposes is to say that they are not for religious ones.

This is precisely for the reason that education which includes religious training and teaching, and its support, have been made matters of private right and function, not public, by the very terms of the First Amendment. That is the effect not only in its guaranty of religion's free exercise, but also in the prohibition of

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perhaps for school lunches, and not for what makes all these things effective for their intended end, would be to make a public function of the smaller items and their cumulative effect, but to make wholly private in character the larger things without which the smaller could have no meaning or use.

establishments. It was on this basis of the private character of the function of religious education that this Court held parents entitled to send their children to private, religious schools. *Pierce v. Society of Sisters, supra*. Now it declares in effect that the appropriation of public funds to defray part of the cost of attending those schools is for a public purpose. If so, I do not understand why the state cannot go farther or why this case approaches the verge of its power.

In truth this view contradicts the whole purpose and effect of the First Amendment as heretofore conceived. The "public function"—"public welfare"—"social legislation" argument seeks, in Madison's words, to "employ Religion [that is, here, religious education] as an engine of Civil policy." Remonstrance, Par. 5. It is of one piece with the Assessment Bill's preamble, although with the vital difference that it wholly ignores what that preamble explicitly states.\*

Our constitutional policy is exactly the opposite. It does not deny the value or the necessity for religious training, teaching or observance. Rather it secures their free exercise. But to that end it does deny that the state can undertake or sustain them in any form or degree. For this reason the sphere of religious activity, as distinguished from the secular intellectual liberties, has been given the twofold protection and, as the state cannot forbid, neither can it perform or aid in performing the religious function. The dual prohibition makes that function altogether private. It cannot be made a public one by legislative act. This was the very heart of Madison's Remonstrance, as it is of the Amendment itself.

It is not because religious teaching does not promote the public

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\* "Whereas the general diffusion of Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society; which cannot be effected without a competent provision for learned teachers, who may be thereby enabled to devote their time and attention to the duty of instructing such citizens, as from their circumstances and want of education, cannot otherwise attain such knowledge; and it is judged that such provision may be made by the Legislature, without counteracting the liberal principle heretofore adopted and intended to be preserved by abolishing all distinctions of pre-eminence amongst the different societies of communities of Christians; . . ." Supplemental Appendix; Foote, Sketches of Virginia (1850) 340.

or the individual's welfare, but because neither is furthered when the state promotes religious education, that the Constitution forbids it to do so. Both legislatures and courts are bound by that distinction. In failure to observe it lies the fallacy of the "public function"—"social legislation" argument, a fallacy facilitated by easy transference of the argument's basing from due process unrelated to any religious aspect to the First Amendment.

By no declaration that a gift of public money to religious uses will promote the general or individual welfare, or the cause of education generally, can legislative bodies overcome the Amendment's bar. Nor may the courts sustain their attempts to do so by finding such consequences for appropriations which in fact give aid to or promote religious uses. Cf. *Norris v. Alabama*, 294 U. S. 587, 590; *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Akins v. Texas*, 325 U. S. 398, 402. Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small. No such finding has been or could be made in this case. The Amendment has removed this form of promoting the public welfare from legislative and judicial competence to make a public function. It is exclusively a private affair.

The reasons underlying the Amendment's policy have not vanished with time or diminished in force. Now as when it was adopted the price of religious freedom is double. It is that the church and religion shall live both within and upon that freedom. There cannot be freedom of religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse. Madison's Remonstrance, Par. 6, 8.\* The great condition of religious liberty is that it be maintained

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\* "Because the Establishment proposed by the Bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world. . . . Because the establishment in question is not necessary for the support of Civil Government. . . . What influence in fact have ecclesiastical establishments had on Civil Society? . . . in no instance have they been seen the guardians of the liberties of the people." II Madison 183, 187, 188.

free from sustenance, as also from other interferences, by the state. For when it comes to rest upon that secular foundation it vanishes with the resting. *Id.*, Par. 7, 8.\* Public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too the struggle of sect against sect for the larger share or for any. Here one by numbers alone will benefit most, there another. That is precisely the history of societies which have had an established religion and dissident groups. *Id.*, Par. 8, 11. It is the very thing Jefferson and Madison experienced and sought to guard against, whether in its blunt or in its more screened forms. *Ibid.* The end of such strife cannot be other than to destroy the cherished liberty. The dominating group will achieve the dominant benefit; or all will embroil the state in their dissensions. *Id.*, Par. 11.†

Exactly such conflicts have centered of late around providing transportation to religious schools from public funds.‡ The issue and the dissension work typically, in Madison's phrase, to "destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several

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\* "Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation." II Madison 183, 187.

† "At least let warning be taken at the first fruit of the threatened innovation. The very appearance of the Bill has transformed that 'Christian forbearance, love and charity,' which of late mutually prevailed, into animosities and jealousies, which may not soon be appeased." II Madison 183, 189.

‡ In this case briefs *amici curiae* have been filed on behalf of various organizations representing three religious sects, one labor union, the American Civil Liberties Union, and the states of Illinois, Indiana, Louisiana, Massachusetts, Michigan, and New York. All these states have laws similar to New Jersey's and all of them, with one religious sect, support the constitutionality of New Jersey's action. The others oppose it. Maryland and Mississippi have sustained similar legislation. Note 49 *infra* [note †, p. 835]. No state without legislation of this sort has filed an opposing brief. But at least seven states have held such action invalid, namely, Delaware, Kentucky, Oklahoma, New York, South Dakota, Washington and Wisconsin. Note 49 *infra* [note †, p. 835]. The New York ruling was overturned by amendment to the state constitution in 1938. Constitution of New York, Art. XI, 4.

Furthermore, in this case the New Jersey courts divided, the Supreme Court holding the statute and resolution invalid, 132 N. J. L. 98, the Court of Errors and Appeals reversing that decision, 133 N. J. L. 350. In both courts, as here, the judges split, one of three dissenting in the Supreme Court, three of nine in the Court of Errors and Appeals. The division is typical. See the cases cited in note 49 [note †, p. 835].

sects." *Id.*, Par. 11. This occurs, as he well knew, over measures at the very threshold of departure from the principle. *Id.*, Par. 3, 9, 11.

In these conflicts wherever success has been obtained it has been upon the contention that by providing the transportation the general cause of education, the general welfare, and the welfare of the individual will be forwarded; hence that the matter lies within the realm of public function, for legislative determination.\* State courts have divided upon the issue, some taking the view that only the individual, others that the institution receives the benefit.† A few have recognized that this dichotomy is false, that both in fact are aided.‡

The majority here does not accept in terms any of those views. But neither does it deny that the individual or the school, or indeed both, are benefited directly and substantially.§ To do so would cut the ground from under the public function—social legislation thesis. On the contrary, the opinion concedes that the children are aided by being helped to get to the religious schooling. By converse necessary implication as well as by the absence of

\* See the authorities cited in note 49 [note †, sub.]; and see note 54 [note \*, p. 837].

† Some state courts have sustained statutes granting free transportation or free school books to children attending denominational schools on the theory that the aid was a benefit to the child rather than to the school. See *Cochran v. Board of Education*, 168 La. 1030, aff'd., 281 U. S. 370; *Borden v. Board of Education*, 168 La. 1005; *Board of Education v. Wheat*, 174 Md. 314; *Adams v. St. Mary's County*, 180 Md. 550; *Chance v. State Textbook R. & O. Board*, 190 Miss. 453. See also *Bowker v. Baker*, — Cal. App. —, 167 P. (2d) 256. Other courts have held such statutes unconstitutional under state constitutions as aid to the schools. *Judd v. Board of Education*, 278 N. Y. 200, but see note 47 *supra* [note ‡, p. 834]; *Smith v. Donahue*, 202 App. Div. 656; *State ex rel. Traub v. Brown*, 36 Del. 181; *Gurney v. Ferguson*, 190 Okla. 254; *Mitchell v. Consolidated School District*, 17 Wash. (2d) 61; *Sherrard v. Jefferson County Board of Education*, 294 Ky. 469; *Van Straten v. Milquet*, 180 Wis. 109. And cf. *Hlebanja v. Brewe*, 58 S. D. 351. And since many state constitutions have provisions forbidding the appropriation of public funds for private purposes, in these and other cases the issue whether the statute was for a "public" or "private" purpose has been present. See note (1941) 50 Yale L. J. 917, 925.

‡ *E. g.*, *Gurney v. Ferguson*, 190 Okla. 254, 255; *Mitchell v. Consolidated School District*, 17 Wash. (2d) 61, 68; *Smith v. Donahue*, 202 App. Div. 655, 664; *Board of Education v. Wheat*, 174 Md. 316, dissenting opinion at 340. This is true whether the appropriation and payment are in form to the individual or to the institution. *Ibid.* Questions of this gravity turn upon the purpose and effect of the state's expenditure to accomplish the forbidden object, not upon who receives the amount and applies it to that end or the form and manner of the payment.

§ The payments here averaged roughly \$40.00 a year per child.

express denial, it must be taken to concede also that the school is helped to reach the child with its religious teaching. The religious enterprise is common to both, as is the interest in having transportation for its religious purposes provided.

Notwithstanding the recognition that this two-way aid is given and the absence of any denial that religious teaching is thus furthered, the Court concludes that the aid so given is not "support" of religion. It is rather only support of education as such, without reference to its religious content, and thus becomes public welfare legislation. To this elision of the religious element from the case is added gloss in two respects, one that the aid extended partakes of the nature of a safety measure, the other that failure to provide it would make the state unneutral in religious matters, discriminating against or hampering such children concerning public benefits all others receive.

As will be noted, the one gloss is contradicted by the facts of record and the other is of whole cloth with the "public function" argument's excision of the religious factor.\* But most important is that this approach, if valid, supplies a ready method for nullifying the Amendment's guaranty, not only for this case and others involving small grants in aid for religious education, but equally for larger ones. The only thing needed will be for the Court again to transplant the "public welfare—public function" view from its proper nonreligious due process bearing to First Amendment application, holding that religious education is not "supported" though it may be aided by the appropriation, and that the cause of education generally is furthered by helping the pupil to secure that type of training.

This is not therefore just a little case over bus fares. In paraphrase of Madison, distant as it may be in its present form from a complete establishment of religion, it differs from it only in degree; and is the first step in that direction. *Id.*, Par. 9.† Today as in his time "the same authority which can force a citizen to

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\* See Part V.

† See also note 46 *supra* [note †, p. 834] and Remonstrance, Par. 3.

contribute three pence only . . . for the support of any one religious establishment, may force him" to pay more; or "to conform to any other establishment in all cases whatsoever." And now, as then, "either . . . we must say, that the will of the Legislature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or, that they are bound to leave this particular right untouched and sacred." Remonstrance, Par. 15.

The realm of religious training and belief remains, as the Amendment made it, the kingdom of the individual man and his God. It should be kept inviolately private, not "entangled . . . in precedents" \* or confounded with what legislatures legitimately may take over into the public domain.

#### V.

No one conscious of religious values can be unsympathetic toward the burden which our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' children's education, at the same time the added cost of instruction for their own. Nor can one happily see benefits denied to children which others receive, because in conscience they or their parents for them desire a different kind of training others do not demand.

But if those feelings should prevail, there would be an end to our historic constitutional policy and command. No more unjust or discriminatory in fact is it to deny attendants at religious schools the cost of their transportation than it is to deny them tuitions, sustenance for their teachers, or any other educational expense which others receive at public cost. Hardship in fact there is which none can blink. But, for assuring to those who undergo it the greater, the most comprehensive freedom, it is one written by design and firm intent into our basic law.

Of course discrimination in the legal sense does not exist. The

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\* Thus each brief filed here by the supporters of New Jersey's action, see note 47 [note †, p. 834], not only relies strongly on *Cochran v. Board of Education*, 281 U. S. 370, but either explicitly or in effect maintains that it is controlling in the present case.

child attending the religious school has the same right as any other to attend the public school. But he foregoes exercising it because the same guaranty which assures this freedom forbids the public school or any agency of the state to give or aid him in securing the religious instruction he seeks.

Were he to accept the common school, he would be the first to protest the teaching there of any creed or faith not his own. And it is precisely for the reason that their atmosphere is wholly secular that children are not sent to public schools under the *Pierce* doctrine. But that is a constitutional necessity, because we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion. Remonstrance, Par. 8, 12.

That policy necessarily entails hardship upon persons who forego the right to educational advantages the state can supply in order to secure others it is precluded from giving. Indeed this may hamper the parent and the child forced by conscience to that choice. But it does not make the state unneutral to withhold what the Constitution forbids it to give. On the contrary it is only by observing the prohibition rigidly that the state can maintain its neutrality and avoid partisanship in the dissensions inevitable when sect opposes sect over demands for public moneys to further religious education, teaching or training in any form or degree, directly or indirectly. Like St. Paul's freedom, religious liberty with a great price must be bought. And for those who exercise it most fully, by insisting upon religious education for their children mixed with secular, by the terms of our Constitution the price is greater than for others.

The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all religious instruction alike. Thus, if the present statute and its application were shown to apply equally to all religious schools of whatever faith,\* yet in the light of our

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\* See text at notes 17-19 *supra* [notes \*, †, ‡, p. 820] and authorities cited; also Foote, Sketches of Virginia (1850) c. XV. Madison's entire thesis, as reflected

tradition it could not stand. For then the adherent of one creed still would pay for the support of another, the childless taxpayer with others more fortunate. Then too there would seem to be no bar to making appropriations for transportation and other expenses of children attending public or other secular schools, after hours in separate places and classes for their exclusively religious instruction. The person who embraces no creed also would be forced to pay for teaching what he does not believe. Again, it was the furnishing of "contributions of money for the propagation of opinions which he disbelieves" that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation.

## VI.

Short treatment will dispose of what remains. Whatever might be said of some other application of New Jersey's statute, the one made here has no semblance of bearing as a safety measure or, indeed, for securing expeditious conveyance. The transportation supplied is by public conveyance, subject to all the hazards and delays of the highway and the streets incurred by the public generally in going about its multifarious business.

Nor is the case comparable to one of furnishing fire or police protection, or access to public highways. These things are matters of common right, part of the general need for safety.\* Certainly

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throughout the Remonstrance and in his other writings, as well as in his opposition to the final form of the Assessment Bill, see note 43 [note \*, p. 832], was altogether incompatible with acceptance of general and "nondiscriminatory" support. See Brant, c. XII.

\* The protections are of a nature which does not require appropriations specially made from the public treasury and earmarked, as is New Jersey's here, particularly for religious institutions or uses. The First Amendment does not exclude religious property or activities from protection against disorder or the ordinary accidental incidents of community life. It forbids support, not protection from interference or destruction.

It is a matter not frequently recalled that President Grant opposed tax exemption of religious property as leading to a violation of the principle of separation of church and state. See President Grant's Seventh Annual Message to Congress, De-

the fire department must not stand idly by while the church burns. Nor is this reason why the state should pay the expense of transportation or other items of the cost of religious education.\*

Needless to add, we have no such case as *Green v. Frazier*, 253 U. S., or *Carmichael v. Southern Coal Co.*, 301 U. S. 495, which dealt with matters wholly unrelated to the First Amendment, involving only situations where the "public function" issue was determinative.

I have chosen to place my dissent upon the broad ground I think decisive, though strictly speaking the case might be decided on narrower issues. The New Jersey statute might be held invalid on its face for the exclusion of children who attend private, profit-making schools.† I cannot assume, as does the majority, that the New Jersey courts would write off this explicit limitation from the statute. Moreover, the resolution by which the statute was applied expressly limits its benefits to students of public and Catholic schools.‡ There is no showing that there are no other private

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cember 7, 1875, in IX Messages and Papers of the Presidents (1897) 4288-4289. Garfield, in a letter accepting the nomination for the presidency, said: ". . . it would be unjust to our people, and dangerous to our institutions, to apply any portion of the revenues of the nation, or of the States, to the support of sectarian schools. The separation of the Church and the State in everything relating to taxation should be absolute." II The Works of James Abram Garfield (ed. by Hinsdale, 1883) 783.

\* Neither do we have here a case of rate-making by which a public utility extends reduced fares to all school children, including patrons of religious schools. Whether or not legislative compulsion upon a private utility to extend such an advantage would be valid, or its extension by a municipally owned system, we are not required to consider. In the former instance, at any rate, and generally if not always in the latter, the vice of using the taxing power to raise funds for the support of religion would not be present.

† It would seem at least a doubtfully sufficient basis for reasonable classification that some children should be excluded simply because the only school feasible for them to attend, in view of geographic or other situation, might be one conducted in whole or in part for profit. Cf. note 5 [note §, p. 814].

‡ See note 7 *supra* [note †, p. 815]. The resolution was as follows, according to the school board's minutes read in proof: "The transportation committee recommended the transportation of pupils of Ewing to the Trenton and Pennington High Schools and Catholic Schools by way of public carrier as in recent years. On Motion of Mr. Ralph Ryan and Mr. M. French the same was adopted." (Emphasis added.) The New Jersey court's holding that the resolution was within the authority conferred by the state statute is binding on us. *Reinman v. Little Rock*, 237 U. S. 171, 176; *Hadacheck v. Sebastian*, 239 U. S. 394, 414.

or religious schools in this populous district.\* I do not think it can be assumed there were none.† But in the view I have taken, it is unnecessary to limit grounding to these matters.

Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. The other, to obtain public funds for the aid and support of various private religious schools. See Johnson, *The Legal Status of Church-State Relationships in the United States* (1934); Thayer, *Religion in Public Education* (1947); Note (1941) 50 *Yale L. J.* 917. In my opinion both avenues were closed by the Constitution. Neither should be opened by this Court. The matter is not one of quantity, to be measured by the amount of money expended. Now as in Madison's day it is one of principle; to keep separate the separate spheres as the First Amendment drew them; to prevent the first experiment upon our liberties; and to keep the question from becoming entangled in corrosive precedents. We should not be less strict to keep strong and untarnished the one side of the shield of religious freedom than we have been of the other.

The judgment should be reversed.

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\* The population of Ewing Township, located near the City of Trenton, was 10,146 according to the census of 1940. Sixteenth Census of the United States, Population, Vol. 1, 674.

† In *Thomas v. Collins*, 323 U. S. 516, 530, it was said that the preferred place given in our scheme to the great democratic freedoms secured by the First Amendment gives them "a sanctity and a sanction not permitting dubious intrusions." Cf. *Remonstrance*, Par. 3, 9. And in other cases it has been held that the usual presumption of constitutionality will not work to save such legislative excursions in this field. *United States v. Carolene Products Co.*, 304 U. S. 144, 152, note 4; see Wechsler, *Stone and the Constitution* (1946) 46 *Col. L. Rev.* 764, 795 *et seq.*

Apart from the Court's admission that New Jersey's present action approaches the verge of her power, it would seem that a statute, ordinance or resolution which on its face singles out one sect only by name for enjoyment of the same advantages as public schools or their students, should be held discriminatory on its face by virtue of that fact alone, unless it were positively shown that no other sects sought or were available to receive the same advantages.

RELEASED TIME FOR RELIGIOUS EDUCATION <sup>10</sup>

## Supreme Court of the United States

OCTOBER TERM, 1947

People of the State of Illinois ex rel. Vashti McCollum, Appellant, v.  
Board of Education of School District No. 71, Champaign County,  
Illinois et al.

[DECIDED MARCH 8, 1948]

MR. JUSTICE BLACK delivered the opinion of the Court.

This case relates to the power of a state to utilize its tax-supported public school system in aid of religious instruction insofar as that power may be restricted by the First and Fourteenth Amendments to the Federal Constitution.

The appellant, Vashti McCollum, began this action for mandamus against the Champaign Board of Education in the Circuit Court of Champaign County, Illinois. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanor punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State. District boards of education are given general supervisory powers over the use of the public school buildings within the school districts. Ill. Rev. Stat. ch. 122, §§ 123, 301 (1943).

Appellant's petition for mandamus alleged that religious teachers, employed by private religious groups, were permitted to come weekly into the school buildings during the regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law. The petitioner charged that this joint public-school religious-group program violated the First and Fourteenth Amendments to the United

States Constitution. The prayer of her petition was that the Board of Education be ordered to “adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District Number 71, . . . and in all public school houses and buildings in said district when occupied by public schools.”

The board first moved to dismiss the petition on the ground that under Illinois law appellant had no standing to maintain the action. This motion was denied. An answer was then filed, which admitted that regular weekly religious instruction was given during school hours to those pupils whose parents consented and that those pupils were released temporarily from their regular secular classes for the limited purpose of attending the religious classes. The answer denied that this coordinated program of religious instruction violated the State or Federal Constitution. Much evidence was heard, findings of fact were made, after which the petition for mandamus was denied on the ground that the school's religious instruction program violated neither the federal nor state constitutional provisions invoked by the appellant. On appeal the State Supreme Court affirmed. 396 Ill. 14. Appellant appealed to this Court under 28 U. S. C. § 344 (a), and we noted probable jurisdiction. 332 U. S. —.

The appellee presses a motion to dismiss the appeal on several grounds, the first of which is that the judgment of the State Supreme Court does not draw in question the “validity of a statute of any State” as required by 28 U. S. C. § 344 (a). This contention rests on the admitted fact that the challenged program of religious instruction was not expressly authorized by statute. But the State Supreme Court has sustained the validity of the program on the ground that the Illinois statutes granted the board authority to establish such a program. This holding is sufficient to show that the validity of an Illinois statute was drawn in question within the meaning of 28 U. S. C. § 344 (a). *Hamilton v. Regents of U. of Cal.*, 293 U. S. 245, 258. A second ground for the motion to dismiss is that the appellant lacks standing to maintain the action,

a ground which is also without merit. *Coleman v. Miller*, 307 U. S. 433, 443, 445, 464. A third ground for the motion is that the appellant failed properly to present in the State Supreme Court her challenge that the state program violated the Federal Constitution. But in view of the express rulings of both state courts on this question, the argument cannot be successfully maintained. The motion to dismiss the appeal is denied.

Although there are disputes between the parties as to various inferences that may or may not properly be drawn from the evidence concerning the religious program, the following facts are shown by the record without dispute.\* In 1940 interested members of the Jewish, Roman Catholic, and a few of the Protestant faiths formed a voluntary association called the Champaign Council on Religious Education. They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend; † they were held weekly,

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\* Appellant, taking issue with the facts found by the Illinois courts, argues that the religious education program in question is invalid under the Federal Constitution for any one of the following reasons: (1) In actual practice certain Protestant groups have obtained an overshadowing advantage in the propagation of their faiths over other Protestant sects; (2) the religious education program was voluntary in name only because in fact subtle pressures were brought to bear on the students to force them to participate in it; and (3) the power given the school superintendent to reject teachers selected by religious groups and the power given the local Council on Religious Education to determine which religious faiths should participate in the program was a prior censorship of religion.

In view of our decision we find it unnecessary to consider these arguments or the disputed facts upon which they depend.

† The Supreme Court described the request card system as follows: “. . . Admission to the classes was to be allowed only upon the express written request of parents, and then only to classes designated by the parents. . . . Cards were distributed to the parents of elementary students by the public-school teachers requesting them to indicate whether they desired their children to receive religious education. After being filled out, the cards were returned to the teachers of religious education classes either by the public-school teachers or the children. . . .” On this subject the trial court found that “. . . those students who have obtained the written consent of their parents therefor are released by the school authorities from their secular work, and in the grade schools for a period of thirty minutes’ instruction in each week during said school hours, and forty-five minutes during each week in the junior high school, receive training in religious education. . . . Certain cards are used for obtaining permission of parents for their children to take said religious instruction courses, and they are made available through the offices of the superin-

thirty minutes for the lower grades, forty-five minutes for the higher. The council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools.\* The classes were taught in three separate religious groups by Protestant teachers,† Catholic priests, and a Jewish rabbi, although for the past several years there have apparently been no classes instructed in the Jewish religion. Classes were conducted in the regular classrooms of the school building. Students who did not choose to take the religious instruction were not released from public school duties; they were required to leave their classrooms and go to some other place in the school building for pursuit of their secular studies. On the other hand, students who were released from secular study for the religious instructions were required to be present at the religious classes. Reports of their presence or absence were to be made to their secular teachers.‡

tendent of schools and through the hands of principals and teachers to the pupils of the school district. Said cards are prepared at the cost of the council of religious education. The handling and distribution of said cards does not interfere with the duties or suspend the regular secular work of the employees of the defendant. . . ."

\* The State Supreme Court said: "The record further discloses that the teachers conducting the religious classes were not teachers in the public schools but were subject to the approval and supervision of the superintendent. . . ." The trial court found: "Before any faith or other group may obtain permission from the defendant for the similar, free and equal use of rooms in the public school buildings said faith or group must make application to the superintendent of schools of said School District Number 71, who in turn will determine whether or not it is practical for said group to teach in said school system." The president of the local school board testified: ". . . The Protestants would have one group and the Catholics, and would be given a room where they would have the class and we would go along with the plan of the religious people. They were all to be treated alike, with the understanding that the teachers they would bring into the school were approved by the superintendent. . . . The superintendent was the last word so far as the individual was concerned. . . ."

† There were two teachers of the Protestant faith. One was a Presbyterian and had been a foreign missionary for that church. The second testified as follows: "I am affiliated with the Christian church. I also work in the Methodist Church and I taught at the Presbyterian. I am married to a Lutheran."

‡ The director of the Champaign Council on Religious Education testified: ". . . If any pupil is absent we turn in a slip just like any teacher would to the superintendent's office. The slip is a piece of paper with a number of hours in the school day and a square, and the teacher of the particular room for the particular hour records the absentees. It has their names and the grade and the section to which they belong. It is the same sheet that the geography and history teachers and all the other teachers use, and is furnished by the school. . . ."

The foregoing facts, without reference to others that appear in the record, show the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious council in promoting religious education. The operation of the state's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by the Fourteenth) as we interpreted it in *Everson v. Board of Education*, 330 U. S. 1. There we said: "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.\* Neither can force or influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or for professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.† Neither a state nor the Federal Government

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\* The dissent, agreed to by four judges, said: "The problem then cannot be cast in terms of legal discrimination or its absence. This would be true, even though the state in giving aid should treat all religious instruction alike. . . . Again, it was the furnishing of 'contributions of money for the propagation of opinions which he disbelieves' that the fathers outlawed. That consequence and effect are not removed by multiplying to all-inclusiveness the sects for which support is exacted. The Constitution requires, not comprehensive identification of state with religion, but complete separation." *Everson v. Board of Education*, 330 U. S. 1, 59, 60.

† The dissenting judges said: "In view of this history no further proof is needed that the Amendment forbids any appropriation, large or small, from public funds to aid or support any and all religious exercises. . . . Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teachings or observances, be the amount large or small." *Everson v. Board of Education*, 330 U. S. 1, 41, 52-53.

can, openly or secretly, participate in the affairs of any religious organizations or groups, and *vice versa*. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.' ” *Id.* at 15-16. The majority in the *Everson* case, and the minority as shown by quotations from the dissenting views in our notes 6 and 7 [notes \* and †, p. 846], agreed that the First Amendment's language, properly interpreted, had erected a wall of separation between Church and State. They disagreed as to the facts shown by the record and as to the proper application of the First Amendment's language to those facts.

Recognizing that the Illinois program is barred by the First and Fourteenth Amendments if we adhere to the views expressed both by the majority and the minority in the *Everson* case, counsel for the respondents challenge those views as dicta and urge that we reconsider and repudiate them. They argue that historically the First Amendment was intended to forbid only government preference of one religion over another, not an impartial governmental assistance of all religions. In addition they ask that we distinguish or overrule our holding in the *Everson* case that the Fourteenth Amendment made the “establishment of religion” clause of the First Amendment applicable as a prohibition against the States. After giving full consideration to the arguments presented we are unable to accept either of these contentions.

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a

wall between Church and State which must be kept high and impregnable.

Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State.

The cause is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion.

*Reversed and remanded.*

MR. JUSTICE FRANKFURTER delivered the following opinion, in which MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON join.\*

We dissented in *Everson v. Board of Education*, 330 U. S. 1, because in our view the Constitutional principle requiring separation of Church and State compelled invalidation of the ordinance sustained by the majority. Illinois has here authorized the commingling of religious with secular instruction in the public schools. The Constitution of the United States forbids this.

This case, in the light of the *Everson* decision, demonstrates anew that the mere formulation of a relevant Constitutional principle is the beginning of the solution of a problem, not its answer. This is so because the meaning of a spacious conception like that of the separation of Church from State is unfolded as appeal is made to the principle from case to case. We are all agreed that the First and the Fourteenth Amendments have a secular reach far more penetrating in the conduct of Government than merely to forbid an "established church." But agreement, in the abstract, that the First Amendment was designed to erect a "wall of separation between Church and State," does not preclude a clash of views as to what the wall separates. Involved is not only the

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\* MR. JUSTICE RUTLEDGE and MR. JUSTICE BURTON also concurred in the Court's opinion.

Constitutional principle but the implications of judicial review in its enforcement. Accommodation of legislative freedom and Constitutional limitations upon that freedom cannot be achieved by a mere phrase. We cannot illuminatingly apply the “wall-of-separation” metaphor until we have considered the relevant history of religious education in America, the place of the “released time” movement in that history, and its precise manifestation in the case before us.

To understand the particular program now before us as a conscientious attempt to accommodate the allowable functions of Government and the special concerns of the Church within the framework of our Constitution and with due regard to the kind of society for which it was designed, we must put this Champaign program of 1940 in its historic setting.

[Mr. Justice Frankfurter here very ably reviewed the history of education in the United States from tax-supported religious education in the colonies through the secularization of public education and the efforts of church leaders to provide religious education in conjunction with the public schools, closing with the released time program under consideration in this case.]

A movement of such scope indicates the importance of the problem to which the “released time” programs are directed. But to the extent that aspects of these programs are open to Constitutional objection, the more extensively the movement operates, the more ominous the breaches in the wall of separation.

Of course, “released time” as a generalized conception, undefined by differentiating particularities, is not an issue for Constitutional adjudication. Local programs differ from each other in many and crucial respects. Some “released time” classes are under separate denominational auspices, others are conducted jointly by several denominations, often embracing all the religious affiliations of a community. Some classes in religion teach a limited sectarianism; others emphasize democracy, unity and spiritual values not anchored in a particular creed. Insofar as these are manifestations merely of the free exercise of religion, they are quite outside the scope of judicial concern, except insofar

as the Court may be called upon to protect the right of religious freedom. It is only when challenge is made to the share that the public schools have in the execution of a particular "released time" program that close judicial scrutiny is demanded of the exact relation between the religious instruction and the public educational system in the specific situation before the Court.\*

The substantial differences among arrangements lumped together as "released time" emphasize the importance of detailed analysis of the facts to which the Constitutional test of Separation is to be applied. How does "released time" operate in Champaign? Public school teachers distribute to their pupils cards supplied by church groups, so that the parents may indicate whether they desire religious instruction for their children. For those desiring it, religious classes are conducted in the regular classrooms of the public schools by teachers of religion paid by the churches and appointed by them, but, as the State court found, "subject to the approval and supervision of the Superintendent." The courses do not profess to give secular instruction in subjects concerning religion. Their candid purpose is sectarian teaching. While a child can go to any of the religious classes offered, a particular sect wishing a teacher for its devotees requires the permission of the school superintendent "who in turn will determine whether or not it is practical for said

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\* Respects in which programs differ include, for example, the amount of supervision by the public school of attendance and performance in the religious class, of the course of study, of the selection of teachers; methods of enrolment and dismissal from the secular classes; the amount of school time devoted to operation of the program; the extent to which school property and administrative machinery are involved; the effect on the public school program of the introduction of "released time"; the proportion of students who seek to be excused; the effect of the program on non-participants; the amount and nature of the publicity for the program in the public schools.

The studies of detail in "released time" programs are voluminous. Most of these may be found in the issues of such periodicals as *The International Journal of Religious Education*, *Religious Education*, and *Christian Century*. For some of the more comprehensive studies found elsewhere, see Davis, *Weekday Classes in Religious Education*, U. S. Office of Education Bulletin 1941, No. 3; Gorham, *A Study of the Status of Weekday Church Schools in the United States* (1934); Lotz, *The Weekday Church School*, in Lotz and Crawford, *Studies in Religious Education* (1931) c. XII; Forsyth, *Week-Day Church Schools* (1930); Settle, *The Weekday Church School*, Educational Bulletin No. 601 of The International Council of Religious Education (1930); Shaver, *Present-Day Trends in Religious Education* (1928) cc. VII, VIII; Gove, *Religious Education on Public School Time* (1926).

group to teach in said school system." If no provision is made for religious instruction in the particular faith of a child, or if for other reasons the child is not enrolled in any of the offered classes, he is required to attend a regular school class, or a study period during which he is often left to his own devices. Reports of attendance in the religious classes are submitted by the religious instructor to the school authorities, and the child who fails to attend is presumably deemed a truant.

Religious education so conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. The fact that this power has not been used to discriminate is beside the point. Separation is a requirement to abstain from fusing functions of Government and of religious sects, not merely to treat them all equally. That a child is offered an alternative may reduce the constraint; it does not eliminate the operation of influence by the school in matters sacred to conscience and outside the school's domain. The law of imitation operates, and non-conformity is not an outstanding characteristic of children. The result is an obvious pressure upon children to attend.\* Again, while the Champaign school population represents only a fraction of the more than two hundred and fifty sects of the nation, not even all the practicing sects in Champaign are willing or able to provide religious instruction. The children belonging to these non-participating sects will thus have inculcated in them a feeling of separatism when the school should be the training ground for habits of community, or they will have religious instruction in a faith which is not that of their parents. As a result, the public school system of Champaign actively furthers inculcation in the religious tenets of some faiths, and in the process sharpens the The great condition of religious liberty is that it be maintained

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\* It deserves notice that in discussing with the relator her son's inability to get along with his classmates, one of his teachers suggested that "allowing him to take the religious education course might help him to become a member of the group."

children committed to its care. These are consequences not amenable to statistics. But they are precisely the consequences against which the Constitution was directed when it prohibited the Government common to all from becoming embroiled, however innocently, in the destructive religious conflicts of which the history of even this country records some dark pages.\*

Mention should not be omitted that the integration of religious instruction within the school system as practiced in Champaign is supported by arguments drawn from educational theories as diverse as those derived from Catholic conceptions and from the writings of John Dewey.† Movements like "released time" are

\* The divergent views expressed in the briefs submitted here on behalf of various religious organizations, as *amici curiae*, in themselves suggest that the movement has been a divisive and not an irenic influence in the community: The American Unitarian Association; The General Conference of Seventh Day Adventists; The Joint Conference Committee on Public Relations set up by the Southern Baptist Convention, The Northern Baptist Convention, The National Baptist Convention Inc., and the National Baptist Convention; The Protestant Council of the City of New York; and The Synagogue Council of America and National Community Relations Advisory Council.

† There is a prolific literature on the educational, social and religious merits of the "released time" movement. In support of "released time" the following may be mentioned: The International Council of Religious Education, and particularly the writings of Dr. Erwin L. Shaver, for some years Director of its Department of Weekday Religious Education, in publications of the Council and in numerous issues of *The International Journal of Religious Education* (e. g., *They Reach One-Third*, Dec., 1943, p. 11; *Weekday Religious Education Today*, Jan., 1944, p. 6), and *Religious Education* (e. g., *Survey of Week-Day Religious Education*, Feb., 1922, p. 51; *The Movement for Weekday Religious Education*, Jan.-Feb., 1946, p. 6); see also Information Service, Federal Council of Churches of Christ, May 29, 1943. See also Cutton, *Answering the Arguments*, *The International Journal of Religious Education*, June, 1930, p. 9, and *Released Time*, *id.*, Sept., 1942, p. 12; Hauser, "Hands Off the Public School?" *Religious Education*, Mar.-Apr., 1942, p. 99; Collins, *Release Time for Religious Instruction*, *National Catholic Education Association Bulletin*, May, 1915, pp. 21, 27-28; Weigle, *Public Education and Religion*, *Religious Education*, Apr.-June, 1940, p. 67; Nicholas Murray Butler, *The Place of Religious Instruction in Our Educational System*, 7 *Vital Speeches* 167 (Nov. 28, 1940); Howlett, *Released Time for Religious Education in New York City*, 64 *Education* 523, May, 1944; Blair, *A Case for the Church School*, 7 *Frontiers of Democracy* 75, Dec. 15, 1940; cf. Allred, *Legal Aspects of Release Time* (National Catholic Welfare Conference, 1947). Favorable views are also cited in the studies in note 17, *supra* [note \*, p. 850]. Many not opposed to "released time" have declared it "hardly enough" or "pitifully inadequate." E. g., Fleming, *God in Our Public Schools* (2d ed. 1944) pp. 80-86; Howlett, *Released Time for Religious Education in New York City*, *Religious Education*, Mar.-Apr., 1942, p. 104; Cavert, *Points of Tension Between Church and State in America Today*, in *Church and State in the Modern World* (1937) 161, 168; F. E. Johnson, *The Church and Society* (1935) 125; Hubner, *Professional Attitudes toward Religion in the Public Schools of the United States Since 1900* (1944) 108-109, 113; cf. Ryan, *A Protestant Experiment in Religious Education*, *The Catholic*

seldom single in origin or aim. Nor can the intrusion of religious instruction into the public school system of Champaign be minimized by saying that it absorbs less than an hour a week; in fact, that affords evidence of a design constitutionally objectionable. If it were merely a question of enabling a child to obtain religious instruction with a receptive mind the thirty or forty-five minutes could readily be found on Saturday or Sunday. If that were all, Champaign might have drawn upon the French system, known in its American manifestation as "dismissed time," whereby one school day is shortened to allow all children to go where they please, leaving those who so desire to go to a religious school.\* The momentum of the whole school atmosphere and school planning is presumably put behind religious instruction, as given in Champaign, precisely in order to secure for the religious instruction such momentum and planning. To speak of "released time"

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World, June, 1922; Elliott, *Are Weekday Church Schools the Solution?* The International Journal of Religious Education, Nov., 1940, p. 8; Elliott, *Report of the Discussion*, Religious Education, July-Sept., 1940, p. 158.

For opposing views, see V. T. Thayer, *Religion in Public Education* (1947) cc. VII, VIII; Mochlman, *The Church as Educator* (1947) c. X; Chave, *A Functional Approach to Religious Education* (1947) 104-107; A. W. Johnson, *The Legal Status of Church-State Relationships in the United States* (1934) 129-130; Newman, *The Sectarian Invasion of Our Public Schools* (1925). See also Payson Smith, *The Public Schools and Religious Education in Religion and Education* (Sperry, Editor, 1915) 32, 42-47; Herrick, *Religion in the Public Schools of America*, 46 *Elementary School Journal* 119, Nov., 1945; Kallen, *Churchmen's Claims on the Public School*, *The Nation's Schools*, May, 1942, p. 49; June, 1942, p. 52. And cf. John Dewey, *Religion in Our Schools* (1908), reprinted in *2 Characters and Events* (1929) 504, 508, 514. "Released time" was introduced in the public schools of the City of New York over the opposition of organizations like the Public Education Association and the United Parents Associations.

The arguments and sources pro and con are collected in Hultner, *Professional Attitudes toward Religion in the Public Schools in the United States since 1900* (1944) 94 *et seq.* And see the symposia, *Teaching Religion in a Democracy*, *The International Journal of Religious Education*, Nov., 1940, pp. 6-16; *The Aims of Week-Day Religious Education*, *Religious Education*, Feb., 1922, p. 11; *Released Time in New York City*, *id.*, Jan.-Feb., 1943, p. 15; *Progress in Week-day Religious Education*, *id.*, Jan.-Feb., 1946, p. 6; *Can Our Public Schools Do More About Religion?* 125 *Journal of Education* 245, Nov., 1942, *id.* at 273, Dec., 1942; *Religious Instruction on School Time*, 7 *Frontiers of Democracy* 72-77, Dec. 15, 1940; and the articles in 64 *Education* 519 *et seq.*, May, 1944.

\* See note 14, *supra* [note †, p. 861]. Indications are that "dismissed time" is used in an inconsiderable number of the communities employing released time. Davis, *Weekday Classes in Religious Education*, U. S. Office of Education Bulletin 1941, No. 3, p. 22; Shaver, *The Movement for Weekday Religious Education*, *Religious Education*, Jan.-Feb., 1946, pp. 6, 9.

as being only half or three quarters of an hour is to draw a thread from a fabric.

We do not consider, as indeed we could not, school programs not before us which, though colloquially characterized as "released time," present situations differing in aspects that may well be constitutionally crucial. Different forms which "released time" has taken during more than thirty years of growth include programs which, like that before us, could not withstand the test of the Constitution; others may be found unexceptionable. We do not now attempt to weigh in the Constitutional scale every separate detail or various combination of factors which may establish a valid "released time" program. We find that the basic Constitutional principle of absolute separation was violated when the State of Illinois, speaking through its Supreme Court, sustained the school authorities of Champaign in sponsoring and effectively furthering religious beliefs by its educational arrangement.

Separation means separation, not something less. Jefferson's metaphor in describing the relation between Church and State speaks of a "wall of separation," not of a fine line easily overstepped. The public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools, to avoid confusing, not to say fusing, what the Constitution sought to keep strictly apart. "The great American principle of eternal separation"—Elihu Root's phrase bears repetition—is one of the vital reliances of our Constitutional system for assuring unities among our people stronger than our diversities. It is the Court's duty to enforce this principle in its full integrity.

We renew our conviction that "we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion." *Everson v. Board of Education*, 330 U. S. at 59. If nowhere else, in the relation between Church and State, "good fences make good neighbors."

## DISCUSSION

## Religious Instruction and Public Education (P. 723)

<sup>1</sup> In *McCullum v. Board of Education* Mr. Justice Frankfurter very thoroughly outlined the history of the struggle to separate religious instruction from tax-supported education. We introduce that portion of his opinion here as applicable to this section as a whole. The footnote citations are the justice's own. He deserves the high appreciation of every lover of religious freedom for the careful way he has presented the subject. The justice's remarks follow:

"Traditionally, organized education in the Western world was Church education. It could hardly be otherwise when the education of children was primarily study of the Word and the ways of God. Even in the Protestant countries, where there was a less close identification of Church and State, the basis of education was largely the Bible, and its chief purpose inculcation of piety. To the extent that the State intervened, it used its authority to further aims of the Church.

"The emigrants who came to these shores brought this view of education with them. Colonial schools certainly started with a religious orientation. When the common problems of the early settlers of the Massachusetts Bay Colony revealed the need for common schools, the object was the defeat of 'one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures.' The Laws and Liberties of Massachusetts, 1648 edition (Cambridge 1929) 47.\*

"The evolution of colonial education, largely in the service of religion, into the public school system of today is the story of changing conceptions regarding the American democratic society, of the functions of State-maintained education in such a society, and of the role therein of the free exercise of religion by the people. The modern public school derived from a philosophy of freedom reflected in the First Amendment. It is appropriate to recall that the Remonstrance of James Madison, an event basic in the history of religious liberty, was called forth by a proposal which involved support to religious education. See MR. JUSTICE RUTLEDGE's opinion in the *Everson* case, *supra*, 330 U. S. at 36-37. As the momentum for popular education increased and in turn evoked strong claims for State support of reli-

\* "For an exposition of the religious origins of American education, see S. W. Brown, *The Secularization of American Education* (1912) cc. I, II; Knight, *Education in the United States* (2d rev. ed. 1941) cc. III, V; Cubberley, *Public Education in the United States* (1934) cc. II, III."

gious education, contests not unlike that which in Virginia had produced Madison's Remonstrance appeared in various forms in other States. New York and Massachusetts provide famous chapters in the history that established dissociation of religious teaching from State-maintained schools. In New York, the rise of the common schools led, despite fierce sectarian opposition, to the barring of tax funds to church schools, and later to any school in which sectarian doctrine was taught.\* In Massachusetts, largely through the efforts of Horace Mann, all sectarian teachings were barred from the common school to save it from being rent by denominational conflict.† The upshot of these controversies, often long and fierce, is fairly summarized by saying that long before the Fourteenth Amendment subjected the States to new limitations, the prohibition of furtherance by the State of religious instruction became the guiding principle, in law and feeling, of the American people. In sustaining Stephen Girard's will, this Court referred to the inevitable conflicts engendered by matters 'connected with religious polity' and particularly 'in a country composed of such a variety of religious sects as our country.' *Vidal et al. v. Girard's Executors*, 2 How. 127, 198. That was more than one hundred years ago.

"Separation in the field of education, then, was not imposed upon unwilling States by force of superior law. In this respect the Fourteenth Amendment merely reflected a principle then dominant in our national life. To the extent that the Constitution thus made it binding upon the States, the basis of the restriction is the whole experience of our people. Zealous watchfulness against fusion of secular and religious activities by Government itself, through any of its instruments but especially through its educational agencies, was the democratic response of the American community to the particular needs of a young and growing nation, unique in the composition of its people.‡

\* "See Boese, *Public Education in the City of New York* (1869) c. XIV; Hall, *Religious Education in the Public Schools of the State and City of New York* (1914) cc. VI, VII; Palmer, *The New York Public School* (1905) cc. VI, VII, X, XII. And see New York Laws 1842, c. 150, § 14, amended, New York Laws 1844, c. 320, § 12."

† "S. M. Smith, *The Relation of the State to Religious Education in Massachusetts* (1926) c. VII; Culver, *Horace Mann and Religion in Massachusetts Public Schools* (1929)."

‡ "It has been suggested that secular education in this country is the inevitable 'product of "the utter impossibility of harmonizing multifarious creeds."' T. W. M. Marshall, *Secular Education in England and the United States*, 1 *American Catholic Quarterly Review* 278, 308. It is precisely because of this 'utter impossibility' that the fathers put into the Constitution the principle of complete 'hands-off,' for a people as religiously heterogeneous as ours."

A totally different situation elsewhere, as illustrated for instance by the English provisions for religious education in State-maintained schools, only serves to illustrate that free societies are not cast in one mould. See the Education Act of 1944, 7 and 8 Geo. VI, c. 31. Different institutions evolve from different historic circumstances.

"It is pertinent to remind that the establishment of this principle of separation in the field of education was not due to any decline in the religious beliefs of the people. Horace Mann was a devout Christian, and the deep religious feeling of James Madison is stamped upon the Remonstrance. The secular public school did not imply indifference to the basic role of religion in the life of the people, nor rejection of religious education as a means of fostering it. The claims of religion were not minimized by refusing to make the public schools agencies for their assertion. The non-sectarian or secular public school was the means of reconciling freedom in general with religious freedom. The sharp confinement of the public schools to secular education was a recognition of the need of a democratic society to educate its children, insofar as the State undertook to do so, in an atmosphere free from pressures in a realm in which pressures are most resisted and where conflicts are most easily and most bitterly engendered. Designed to serve as perhaps the most powerful agency for promoting cohesion among a heterogeneous democratic people, the public school must keep scrupulously free from entanglement in the strife of sects. The preservation of the community from divisive conflicts, of Government from irreconcilable pressures by religious groups, of religion from censorship and coercion however subtly exercised, requires strict confinement of the State to instruction other than religious, leaving to the individual's church and home, indoctrination in the faith of his choice.

"This development of the public school as a symbol of our secular unity was not a sudden achievement nor attained without violent conflict.\* While in small communities of comparatively homogeneous religious beliefs, the need for absolute separation presented no urgencies, elsewhere the growth of the secular school encountered the resist-

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\* "See Cubberley, *Public Education in the United States* (1934) pp. 230 *et seq.*; Zollmann, *The Revelation of Church and State*, in Lotz and Crawford, *Studies in Religious Education* (1931) 403, 418 *et seq.*; Payson Smith, *The Public Schools and Religious Education*, in *Religion and Education* (Sperry, Editor, 1945) pp. 32 *et seq.*; also Mahoney, *The Relation of the State to Religious Education in Early New York 1633-1825* (1941) c. VI; McLaughlin, *A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945* (1946) c. I; and see note 10, *infra* [note \* on page 860].

ance of feeling strongly engaged against it. But the inevitability of such attempts is the very reason for Constitutional provisions primarily concerned with the protection of minority groups. And such sects are shifting groups, varying from time to time, and place to place, thus representing in their totality the common interest of the nation.

"Enough has been said to indicate that we are dealing not with a full-blown principle, nor one having the definiteness of a surveyor's metes and bounds. But by 1875 the separation of public education from Church entanglements, of the State from the teaching of religion, was firmly established in the consciousness of the nation. In that year President Grant made his famous remarks to the Convention of the Army of the Tennessee:

"'Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated for the support of any sectarian schools. Resolve that neither the state nor the nation, nor both combined, shall support institutions of learning other than those sufficient to afford every child growing up in the land the opportunity of a good common school education, unmixed with sectarian, pagan, or atheistical dogmas. Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contributions. Keep the church and state forever separated.' 'The President's Speech at Des Moines,' 22 *Catholic World* 433, 434-35 (1876).

"So strong was this conviction, that rather than rest on the comprehensive prohibitions of the First and Fourteenth Amendments, President Grant urged that there be written into the United States Constitution particular elaborations, including a specific prohibition against the use of public funds for sectarian education,\* such as had

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\* "President Grant's Annual Message to Congress, December 7, 1875, 4 Cong. Rec. 175 *et seq.*; Ames, *The Proposed Amendments to the Constitution of the United States during the First Century of its History*, H. Doc. No. 353, Pt. 2, 54th Cong., 2d Sess., pp. 277-78. In addition to the first proposal, 'The Blaine Amendment,' five others to similar effect are cited by Ames. The reason for the failure of these attempts seems to have been in part 'That the provisions of the State constitutions are in almost all instances adequate on this subject, and no amendment is likely to be secured.' *Id.*

"In the form in which it passed the House of Representatives, the Blaine Amendment read as follows: 'No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no religious test shall ever be required as a qualification to any office or public trust under any State. No public property, and no public revenue of, nor any loan of credit by or under the authority of, the United States, or any State, Territory, District, or municipal corporation, shall be appropriated to, or made or used for, the support of any school, educational or other institution, under the control of any religious or anti-religious sect, organization, or denomination, or wherein the particular creed or tenets of any

been written into many State constitutions.\* By 1894, in urging the adoption of such a provision in the New York Constitution, Elihu Root was able to summarize a century of the nation's history: 'It is not a question of religion, or of creed, or of party; it is a question of declaring and maintaining the great American principle of eternal separation between Church and State.' Root, *Addresses on Government and Citizenship*, 137, 140.† The extent to which this principle was deemed a presupposition of our Constitutional system is strikingly illustrated by the fact that every State admitted into the Union since 1876 was compelled by Congress to write into its constitution a requirement that it maintain a school system 'free from sectarian control.' ‡

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religious or anti-religious sect, organization, or denomination shall be taught. And no such particular creed or tenets shall be read or taught in any school or institution supported in whole or in part by such revenue or loan of credit; and no such appropriation or loan of credit shall be made to any religious or anti-religious sect, organization, or denomination, or to promote its interests or tenets. This article shall not be construed to prohibit the reading of the Bible in any school or institution; and it shall not have the effect to impair rights of property already vested. . . . H. Res. 1, 44th Cong., 1st Sess. (1876)."

\* "See *Constitutions of the States and United States*, 3 Report of the New York State Constitutional Convention Committee (1938) Index, pp. 1766-67."

† "It is worthy of interest that another famous American lawyer, and indeed one of the most distinguished of American judges, Jeremiah S. Black, expressed similar views nearly forty years before Mr. Root: "The manifest object of the men who framed the institutions of this country, was to have a *State without religion* and a *Church without politics*—that is to say, they meant that one should never be used as an engine for any purpose of the other. . . . Our fathers seem to have been perfectly sincere in their belief that the members of the Church would be more patriotic, and the citizens of the State more religious, by keeping their respective functions entirely separate. For that reason they built up a wall of complete and perfect partition between the two." From *Religious Liberty* (1856) in Black, *Essays and Speeches* (1886) 51, 53; cf. Brigance, *Jeremiah Sullivan Black* (1934). While Jeremiah S. Black and Elihu Root had many things in common, there were also important differences between them, perhaps best illustrated by the fact that one became Secretary of State to President Buchanan, the other to Theodore Roosevelt. That two men, with such different political alignment, should have shared identic views on a matter so basic to the well-being of our American democracy affords striking proof of the respect to be accorded to that principle."

‡ "25 Stat. 676, 677, applicable to North Dakota, South Dakota, Montana and Washington, required that the constitutional conventions of those States 'provide, by ordinances irrevocable without the consent of the United States and the people of such States . . . for the establishment and maintenance of systems of public schools, which shall be open to all the children of said States, and free from sectarian control. . . .' The same provision was contained in the Enabling Act for Utah, 28 Stat. 107, 108; Oklahoma, 34 Stat. 267, 270; New Mexico and Arizona, 36 Stat. 557, 559, 570. Idaho and Wyoming were admitted after adoption of their constitutions; that of Wyoming contained an irrevocable ordinance in the same terms, Wyoming Constitution, 1889, Ordinances, § 5. The Constitution of Idaho, while it contained no irrevocable ordinance, had a provision even more explicit in its establishment of separation. Idaho Constitution, 1889, art. IX, § 5."

"Prohibition of the commingling of religious and secular instruction in the public school is of course only half the story. A religious people was naturally concerned about the part of the child's education entrusted 'to the family altar, the church, and the private school.' The promotion of religious education took many forms. Laboring under financial difficulties and exercising only persuasive authority, various denominations felt handicapped in their task of religious education. Abortive attempts were therefore frequently made to obtain public funds for religious schools.\* But the major efforts of religious inculcation were a recognition of the principle of Separation by the establishment of church schools privately supported. Parochial schools were maintained by various denominations. These however, were often beset by serious handicaps, financial and otherwise, so that the religious aims which they represented found other directions. There were experiments with vacation schools, with Saturday as well as Sunday schools.† They all fell short of their purpose. It was urged that by appearing to make religion a one-day-a-week matter, the Sunday school, which acquired national acceptance, tended to relegate the child's religious education, and thereby his religion, to a minor role not unlike the enforced piano lesson.

"Out of these inadequate efforts evolved the week-day church school, held on one or more afternoons a week after the close of the public school. But children continued to be children; they wanted to play when school was out, particularly when other children were

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\* "See *e. g.*, the New York experience, including *inter alia*, the famous Hughes controversy of 1840-42, the conflict culminating in the Constitutional Convention of 1894, and the attempts to restore aid to parochial schools by revision of the New York City Charter, in 1901, and at the State Constitutional Convention of 1938. See McLaughlin, *A History of State Legislation Affecting Private Elementary and Secondary Schools in the United States, 1870-1945* (1946) pp. 119-25; Mahoney, *The Relation of the State to Religious Education in Early New York 1633-1825* (1941) c. VI; Hall, *Religious Education in the Public Schools of the State and the City of New York* (1914) pp. 46-47; Boese, *Public Education in the City of New York* (1869) c. XIV; Compare *New York Laws 1901*, vol. 3, § 1152, p. 492, with amendment, *id.*, p. 688; see Nicholas Murray Butler, *Religion and Education* (Editorial) in 22 *Educational Review* 101, June, 1901; *New York Times*, April 8, 1901, p. 1, col. 1; April 9, 1901, p. 2, col. 5; April 19, 1901, p. 2, col. 2; April 21, 1901, p. 1, col. 3; Editorial, April 22, 1901, p. 6, col. 1.

"Compare S. 2499, 79th Cong., 2d Sess., providing for Federal aid to education, and the controversy engendered over the inclusion in the aid program of sectarian schools, fully discussed in, *e. g.*, 'The Nation's Schools,' January through June, 1947."

† "For surveys of the development of private religious education, see *e. g.*, A. A. Brown, *A History of Religious Education in Recent Times* (1923); Athearn, *Religious Education and American Democracy* (1917); Burns and Kohlbrener, *A History of Catholic Education in the United States* (1937); Lotz and Crawford, *Studies in Religious Education* (1931) Parts I and IV."

free to do so. Church leaders decided that if the week-day church school was to succeed, a way had to be found to give the child his religious education during what the child conceived to be his 'business hours.'

"The initiation of the movement\* may fairly be attributed to Dr. George U. Wenner. The underlying assumption of his proposal, made at the Interfaith Conference on Federation held in New York in 1905, was that the public school unduly monopolized the child's time and that the churches were entitled to their share of it.† This, the schools should 'release.' Accordingly, the Federation, citing the example of the Third Republic of France,‡ urged that upon the request of their parents children be excused from public school on Wednesday afternoon, so that the churches could provide 'Sunday school on Wednesday.' This was to be carried out on church premises under church authority. Those not desiring to attend church schools would

\* "Reference should be made to Jacob Gould Schurman, who in 1903 proposed a plan bearing close resemblance to that of Champaign. See Symposium, 75 *The Outlook* 635, 636, November 14, 1903; Crooker, *Religious Freedom in American Education* (1903) pp. 39 *et seq.*"

† "For the text of the resolution, a brief in its support, as well as an exposition of some of the opposition it inspired, see Wenner's book, *Religious Education and the Public School* (rev. ed. 1913)."

‡ "The French example is cited not only by Wenner but also by Nicholas Murray Butler, who thought released time was 'restoring the American system in the state of New York.' *The Place of Religious Instruction in Our Educational System*, 7 *Vital Speeches* 167, 168 (Nov. 28, 1940); see also Report of the President of Columbia University, 1934, pp. 22-24. It is important to note, however, that the French practice must be viewed as the result of the struggle to emancipate the French schools from control by the Church. The leaders of this revolution, men like Paul Bert, Ferdinand Buisson, and Jules Ferry, agreed to this measure as one part of a great step towards, rather than a retreat from, the principle of Separation. The history of these events is described in Muzzey, *State, Church, and School in France*, *The School Review*, March through June, 1911.

In effect, moreover, the French practice differs in crucial respects from both the Wenner proposal and the Champaign system. The law of 1882 provided that 'Public elementary schools will be closed one day a week in addition to Sunday in order to permit parents, if they so desire, to have their children given religious instruction outside of school buildings.' Law No. 11,696, March 28, 1882, *Bulletin des Lois*, No. 690. This then approximates that aspect of released time generally known as 'dismissed time.' No children went to school on that day, and the public school was therefore not an alternative used to impel the children towards the religious school. The religious education was given 'outside of school buildings.'

"The Vichy Government attempted to introduce a program of religious instruction within the public school system remarkably similar to that in effect in Champaign. The proposal was defeated by intense opposition which included the protest of the French clergy, who apparently feared State control of the Church. See Schwartz, *Religious Instruction under Pétain*, 58 *Christian Century* 1170, Sept. 24, 1941."

continue their normal classes. Lest these public school classes unfairly compete with the church education, it was requested that the school authorities refrain from scheduling courses or activities of compelling interest or importance.

"The proposal aroused considerable opposition and it took another decade for a 'released time' scheme to become a part of a public school system. Gary, Indiana, inaugurated the movement. At a time when industrial expansion strained the communal facilities of the city, Superintendent of Schools Wirt suggested a fuller use of the school buildings. Building on theories which had become more or less current, he also urged that education was more than instruction in a classroom. The school was only one of several educational agencies. The library, the playground, the home, the church, all have their function in the child's proper unfolding. Accordingly, Wirt's plan sought to rotate the schedules of the children during the school-day so that some were in class, others were in the library, still others in the playground. And some, he suggested to the leading ministers of the City, might be released to attend religious classes if the churches of the City cooperated and provided them. They did, in 1914, and thus was 'released time' begun. The religious teaching was held on church premises and the public schools had no hand in the conduct of these church schools. They did not supervise the choice of instructors or the subject matter taught. Nor did they assume responsibility for the attendance, conduct or achievement of the child in a church school; and he received no credit for it. The period of attendance in the religious schools would otherwise have been a play period for the child, with the result that the arrangement did not cut into public school instruction or truly affect the activities or feelings of the children who did not attend the church schools.\*

"From such a beginning 'released time' has attained substantial proportions. In 1914-15, under the Gary program, 619 pupils left the public schools for the church schools during one period a week. According to responsible figures almost 2,000,000 in some 2,200 communities participated in 'released time' programs during 1947." †

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\* Of the many expositions of the Gary plan, see *e. g.*, A. A. Brown, *The Week-Day Church Schools of Gary, Indiana*, 11 *Religious Education* 5 (1916); Wirt, *The Gary Public Schools and the Churches*, *id.* at 221 (1916).

† See the 1947 Yearbook, International Council of Religious Education, p. 76; also *New York Times*, September 21, 1947, p. 22, col. 1.

**Madison on Teaching Religion in Tax-supported Schools (P. 723)**

<sup>2</sup> James Madison, as much as anyone else, deserves credit for the disestablishment of the church in Virginia and the separation of church and state in the Union. Late in life he wrote a letter to Edward Everett expressing his views on the teaching of religion in a state educational institution which has been often cited. Since it has a bearing on the subject of this section, we quote it here:

“MONTPELIER, MARCH 19, 1823

“DEAR SIR: . . . A University with sectarian professorships becomes, of course, a Sectarian Monopoly: with professorships of rival sects, it would be an Arena of Theological Gladiators. Without any such professorships, it may incur for a time at least, the imputation of irreligious tendencies, if not designs. The last difficulty was thought more manageable than either of the others. On this view of the subject, there seems to be no alternative but between a public University without a theological professorship, and sectarian Seminaries without a University.

I recollect to have seen, many years ago, a project of a prayer, by Governor Livingston, father of the present Judge, intended to comprehend and conciliate College Students of every Christian denomination, by a Form composed wholly of texts and phrases of Scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect from the single cause that many sects reject all set forms of Worship.

“The difficulty of reconciling the Christian mind to the absence of a religious tuition from a University established by law, and at the common expense, is probably less with us than with you. The settled opinion here is that religion is essentially distinct from Civil Government, and exempt from its cognizance; that a connection between them is injurious to both; that there are causes in the human breast, which insure the perpetuity of religion without the aid of the law; that rival sects, with equal rights, exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or overheated imaginations, the proper remedies lie in time, forbearance and example; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity; and, finally that these opinions are supported by experience, which has shewn that every relaxation of the alliance between Law and religion from the partial example of Holland, to its consummation in Pennsylvania Delaware N. Jer., &c., has been found as safe in

practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of independence it was left with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change; and particularly in the Sect which enjoyed the legal patronage. This proves rather more than that the *law is not necessary to the support of religion.* [Italics not in original.]

"With such a public opinion, it may be expected that a University, with the feature peculiar to ours, will succeed here if anywhere. Some of the Clergy did not fail to arraign the peculiarity; but it is not improbable that they had an eye to the chance of introducing their own creed into the professor's chair. A late resolution for establishing an Episcopal school within the College of William and Mary, tho' in a very guarded manner, drew immediate animadversions from the press, which if they have not put an end to the project, are a proof of what would follow such an experiment in the University of the State, endowed and supported as this will be, altogether by the Public authority and at the common expense."—*Writings of James Madison* (Hunt ed.), vol. 9, pp. 126-128.

### Ohio and Religious Liberty in the Public Schools (P. 724)

<sup>a</sup> The opinion in *Board of Education v. Minor* was rendered by Mr. Justice Welch. The defendants had brought their action (*Minor v. Board of Education*) to the Superior Court of Cincinnati to enjoin the board from carrying into effect two resolutions adopted by the board, November 1, 1869, which read as follows:

"Resolved, That religious instruction, and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common-school fund.

"Resolved, That so much of the regulations on the course of study and text-books in the intermediate and district schools (page 213, annual report) as reads as follows, 'The opening exercises in every department shall commence by reading a portion of the Bible by or under the direction of the teacher, and appropriate singing by the pupils,' be repealed."

Two of the judges of the superior court, Hagans and Storer, decided in favor of religion in the public schools, and enjoined the board from carrying the foregoing resolutions into effect. The other member of the court, Judge Taft, dissented. The case was then carried

to the State supreme court, which reversed the decision of the lower court. Stanley Matthews, afterward a justice of the United States Supreme Court, and George Hoadley, subsequently governor of Ohio, were of the counsel for the board of education, and delivered clear and effective speeches at the trial of the case before the supreme court.

### Bible Reading in the Public Schools (P. 732)

'The favor with which this decision of the Wisconsin Supreme Court was received by the public, by liberal Christians as well as by unbelievers, is well expressed in the comments on and summary of the case in *The Independent*, a leading religious journal of the country, as follows:

"We have read, with hearty approval, the opinions recently delivered in the Supreme Court of Wisconsin in regard to the question of the Bible in the public schools of that State, the full text of which has been published in the *Albany Law Journal*. This reading only confirms our opinion of this decision, as heretofore expressed.

"Mr. Justice Lyon delivered the opinion of the court, and Messrs. Justices Cassoday and Orton delivered concurring opinions. The case before the court was that of a petition for a mandamus, commanding the school board in the city of Edgerton to cause the teachers in one of the public schools of that city to discontinue the practice of reading, during school hours, portions of King James's Version of the Bible. The petitioners for the mandamus were residents and taxpayers in Edgerton, and presumptively Catholics in their religious faith, although this fact is not stated in these deliverances. They complained of the practice above referred to.

"This petition brought squarely before the court the question whether such a practice is consistent with the constitution of the State of Wisconsin; and this question the court unanimously answered in the negative. And, that our readers may the better understand the case, we submit in the following order the several points decided:

"1. The first point is the construction of article X, section 3, of the constitution of the State, which declares that 'the Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years, and *no sectarian instruction shall be allowed therein.*' The court held that the reading of King James's Version of the Bible in the public schools of the State during school hours, is 'sectarian instruction' within the meaning of this constitutional prohibition, and

hence inconsistent therewith. Mr. Justice Lyon said that the prohibition 'manifestly refers exclusively to instruction in *religious doctrines*,' and in such doctrines as 'are believed by some religious sects and rejected by others.' The court took judicial knowledge of the fact that King James's Version of the Bible is not accepted and used by *all* 'religious sects' in Wisconsin, but is accepted by some of these sects and rejected by others. Hence, as between them, all having the same constitutional rights, the court held that version to be a 'sectarian' book, and the reading of it in the manner and for the purpose set forth in the complaint to be forbidden by the constitution of the State.

"How any other conclusion could have been drawn from the premises, we are not able to see. We presume that there is not a Protestant in Wisconsin who would hesitate a moment on the point, if the book read had been the Douay Version of the Bible, which is acceptable to Catholics, or the Koran, or the Book of Mormon. The reading of such a book as a part of school exercises, whether for worship or religious instruction, would be offensive to Protestants, and they would have good cause for complaint, just as the reading of King James's Version, which is sometimes called the Protestant Bible, is offensive to Catholics. It should not be forgotten that, under the constitution of Wisconsin, Catholics and Protestants have on this subject precisely the same rights, and that neither can claim any precedence over the other. The constitution of that State makes no distinction between them, and determines no question relating to their differences, or any other religious differences. It deals with all the people simply as *citizens*, no matter what may be their religious tenets, or whether they have any such tenets.

"2. The second point decided is that 'the practice of reading the Bible in such schools can receive no sanction from the fact that pupils are not compelled to remain in the school while it is being read.' On this point we quote, as follows, the language of Mr. Justice Lyon:

"'When, as in this case, a small minority of the pupils in the public school is excluded, for any cause, from a stated school exercise, particularly when such cause is apparent hostility to the Bible, which a majority of the pupils have been taught to revere, from that moment the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils which the Constitution seeks to establish and protect, and puts a portion of them at a serious disadvantage in many ways with respect to the others.'

“The plain fact is that *not* to compel the attendance upon such reading, of the children of parents who object to it, for the sake of continuing the reading, is a virtual confession that the reading has a ‘sectarian’ character, as between those who desire it and those who object to it. It is merely an attempt to get round what is apparent on the face of the case.

“3. The third point decided is that ‘the reading of the Bible is an act of worship, as that term is defined in the constitution; and hence the taxpayers of any district who are compelled to contribute to the erection and support of common schools, have the right to object to the reading of the Bible, under the constitution of Wisconsin, article I, section 18, clause 2, declaring that no man shall be compelled to . . . erect or support any place of worship.’ This provision is in what is called the ‘Declaration of Rights.’ The opinion delivered by Mr. Justice Cassoday on this point is, to our understanding, clear and conclusive. Bible reading in public schools has the form and intention of religious worship; and this being the fact, then to compel the people by taxation to erect and support public schools, in which such reading is a practice, is to compel them by law to erect and support places of worship. The fact that these places are also used for other purposes does not relieve the difficulty. The constitution expressly declares that the people shall not ‘be compelled to erect *any* place’ that is used for the purpose of worship. To tax a man to erect and support a public school, and then to introduce the element of religious worship into that school, is to make a combination which the constitution forbids.

“4. The fourth point decided is that, ‘as the reading of the Bible at stated times in a common school is religious instruction, the money drawn from the State treasury in support of such school is “for the benefit of a religious seminary,” within the meaning of the constitution of Wisconsin, article I, section 18, clause 4, prohibiting such an appropriation of the funds of the State.’ The design of the clause referred to is to prevent the State from using the public funds to defray the expenses of religious instruction; and this design is frustrated just as really when these funds are used to support common schools in which such instruction is given, as it would be if these funds were used to support ‘religious societies or religious or theological seminaries.’ Mr. Justice Cassoday, in his opinion, sets forth this point very clearly.

“We have thus given the pith of the argument on this subject as stated by the three justices of the Supreme Court of Wisconsin. We see no escape from the conclusion reached, and have no desire to escape it, since we thoroughly believe in its correctness everywhere. To the

argument that 'the exclusion of Bible reading from the district schools is derogatory to the value of the Holy Scriptures, a blow to their influence upon the conduct and consciences of men, and disastrous to the cause of religion,' Mr. Justice Lyon thus replied:

"We most emphatically reject these views. The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and, above all, by parents in the home circle. There these truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental conscience. The constitution does not interfere with such teaching and culture. [Mr. Justice Lyon continued, although *The Independent* omits this section: "It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble. Religion teaches obedience to law, and flourishes best where good government prevails. The constitutional prohibition was adopted in the interests of good government, and it argues but little faith in the vitality and power of religion, to predict disaster to its progress because a constitutional provision, enacted for such a purpose, is faithfully executed." ]

"The doctrine of the constitution of Wisconsin, as thus settled by the supreme court of that State, is, in our judgment, the true doctrine for every State in the Union. It remits the question of religious instruction, as to what it shall be, as to the agency giving it, and as to the cost thereof, to voluntary, private and individual effort, and devotes the public school, created and regulated by law, and supported by a general taxation of the people, exclusively to secular education. This principle is in harmony with the nature and structure of our political institutions, and is, moreover, just and equitable as between religious sects. It favors no one of them and proscribes no one of them; and, while it leaves them all free to propagate their religious beliefs in their own way, and at their own expense, it gives to the whole people, at the cost of the whole, a system of popular education that is certainly good as far as it goes, and is *all* that the State can give, without itself becoming a religious propagandist. Catholics and Protestants alike ought to be satisfied with it. There is no other basis on which the school question can be justly settled as between different religious sects."—June 19, 1890, p. 11.

### Bible Reading in Virginia Public Schools

In 1926 the Virginia Legislature had before it a bill requiring the compulsory reading of the Bible in the public schools of the State. In opposition to it, a memorial was written by the Honorable John Garland Pollard, dean of the Marshall-Wythe School of Government and Citizenship of the College of William and Mary, and later governor of the State of Virginia. This memorial was presented by a committee of the Baptist General Association of Virginia to the State legislature. It made such a profound impression upon the members of the General Assembly that the bill was defeated in the committee by an overwhelming majority. The petition expresses so well the principles involved that we reproduce it here as a discussion of the subject:

"The undersigned committee, on behalf of the Baptist General Association of Virginia, composed of 1,175 white churches, with a total membership of 219,166 citizens of this Commonwealth, having been informed that a renewed and concerted effort will be made by numerous citizens and organizations to have your honorable body at its next session pass the bill defeated at the last session, or any similar bill, compelling teachers in public schools of this State to read the Bible daily in schools, hereby enters its solemn protest against the passage of any such measure, and in support of its protest presents the following facts and considerations, and recurs to the following fundamental principles:

"1. The Bible is distinctly a religious book, and when properly read is an act of worship which cannot rightfully be enforced by law. Law rests on force. Religion is voluntary. Any attempt to promote religious worship by force of law is, in the language of our statute of religious liberty, 'a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His almighty power to do.'

"2. There are many versions of the Bible. One of these, commonly used by Protestants, is known as the King James Version; another, used by Catholics, is known as the Douay Version, which contains entire books not appearing in the King James Version. These two versions differ in many particulars considered material by the respective sects. Our Jewish fellow citizens do not consider the New Testament as a part of their Bible. If the law is to compel the reading of the Bible, the question at once arises, Shall the Protestant, Catholic, or Jewish Bible be read? The proponents of the proposed law would doubtless answer, 'The Protestant Bible should be read, because it is the Bible of the majority.' To compel the numerous Catholic and

Jewish teachers in our schools to read a Bible which they do not consider the true Bible is not only an invasion of their right, but also of the rights of the non-Protestant pupils and their parents.

“We may best realize the wrong involved, by imagining our own feeling of protest, should the law compel the reading of the Roman Catholic Version to our Protestant children. Protestants can claim nothing on the score of conscience that they are unwilling to concede equally to others. It is not a question of majorities, for if the conscience of the majority is to be the standard, there is no such thing as the right of conscience at all. It is against the power of majorities that the right of conscience is protected. This right is an indefeasible natural right of man of which no free government can deprive him. There are some rights which even the majority cannot take away and the right of conscience is the most sacred of these. Government should never interfere unless men under the guise of conscience commit acts which violate the good order of society.

“To the Protestant, the Catholic Bible is a sectarian book. To the Catholic, the Protestant Bible is a sectarian book. To the Jew, the New Testament is a sectarian book. To the citizen who has no religion, all versions are sectarian. To select the textbook of any sect to be read in the public schools is to confer a peculiar advantage upon that sect. This is expressly prohibited by the Constitution of the State (Section 58). It is a mistaken idea that the Protestant religion, or even Christianity, has in Virginia any peculiar rights. Christianity may have been once a part of the common law, but this has long since been changed in Virginia, both by statute and constitution. The Supreme Court of Appeals has said that the ancient law on the subject ‘was wholly abrogated by our Bill of Rights, and the act for securing religious freedom, subsequently engrafted in the amended Constitution, which wholly and permanently separated religion, or the duty which we owe to our Creator, from our political and civil government; putting all religions on a footing of perfect equality; protecting all; imposing neither burdens nor civil incapacities upon any; conferring privileges upon none. Placing the Christian religion where it stood in the days of its purity, before its alliance with the civil magistrate; when its votaries employed for its advancement no methods but such as are congenial to its nature; . . . proclaiming to all our citizens that henceforth their religious thoughts and conversation shall be as free as the air they breathe; that the law is of no sect in religion, has no high priest but justice. Declaring to the Christian and the

Mahometan, the Jew and the Gentile, the Epicurean and the Platonist (if any such there be amongst us), that so long as they keep within its pale, all are equally objects of its protection.' *Perry's Case*, 3 Grat., 641.

"Not only does the Constitution place all sects on the plane of absolute equality before the law, but, as if forever to banish the force of law from the realm of religion, it actually protects the individual from the church of his own choosing by prohibiting the General Assembly from authorizing any religious society to levy a tax even on themselves,—again recognizing that the law must not be used to enforce any religious duty.

"History teaches us that the principle here contended for was established after centuries of struggle marked by persecution and bloodshed, culminating here in Virginia, whose government was the first in the world to proclaim complete and absolute religious equality before the law. Jefferson, who led the movement, declared it to be the bitterest fight in which he was ever engaged. Truly it is a blood-bought blessing, and we consider it our duty to seek to protect it against the slightest encroachment.

"3. The bill as proposed contains two provisions intended to protect the rights of conscience, but which disclose the inherent weakness of the whole proposition. It provides that at least five verses must be read without comment. It compels reading, but prohibits study. It also provides that pupils may be excused from the classroom during the reading of the Bible, upon written request of either parent. This provision is a recognition of the fact that any version of the Bible used will be looked upon by some as a sectarian book, and as a measure of justice to such, their children may withdraw from the classroom. But this does not correct the injustice, for it is unkind and inconsiderate to subject the children of the small minority to the embarrassment of excluding themselves from a stated school exercise, especially because of apparent hostility to that version of the Bible which the majority have been taught to revere. The excluded pupil will lose caste with his fellow students and is liable to be the object of reproach and perhaps of insult. Such a course would tend to destroy the equality of the pupils, which the law ought to maintain and protect.

"It is probable that a great number of non-Protestant parents, rather than subject their children to the embarrassment of separating them from their fellow pupils during the reading of the Protestant Bible, will submit to the injustice in silence, hoping for the day when minorities shall grow into majorities. In this connection it may be well for Protestants to remember that in some of the States, the Catholics are

already, or soon may be, in a majority. May we reasonably expect from them better treatment than we accord them? It will be a sad day for the cause of public education when religious sects begin to vie with one another for the control of the schools. We must not drive the entering wedge of dissension into a system which is the bedrock of our republican institutions.

“Moreover, while the proposed act seeks to leave some discretion to the pupils, none is left to the teacher who is commanded by law to read the Bible and, presumably, will be punished for failing to do so.

“4. The right to worship God according to the dictates of one’s conscience is firmly established throughout America. But this is not all of religious liberty. It is broader. It means complete and absolute equality before the law of all religions. The State should have no favorites in matters of religion. Its only relation to religion is to protect all of its citizens in the sacred rights of conscience just as it protects them in their rights of person and property. If there is one teaching which history makes clear, it is that Christianity prospers most under those governments which as such seek to help it least. A false religion may need the peculiar recognition of the law, but it is beneath the dignity of the true religion to ask or accept it. From the early days of the Christian era down to the present time, some of Christ’s zealous followers have, in violation of His teachings, sought to promote His cause by force, first by burning at the stake, later by stripes or imprisonment and by taxing others to promote a religion in which they did not believe, and today we have the last faint glimmer of that hoary fallacy remaining with those good people who erroneously think they can aid religion by invoking the strong arm of the law to compel the reading of the Bible. How blind to the teaching of history and the principles of Him who said, ‘My kingdom is not of this world!’

“5. Some argue that the law should compel the reading of the Bible, not as a religious book, but simply as literature. But this is evidently not the viewpoint of the proponents of this bill, for, as if to minimize the wrong done sects who do not accept our Bible, they limit the reading to five verses, prohibit comment, and excuse pupils from attendance upon the reading. The truth is that the Scriptures cannot be separated from their sacred religious character, and any move to advance their acceptance through secular authority under pressure of law, is an unworthy attempt to shift upon the State a solemn duty divinely commissioned to the church. The realm of religion is entirely beyond the scope of the State. True, it is sadly neglected, but

the remedy is the re-establishment of the family altar and a redoubling of the efforts of the churches.

“6. We wish it distinctly understood that we are in full accord with the proponents of the bill in their belief in the importance of training our children in the great religious truths taught in the Bible. Its importance cannot be overstated. The only difference between us is one of method, but that method involves a great underlying principle which is a part of our religious as well as our political faith. Our public school system belongs to the members of all religious denominations, and those who are attached to none, and we must respect each other's rights in the common property of us all. Religious training our children must have, but it should be given in our homes and churches, and not at the expense of those who do not believe in our Bible. We maintain that each Christian body should advance its own religion by its own efforts and at its own expense, and that any attempt to get the force of the State behind our religion, even to the extent of compelling the reading of five verses from our version of the Scriptures, begets a suspicion that our religion cannot stand on its own merits. We are unwilling to admit, but on the other hand emphatically deny, that the textbook of our religion needs the strong arm of the law to support it.

“We fully agree that the religious instruction of the child should be given along with its secular training, but it by no means follows that it must be given by the same persons and in the same place. Our Catholic fellow citizens do not agree on this proposition, and maintain separate schools where religion may be taught, but it will hardly be maintained that their children are better than others or grow up to make better citizens. The important thing is for our children to have religious instruction, and it is not essential that any part of such instruction be given in the day schools under governmental control and at public expense.

“7. Baptists in this State would suffer no direct injury from the proposed law, for the Bible which would be read in the schools is the version which the Baptists use, but the Baptists of Virginia know historically what discrimination against their religion means. Not many generations ago, when they were few in number, their ministers here in Virginia were punished and imprisoned for preaching the Gospel, and now that they have grown to be the largest religious denomination in the State, they would be unworthy of the suffering and sacrifices of their forefathers and would lay themselves open to

the charge that their love of right is for themselves only if they did not seek to protect the religious rights of others.

"8. This matter seems trivial to some, who argue that the compelling of our teachers to read five verses of the Bible each day involves an infringement of their right so infinitesimally small that the law may well disregard it, but to say the least, such a law would be a piece of petty pilfering of the rights of the minority sects, which would make us none the richer but would brand us as offenders against the sacred rights of others and render us easy marks for retaliation when circumstances are reversed.

"The matter is in truth one of tremendous import, not perhaps in itself, but because it is a violation of principle, and one violation leads to another until the principle itself is in danger. The mere reading of five verses of Scripture without comment will not and cannot satisfy those who believe that religious training should be given in the public schools. The next step will be the actual teaching of the Bible, and when this is established, how strong the argument will be that inasmuch as the Protestants are teaching their Bible at public expense, therefore, the Catholics should be permitted to do the same—hence, public school funds should be appropriated to Catholic schools so as to give them an equal opportunity to teach their Bible at public expense. Such a division of school funds has already been accomplished in some parts of Canada and will come in this country if success meets the efforts of those who insist on injecting matters religious with their inevitable sectarianism into our public school system. The dismemberment of that system will be the natural fruitage of the adoption of the pending bill.

"We, therefore, appeal to your honorable body to adhere to the doctrine, peculiarly bound up with the history of this Commonwealth, which completely separates church and State, which refuses to exercise force in the realm of religion, and which places all religions on a plane of absolute equality before the law."—*Richmond Times-Dispatch*, Feb. 7, 1926, pp. 1, 19.

### Public School Teachers and the Wearing of Religious Garb (Pp. 736-749)

<sup>5</sup> When the Supreme Court of Pennsylvania in 1894 ruled that the wearing of a religious garb by public school teachers was not a sectarian teaching or influence, opposing opinion was aroused to influence the State legislature. On June 27, 1895, the legislature of Pennsylvania passed a law entitled "An Act to prevent the wearing in the public

schools of this Commonwealth, by any of the teachers thereof, of any dress, insignia, marks or emblems indicating the fact that such teacher is an adherent or member of any religious order, sect or denomination, and imposing a fine upon the board of directors of any public school permitting the same.”

“*Commonwealth v. Herr* was really a test case to determine the constitutionality of the act.

The principle is clear as stated in the dissent in *Hysong v. Gallitzin* Borough School District: “No priest or bishop in full canonical dress more plainly declares his church, and his office therein, than do these nonsecular and ecclesiastical persons when they come in the schoolroom of a secular public school wearing the peculiar uniform and insignia of their sisterhood. . . . If a school so conducted is not dominated by sectarian influence, and under sectarian control, it is not easy to see how it could be.”

And in *O'Connor v. Hendrick*, in New York State, it was said: “There can be little doubt that the effect of the costume worn by these Sisters of St. Joseph at all times in the presence of their pupils would be to inspire respect if not sympathy for the religious denomination to which they so manifestly belong. To this extent the influence was sectarian, even if it did not amount to the teaching of denominational doctrine.”

That the principle has not been fully accepted in all States is witnessed by *Gerhardt v. Heid*; page 744. In order that the reader may get the other side of the picture this case has been presented.

### The Compulsory Education Act (P. 749)

“*Be It Enacted by the People of the State of Oregon:*

“Section 1. That Section 5259, Oregon Laws, be and the same is hereby amended so as to read as follows:

“Sec. 5259. *Children Between the Ages of Eight and Sixteen Years*—Any parent, guardian, or other person in the State of Oregon, having control or charge or custody of a child under the age of sixteen years and of the age of eight years or over at the commencement of a term of public school of the district in which said child resides, who shall fail or neglect or refuse to send such child to a public school for the period of time a public school shall be held during the current year in said district, shall be guilty of a misdemeanor and each day's failure to send such child to a public school shall constitute a separate offense; provided, that in the following cases, children shall not be required to attend public schools:

“(a) *Children Physically Unable*—Any child who is abnormal, subnormal or physically unable to attend school.

“(b) *Children Who Have Completed the Eighth Grade*—Any child who has completed the eighth grade, in accordance with the provisions of the State course of study.

“(c) *Distance From School*—Children between the ages of eight and ten years, inclusive, whose place of residence is more than one and one-half miles, and children over ten years of age whose place of residence is more than three miles, by the nearest traveled road, from a public school; provided, however, that if transportation to and from school is furnished by the school district, this exemption shall not apply.

“(d) *Private Instruction*—Any child who is being taught for a like period of time by the parent or private teacher such subjects as are usually taught in the first eight years in the public school; but before such child can be taught by a parent or a private teacher, such parent or private teacher must receive written permission from the county superintendent, and such permission shall not extend longer than the end of the current school year. Such child must report to the county school superintendent or some person designated by him at least once every three months and take an examination in the work covered. If, after such examination, the county superintendent shall determine that such child is not being properly taught, then the county superintendent shall order the parent, guardian or other person, to send such child to the public school the remainder of the school year.

“If any parent, guardian or other person having control or charge or custody of any child between the ages of eight and sixteen years, shall fail to comply with any provision of this section, he shall be guilty of a misdemeanor, and shall, on conviction thereof, be subject to a fine of not less than \$5, nor more than \$100, or to imprisonment in the county jail not less than two nor more than thirty days, or by both such fine and imprisonment in the discretion of the court.

“This Act shall take effect and be and remain in force from and after the first day of September, 1926.”

### On the Difference Between Public and Parochial Schools (P. 755)

<sup>1</sup>The attorney general of the State of Ohio in 1914 was Hon. Timothy Hogan. He was asked to construe the term “public school buildings” as used in section 3963 of the General Code. The question had arisen as to whether or not municipalities which owned and main-

tained their own waterworks system could furnish without cost, water for parochial schools. Mr. Hogan replied:

“Under the provisions of section 3963, General Code, the city council is without power in any way to furnish water for parochial schools without making a charge therefor.”—*Annual Report of the Attorney General for 1914*, p. 317.

In 1933 the director of education for the State of Ohio asked the attorney general, John W. Bricker, to “kindly define for us the term ‘public school.’” In opinion 1409, dated August 17, 1933, the attorney general replied:

“‘Common schools’ or ‘public schools,’ as the terms are used in the Constitution of Ohio and the present statutory law of the State, are those schools or that system of schools established by laws enacted by the legislature in pursuance of the constitutional mandate to establish a thorough and efficient system of common schools throughout the state administered by public agencies created by law and maintained from public funds raised by taxation or from school funds otherwise obtained. . . .

“The term ‘public school’ is used both in common parlance and by the courts, text writers and legislators and as so used, is universally understood to mean those schools or that system of schools established and maintained by law, administered by public officers whose offices are created by law and supported by public funds raised by taxation or otherwise. . . .

“It appears to us that the word ‘public’ as applied to school houses, is used in the same sense in which it is used . . . as applied to property; and that the school houses intended are such as belong to the public, such as are designed for the schools established and conducted under the authority of the public. . . .

“A ‘private school’ as distinguished from a ‘public school,’ is one managed and supported by individuals or a private corporation. A parochial school is a private school. . . .

“No authority exists for the use of public funds for the support or maintenance of any other class of schools than the schools mentioned, and no power exists in the legislature or in any public official, for the diversion or use of any part of the public funds intended for school purposes, for schools administered by religious groups or sects.”—*Opinions of the Attorney General—Ohio* (1933), vol. 2, pp. 1290-1295.

### Parochial Schools Parading as Public Schools (Pp. 755-782)

<sup>8</sup>The situation depicted in the three cases quoted under the title, "The Use of Public Funds to Support a Parochial School," is not an encouraging one. The incorporation of parochial schools into the framework of the public school system has been all too frequent. There are at present outstanding occurrences of this which have not come to the courts. At this writing no such case has come to the Supreme Court of the United States.

It is apparent to anyone reading the details of the three cases cited that the schools were parochial even after they were admitted to the public school system. They were taught by religious teachers, religious instruction was imparted, religious ceremonies were used, and religious influences were continued just as if the schools were private schools. The reasoning in *Knowlton v. Baumhover* and *Harfst v. Hoegan* is sound and clear. The separation of church and state had been violated in these cases.

### Parochial School Children and Tax-supported Transportation (Pp. 782-841)

<sup>9</sup>The use of public school buses for the transportation of parochial school children constituted one of the early diversions of public money for the aid of religious education. The reasoning on the subject has varied. Some States have permitted the practice and others have forbidden it. The clear discernment apparent in *State ex rel. Van Straten v. Milquet*, *Gurney v. Ferguson*, and the dissent in *Everson v. Board of Education of the Township of Ewing*, is missing from the majority opinion in the last-mentioned case. The honorable justices of the Supreme Court vigorously upheld the principles of separation of church and state, but they failed to see in the facts of the case that the wall of separation had been breached. The battle over this point of constitutional law is not yet finished. Other cases are certain to find their way to the Supreme Court. And it is entirely possible that the court will reverse itself as it did in the flag-salute cases. (See pages 572-586.)

### Released Time for Religious Instruction (P. 842)

<sup>10</sup>The historical background for the released time program for imparting religious instruction to public school children was well covered by Mr. Justice Frankfurter in *McCollum v. Board of Education*.

It will be found on pages 855-862 as note 1 of this discussion. The decision speaks for itself.

### The Ordinance of 1787 and Its Relation to Religion in Public Schools

“While the Constitutional Convention was in session at Philadelphia, the Continental Congress, sitting under the Articles of Confederation, passed an ordinance, July 13, 1787, ‘for the government of the territory of the United States northwest of the river Ohio.’ This territory was ceded by Virginia to the United States, and embraced the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin. The same ordinance was afterward extended to Tennessee, Alabama and Mississippi. This ordinance provides for full religious liberty on the one hand, and for the cultivation of religion, morality, and education, as essential conditions of national prosperity.”—*Philip Schaff*, “*Church and State in the United States*” (1888 ed.), p. 119.

Section 14, Article 3, of this Ordinance reads in part:

“Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

It has been maintained by certain organizations which favor religious legislation and have been advocating the teaching of religion in the public schools, and others who have been working for state support of parochial schools, that the Ordinance of 1787 enacted by the Continental Congress, under the Articles of Confederation, before the Federal Constitution was adopted, is still binding upon all the States which originally comprised the Northwest Territory. This plea for State support of religion and the claim that this Article is still binding is based upon the fact that the ordinance contained a provision which stated that its articles were to “forever remain unalterable.” But it is utterly futile to write such a provision into any human law.

When the Bill of Rights, the first ten amendments to our Federal Constitution, was adopted, some of the founders of our Republic proposed to write a similar provision concerning these amendments into the Constitution, but Madison and Jefferson contended that such a clause binding future generations was without force and utterly useless, as no past generation could control the action of future generations. The Supreme Court of the United States by its decisions has ruled that the Ordinance of 1787 for the government of the Northwest Territory was superseded in such territory by the State constitutions, which were subsequently adopted by the people of the States com-

prising that territory. In the case of *Huse v. Glover*, in referring to the limitations of the provisions of the Ordinance of 1787, the Court stated:

"The fourth section of the ordinance for the government of the northwestern territory was the subject of consideration in *Escanaba Co. v. Chicago*, 107 U. S. 678. We there said that the ordinance was passed before the Constitution took effect; that although it appears by various acts of Congress to have been afterwards treated as in force in the territory, except as modified by them, and the act enabling the people of Illinois Territory to form a Constitution and State government, and the resolution of Congress admitting the State into the Union, referred to the principles of the ordinance, according to which the Constitution was to be formed, its provisions could not control the powers and authority of the State after her admission; that, whatever the limitation of her powers as a government whilst in a territorial condition, whether from the ordinance of 1787 or the legislation of Congress, it ceased to have any operative force, except as voluntarily adopted by her after she became a State of the Union; that on her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States." *Huse v. Glover*, 119 U. S. 546.

Commenting on this and similar decisions, the editors of *Corpus Juris* say:

"On the accession of a territory to Statehood and the adoption by its people of a constitution that has received the approval of Congress, all constitutions and ordinances framed by the Federal authorities for the purpose of the territorial government are superseded and repealed, except to the extent that they may be continued in force by the State constitution."—12 *Corpus Juris*, 725, sec. 96; see also 7 S. Ct. 313, 30 L. ed. 487; 14 *Ariz.* 429, 430, 15 L. R. A. 691.

The same opinion is stated forcefully in another case. See also *Strader, et al., v. Graham*, 51 U. S. 96, 10 Howard.

The States carved out of the Northwest Territory adopted provisions in their State constitutions which are in direct conflict with Article III of the Ordinance of 1787 touching the teaching of religion in the public schools and supporting religious education from public funds, and which completely nullify, supercede, and repeal that provision in the Ordinance of 1787. The Supreme Court of the State of Ohio, in a decision on this question, says:

"When the Constitution of the State of Ohio was adopted and our State admitted by the Congress of the United States into the Union,

the provisions of the Ordinance of 1787 ceased to be operative in the territory comprised within the limits of this State." *State v. Edmondson*, 89 Ohio State, 93, 102.

What is true of Ohio in this respect is true of every other State affected by this ordinance. From a high legal authority on the Ohio law, we quote the following under the title, "Ordinance of 1787:"

"The Supreme Court of the United States holds that the Ordinance of 1787 is not in force in Ohio, or in any part of the Northwest Territory, for two reasons:

"The Ordinance of 1787 was superseded by the adoption of the Constitution of the United States. Such of the provisions as are yet in force owe their validity to acts of Congress passed under the present Constitution during the territorial government of the Northwest Territory, and since the constitutions and laws of the States formed in it. . . .

"And any provisions of the ordinance which are repugnant to the constitution of Ohio, may be considered as also annulled."—Page's *Annotated Ohio General Codes*, under title, "The Ordinance of 1787," Lifetime ed., vol. 2, part 2, p. 62.

The Supreme Court of the State of Ohio has further declared that "neither Christianity or any other system of religion is a part of the law of this State."—*Bloom v. Richards*, 2 Ohio State, 387, 390; Justice Thurman, in *McGatrick v. Wason*, 4 Ohio State, 566, 571; Article 11 of the Treaty of Tripoli, concluded by the administration of George Washington, Nov. 4, 1796, 8 United States Statutes at Large, 155.

All the States admitted into the Union from the Northwest Territory inserted provisions into their State constitutions which divorced every form of religion from state recognition or support. The State of Indiana Bill of Rights says:

"No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or maintain any ministry against his consent."—*Indiana Constitution*, art. I, "Bill of Rights," sec. 4.

The Constitution of Indiana further says of "the common school fund," "the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever."—*Indiana Constitution*, art. VIII, "Education," sec. 3.

The State of Illinois, in its Bill of Rights, says:

No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given

by law to any religious denomination or mode of worship."—*Illinois Constitution*, art. II, "Bill of Rights," sec. 3.

The Constitution of Illinois further provides that "neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose."—*Illinois Constitution*, art. VIII, "Education," sec. 3.

The States of Michigan and Wisconsin, the two remaining States carved out of the original Northwest Territory, and subject to the Ordinance of 1787 prior to their admission into the Union as States, have equally strong and emphatic declarations in their Bills of Rights which are repugnant to Article III of the Ordinance of 1787.

It is therefore utterly futile and preposterous to assert that this Article is still binding upon these States and that the civil government should give legal recognition to "the Christian religion and its modes of worship" such as the observance of Sunday, Good Friday, and Easter, and also financial support to parochial schools and other educational institutions under sectarian or religious control.

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