1894

Constitutionality of the Sunday Laws of the United States

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THE CONSTITUTIONALITY OF THE SUNDAY LAWS OF THE UNITED STATES.

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THESIS OF

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For the degree of Bachelor of Laws

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1894.

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Questions regarding the observance of Sunday have often been raised, and have been controverted with apparently no hopes of definite conclusions being reached.

As regards the theological aspect there have been contributions aggregating whole libraries, which have resulting in nothing but intensifying pre-existing prejudices. (1)

But apart from dictates of creed the first day of the week has been set apart by statute from other days. Laws have been enacted for centuries, and they have played an important part in American jurisprudence, receiving the attention not only of legislators but of the judges. Sunday statutes and decisions are almost innumerable, but apart from them there is little of importance on the subject. Several articles of minor significance have recently found their way into the reviews, which discuss the legal aspect from several points of view. A work by James .Ain-gold is most valuable, and deals with the subject quite thoroughly.

A historical treatment of the development of the Sunday laws, and their force under the constitutions of

(1) 19 American Law Register, 137.
the United States requires an investigation not only in the statutes and decisions as we now find them, but a knowledge of the conditions under which they originated and of the people who enacted them. This is necessity is largely to be gathered from secondary sources, but the general outline is of such universal repute that they may fairly be deemed reliable. There will generally be found some material in the works on constitutional law, and especially valuable are the discussions by Story, Cooley, Ordronaux, and Tiedemann.
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CHAPTER I. INTRODUCTION.

The growth of Sunday legislation forms a chapter in history worthy of the most thorough investigation. It is a subject both interesting and instructive, and leads to results both curious and surprising. The origin of the Sunday laws, their gradual though continued growth, culminating into rules of conduct of the most rigid and coercive character, and the relaxation which succeeded when more liberal ideas developed, afford us one of the best examples of the process of evolution.

In nothing perhaps are more plainly exemplified the thoughts, inclinations, and characteristics of the leading nations of the world since the Christian era than in their Sunday laws.

The constitutionality of laws which set apart one day of the week, namely Sunday, is a phase of the general subject peculiarly adapted to a student of American jurisprudence. For in this country where the people are sovereign, and where legislatures are controlled by fundamental rules set forth in written constitutions, obviously conclusions will not be the same as those arrived at under different conditions.

Inasmuch as the Sunday laws of any state belong to the realm of the legislature, they are subject to the
limitations of the constitutions of the state and of the United States. To a complete understanding of the nature and extent of the limitations on the one hand, and the existence of the power to enact such laws on the other, it is necessary to go beyond the mere literal wording and trace the origin and growth of these statutes.

The Sunday laws of the American states are derived from acts passed long before the states themselves existed. Without seeming therefore to lead to the subject from a too remote point, scientific treatment would suggest some investigation into the history of Sunday legislation from its very beginning.

The first important act which may properly be called a Sunday law, the basis of all subsequent legislation, was the act of Constantine the Great, 321 A.D. The early history of Sunday legislation is inextricably mingled with the growth and influence of the church. The followers of the Christian religion had found in the Roman empire a most opportune field for the work of gaining proselytes, and their ideas spread rapidly, until at length Christianity was recognized as one of the state religions, and was embraced by the emperor himself. Constantine, a strict devotee of Apollo the sun-god, who as Pontifex Maximus was the supreme authority over all
religions, proclaimed the first day of the week, (sabbath), a day of rest from labor. (1)

There had been little recognition previous to this time of Sunday, as a day set apart. (2) The apostles and their immediate followers had observed the day as distinct from the Jewish Sabbath, and the two were never confounded until a long time subsequent to this. (3) The obligations of the Sabbath both in theory and practice were deemed not applicable to the adherents of the new faith. (4)

(1) The text of the edict is as follows:- "Let all judges in 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 lost, the provisions of Heaven be lost."

(2) A slight study of the early history will show how amazing is ignorance among modern speakers and writers on this point, and how utterly false some of their assumptions.


(4) Bossey on Sunday History, 72,724.
114 Edinburgh Review, 873.
In token of respect for the day on which their Lord arose, it became common to hold assemblages for the purpose of prayer and praise, and as time passed the habit of observing one day of the week as set apart from the rest, together with the tendency among Christians to keep separate from Jewish methods and ideas led to an extension of the importance of Sunday until as we have seen the day became recognized by the pagan emperors of Rome.

There was some recognition also of the Jewish Sabbath as one of the early holidays, from the appointment of which grew up regulations of Sunday. All legal religions were granted certain rights by Rome, there being reserved the right to legislate over them. (1)

The edict of Constantine was followed by numerous laws enjoining rest, A.D. 326; forbidding the transaction of any business or the arbitration of causes, A.D. 326; suppressing certain games on Sunday, A.D. 469. (2) In 533 the Council of Orleans prohibited the labor allowed by Constantine, and in 585 the second Council of Nicaea forbade litigation on the Lord's day. As Christianity


(2) L. Solis XIII, c. De Fergue.

18 American Law Register, 137.
became the state religion festivals from time to time were increased in number, and made more binding. At the end of the fifth century a tendency to identify the lord's day with the Jewish Sabbath began to manifest itself, traceable chiefly to the civil legislation of that period, and during the Dark Ages this tendency grew as the ecclesiastical authority of the church increased. (1). The Anglo-Saxons, converted under the Empire adopted the Sunday legislation, and through the Saxon and English laws it has been transmitted to us. (2).

There had set in with the Reformation a strong reaction against the sabbatarian theory, and all the great reformers repudiated the idea that there was any identity between the Lord's day and the Jewish sabbath (3).

But in England, in the reign of Elizabeth there arose among the Puritans a revulsion against the secularization of the "Lord's day", and its sacred character was made a

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(1) Rev. W. Lewis, origin and results of Sunday legislation. 30 Pop. Science No. 11.
(2) Idem.
leading tenet of their faith. Thus the observance of Sunday, which owed its origin to the Roman laws and institutions of the Roman empire, was not for the first time held to be a day set apart by Divine authority as a holy day. (1). The obligations imposed by the fourth commandment were held to be as binding on the first day of the week as they had been to the Jews on the seventh, in the theory that such had been commanded by the Saviour (2). Sunday legislation now took on a more distinctively Sabbatic type. (3). This was largely due to the long and bitter political struggle between the Puritans and the Stuarts, each of whom so stubbornly contested the rights of the other.

There were several early acts forbidding work, 677, 697, 749, 906, traveling, 747, and trading, 325. Many of these were confirmed by William the Conqueror and Henry II, and became a part of the Common Law of England. (4)


(2) There seems to be no attempt to prove any such authority, it seems merely to have been taken for granted.

(3) Lewis, Origin and Results of Sunday Legislation. 1 Eliz. c. 5 & 3 Jac. I c. 4, § 27, punishes by fine all persons absent from church without lawful or reasonable excuse.

The first statute in England of general importance was that passed 1563 (1), which enacted that Sunday and certain other days should be strictly observed as holy days, provided that when necessity might require, it should be lawful "to labor, ride, fish, or work any kind of work." By the common law no judicial proceedings could be had on Sunday, and the maxim "Dies dominicae non est iuridicus" was the extent of the restraint imposed by the law. (2) Ministerial acts, not prohibite, were lawful, and also certain classes of judicial acts. (3)

In consequence of the arbitrary interference and complaints of the puritan magistrates, James I, in 1618, issued his famous book of sports, which gave a list of the lawful amusements, which good people might indulge in at the end of divine service (4). This was confirmed by Charles I. Not until about the middle of the seventeenth century were the puritans measurably successful in their

(1) 5 & 6 Eliz. c.7. "Pickering's Statutes.

(2) Acts of Ads. I in 1725, 1735. 3 & 4 Will. 1 ch. 51.


(4) Cases cited in Marwirth vs. Sullivan, 9 Pac. (Cal.) 807 and note.
attempts to prevent games, sports, plays, masques and banquets on Sunday (1).

In 1677 was passed the statute known as 21 Car. II c. 7 (2), upon which the legislation of this country is mainly based. It was the law of many of the American colonies, in some instances being copied almost in its entirety (3).

The influence exerted by the Puritans on the law of Sunday was felt not only in England and on the continent, but was carried beyond the Atlantic, and overspread the greater part of the New World, thus the rigid system of religious observance which had grown up through the centuries was transplanted to America. It was in many instances the spirit of religion which prompted the establishment of the colonies. Held almost in bondage by rival sects, America offered a retreat against intolerance and persecution. But whether the Puritan of Massachusetts, the Hugenot of the Carolinas, or the English Catholic of


(2) 8 Pick. Statutes 418. "No tradesman, artificer, workman, laborer, or other person or persons whatsoever, shall do or exercise any worldly labor, business, or work of the ordinary calling upon the Lord's day or any part thereof, work of necessity and charity only excepted."

(3) Allen vs. Gardiner, 7 R.I. 22.

L'Invin vs. Beasley, 7 Jones (N.C.) 360.
Maryland, each brought with them the zeal for their own, and strive to make their particular creed the controlling one of the colony.

laws looking to the spiritual welfare of the people and the furtherance of religious ideas were among the first enactments of the colonists. (1) The observance of the Lord's day was the object of numerous regulations.

A close study of the Sunday laws will give an insight into much of the inner history of the different parts of the country. The statute book is to a large extent a register of the thoughts and characteristics of a people. Thus a recognition of the difference between freeman and slaves is found in the statutes of the southern colonies. (2) In later times when the influence of emigration was felt the acts of many of the states were modified to meet the new demands. (3) Many times there have been provisions for those who observe some other day of the week instead of the first for an

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(1) Story on the Constitution, 77, 81.

(2) See early statutes of Virginia, Georgia, South Carolina, Indiana, Florida.

(3) Thus in Ohio and Illinois provisions that nothing shall prevent emigrants from moving forward on Sunday, and that ferrymen and toll keepers shall be allowed to labor on that day in their behalf. Zumer. Law Review 228.
exemption from the Sunday statute. (1).

The strong religious feeling in many of the early colonies led to legislation which compelled attendance at divine worship. (2). The belief which has been inherited from the preceding generations led to statutes enacted with the view that the government might compel people to adopt a certain creed, and that individuals might by law be forced to exercise a certain degree of piety. (3). Church and state were still united. The "Blue Laws", which prevailed in many of the New England colonies, were rigid in the extreme; enforcing not only the prohibition of all labor, but of all amusement on the basis of the Jewish Sabbathian law. Heresies were punished by fines and

(1) Such statutes have been passed in Me., N.H., Vt., Mass., N.J., Conn., N.Y., N.J., Ohio, Ind., Ill., Ark., Mich., Ken., and Wis.

(2) As in Ct., S.C., and in Conn. in 1656, 1721, 1723, 1757. In Mass. as late as 1731 attendance was required at worship of all able-bodied men except "where there was no place of worship at which such person could conscientiously attend".

(3) 12 Chicago Legal News 21.

(4) Conn. Laws of 1651, 1657, 1658, 1674, 1685, 1721, 1736, 1757, 1772. Or 1751 "No person shall convene or meet together in company in the streets, nor go from his or her place of abode on the Lord's day, unless to attend the public worship of God or some work of necessity or charity."

imprisonments, and in obstinate cases even by death.

Ministers and public worship were maintained by taxes levied on the whole community. (1)

But the excessive severity of the earliest years of the colonies gradually relaxed as the feelings and habits of the people changed, and by the time of the Revolution, the statutes had assumed a character not unlike those of the present time, though they were then much more strictly observed.

(1) See generally on this subject, Story on the Constitution, Sec. 74, 77, 91. 

As Nation II, The Effectiveness of Sunday Statutes, Ant. C. J. and Prov. Laws, Ch. 73, pp. 100-101, Ch. 57, p. 106. 

Hatch Hist. I, 42-43, 41, 42. 

Hatch C. 18, 18-21.

1 Delk. New Laws, Ch. 4, p. 73-77.

1 Chalmers Am. 1, 83-84, 183-94.

Reynolds v. United States, 9 Cr. L. 182, 183.

"Upon the Sabbath, they'll no physicke take

Lest it should work, and so the Sabbath break."
CHAPTER II.
THE UNITED STATES CONSTITUTION AS REGARDS RELIGION.

The Sunday statutes which became a part of the legislation of the states on the formation of the Union were, as we have seen, derived from the religious framework of the colonists, which they had borrowed from England. In every American colony from its foundation down to the final separation from the mother country the laws and institutions supported and sustained in some form the Christian religion. (1). But the virulence of some of the statutes, and their enforcement made their power shortlived.

As the population increased and communication became more common, new ideas arose as regards religion. The intolerance among the several Christian sects aroused the bitterest feeling on both sides of the Atlantic. The domination in every colony of the followers of the most numerous creed led to no end of jealousy and strife, and the frequent controversies which followed in several of the states resulted in the most animated discussion. This culminated in Virginia, where at length

(1) Story on Constitution, Sec. 1873.
A bill was passed by the assembly which stated the distinction between what properly belongs to the church and what to the state. (1).

In a little more than a year after the issuance of this statute the convention met which prepared the Constitution of the United States. Jefferson, a member of that convention on seeing a draft of the Constitution expressed his disappointment at the absence of an express declaration of religious freedom. (2).

The situation of the different states proclaimed not only the policy but the necessity of excluding from the National government all power to act upon the subject of religion. (3) Several of the states in adopting the constitution proposed amendments. New York, New Hampshire, Virginia, and North Carolina desired a declaration of freedom of religion, and in the first session of the first Congress an amendment with that in view was proposed by Madison, and adopted. The action was received most favorably by Jefferson, (4) who declared the scope and effect


(2) J Jefferson Works 353.

(3) Story on Const. Sec. 1879. Oklahoma Const. Secs. 236-5.

(4) J Jefferson Works 113.
of the amendment to be to deprive Congress of all
legislative power over mere opinions regarding religion,
but left it free to reach actions which were in violation
of the social duties or subversive of good order. (1).

The amendment (Art.1) forbids Congress to make
any law respecting an establishment of religion or
prohibiting the free exercise thereof, and by a later
amendment (Art. VI sec. 3) no religious test shall ever be
required as a qualification to any office or public
trust under the United States. (2). Thus was cut off all
alliance between church and state,(3), and all religious

(1) 2 Black's Washington VII 568. Board of Education vs.
Minor, 23 Ohio St. 211. Att'y General vs. Detroit, 52 Mich.
213. S Elliot's Debates 359. 4 Elliot's Debates 244.
8 Elliot's Debates 158-97. Story on the Const. Sec. 1779.
Reynolds vs. United States, 98 U. S. 187.
State Constitutions,-Georgia, 1777, Art. 56. Maryland, Dec.
New York, 1777, Art. 38. New Hampshire, Bill of Rights,
Virginia, Bill of Rights, 1776, Sec. 13.

(2) countless used in the sense of the statute of 35 Geo.
11 which required on oath, and declaration against trans-
substitution, which all officers civil and military were
formerly obliged to take within six months after their

(3) Story on Const. 184, 754. 4 Black. Com. 44, 57-57.
2 Kent's Com. Lect. 32, 33, 35. 4 Ames Const. Ch. 16, p. 181.
persecution and oppression prevented. (1).

Sunday is recognized by the Constitution as a day of rest with regard to the President, and implicitly the Congress of the United States, the members of which are not required to work on that day. (3).

It was not supposed that the amendment could be invoked as protection against legislation for the punishment of acts inimical to the peace and good order and morals of society. (5). Nor was it intended that the government should be prohibited from recognizing religion and religious worship, (4), and in several instances we

1. People vs. Ruggles, 8 Johnson 180.
2. Montesquieu's Spirit of Laws, 3 24 Ch. III, V.
4. Vidal vs. Girard's Ex'r's, 2 Howard, (U.S.) 127.

(5) Art. I Sec. 7. "If any bill shall not be returned by the President within ten days, (Sunday excepted), after it shall be presented to him, the same shall be a law, in like manner as if he had signed it."


(4) Cooley: General Principles of Constitutional Law.
find such recognition. (1). Nor was the intention to
countenance, much less advance other religions by pros-
trating Christianity; (2); the aim was rather to exclude
all rivalry among Christian sects.

(1) Provisions are made for the appointment of chaplains
for the two houses of Congress, and for the army and navy.

(2) Story on the Constitution, Sec. 1077, 1078.
CHAPTER III.

SUNDAY LAWS UNDER THE STATE CONSTITUTIONS.

The whole power over the subject of religion, being taken away from the federal government, is left exclusively to the state governments. (1). No provision is made for the protection of citizens of the respective states in their religious liberties, that is left entirely to the state constitutions, nor is there any inhibition imposed by the constitution of the United States in this respect on the states. (2).

Proceeding from the limitation upon the power of the national government by the amendment to the constitution, and based on the same principle, there has been imposed a prohibition of all interference in matters of religion. The phraseology of each constitution in this regard varies, but the practical effect is the same in the main in all of them. (3). They prohibit the estab-

(1) Ex Parte Garland, 4 Wallace 397. Webster's argument in the Girard Bill Case, Webster's Works VI 175.

(2) Remon vs. First Municipality, 3 Howard 590, 599.

lishment of any religion, and the requirement of support and attendance of any. They forbid discrimination against any religion by laws or the administration of the government. Every person is free to worship according to the dictates of his conscience, and to give free expression to his religious opinions. (1).

Many instances however arise where apparently full effect is not given to these constitutional provisions. Discriminations have not, even at the present day, wholly ceased to exist. (2). Interference in religious matters can be entirely abrogated only by a complete change in public opinion, which from the nature comes about slowly.

It cannot however be supposed that the attempts to preserve and perpetuate religious liberty, and to guard against discriminations in matters of religious belief in any way reflected on the necessity of a continuance

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(1) Cooley, Constitutional Limitations, 574.
For list of state constitutions see Ringgold p.279.

Constitution of North Carolina of 1776 denied the right to hold office to all persons who did not accept the divinity of the Old and New Testament, or the truth of the Protestant religion. In the one of 1775 the word Christian was substituted for Protestant. 2 Kent 75 n.b.l.
of recognition of the mandates of religion. (1).

The framers of these various constitutions were in general men by principle and by practice firm in the Christian faith. Neither would the American people, a majority of whom have from the earliest time viewed Christianity as the great basis on which the permanency of republican liberty depends (2), have accepted a total abrogation of its authority.

But centuries of experience had taught that the only practical scheme of government in America was one founded not only on religious toleration but on religious liberty. (3). Individual sentiments therefore were sacrificed to the general good of the state. The policy inaugurated by the framers of our fundamental law, which was before unknown to the experience of nations, and has well been called "a plant of American growth" has since

(1) City Council vs. Benjamin, & Strob. (C.C.) 555.
    Sedgfield v. State, 36 Atl. (2d) 426 (17 (2).

(2) Lindenmüller vs. People, 72 Ill. 2d. 547. Story, Sec. 1577.
    Commonwealth vs. Fendel, 1 Phil. (2d) 169.

(3) Coolidge, Constitutional limitations, 301.
been fully justified and approved.

The observance of Sunday throughout the United States as a day set apart from the rest of the week was almost universal at the birth of the new nation, and the formation of the states from the colonies. Statutes were early passed, differing to be sure according to the habits and feelings of the people, regulating such observance.

With the origin of Sunday there was little thought, the day as a special day of rest had already been selected, and the law was concerned only with what should be the nature of the observance. Existing statutes were to a large extent followed, and if there was any change it was a gradual one made to meet the changed feeling and mode of life of the people.

It is evident from the terms of the statutes that the intention of the legislation was to compel a general suspension of business and labor on Sunday (1), works of necessity and charity being however almost universally

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(1) Sunday Laws, 2 American Law Review, 896
15 Central Law Journal 143.
excepted from the general rule. (1). In some states laws contain special provisions evidently against the besetting sins of the inhabitants. (2).

The exact application of these statutes is however incapable of sharp definition, and from the nature of things the interpretation by the courts varies greatly. (3). Acts held lawful in one state have been forbidden in others, and exceptions like the general provisions have been sometimes broadly, sometimes strictly construed. There is an almost countless number of decisions, and considerable conflict in the holdings. (4).

(1) $.R. Co. vs. Renz, 75 Ga. 136.
Stewart vs. Davies, 51 Ark. 517.
$.R. Co. vs. Lehman, 53 Wn. 205.
Commonwealth vs. $.R. Co. 180 Ky. 231.

(2) 15 Central L. Journal 146.

(3) 10 American L. Review 797.
10 American L. Review 140.

(4) 10 American L. Review 793.
Kinnard.
CHAPTER IV.

CASES RELATING THE CONSTITUTIONALITY OF SUNDAY LAWS.

In nearly every state cases have arisen in which the main argument against the statute is that it is unconstitutional, and therefore of no force or effect. As the constitutions of the several states are not unlike in their main features, and the decisions in many of the states are based on those of other states they may properly be studied in connection with each other.

In general it has been held that ordinary labor and amusement on Sunday may be prohibited. But this proposition has not found universal acceptance.

Thus in South Carolina in 1843 it was argued by a recorder (1) that as by the constitution entire freedom of religious faith and worship was guaranteed to all alike it was not within the civil power to ordain that the few should be compelled to keep Sunday in the same way and to the same extent as the Christian, when by his religious faith he is required to keep another day as sacred. He cites the rigid requirements of the Sunday law.

(1) Reversed on Appeal, City Council of Charleston vs. Benjamin, 2 Strob. 508.
statute of 1712, which requires attendance at religious worship, and asserts that this is obsolete being repealed by provisions regarding against discriminations between religions.

In Indiana in 1859 the court held (1) that if the law sought to enforce the observance of the law as an institution of the Christian religion it could not be upheld any more than a law forbidding labor on Saturday, the Jewish Sabbath, or any other day of the week set apart by some religious creed. That as a police regulation the legislature might prohibit one person from compelling another to labor on Sunday, but no right existed to compel a man to refrain from laboring for himself a certain portion of the week as that would involve nothing less than the patriarchal theory of government.

The most important case which holds a Sunday law unconstitutional, and one which gives perhaps the strongest reasoning that can be urged against the policy of such laws from a worldly standpoint, is one decided in California, in 1898. The statute in question was one "for the better observance of the Sabbath", and was held by

(1) Thomason vs. State, 15 Ind. 463, 464.
(2) Ex parte Ream, 3 Ind. 592, 594.
the court (field dissenting), to involve a discrimination in favor of one religious profession over all others by establishing a compulsory religious observance, while 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.

Terry, Chief Justice, considered the position that the Sunday law was a necessity for the benefit of the health of the citizen, untenable, that it was an argument founded on the assumption that mankind was in the habit of working too much, thereby entailing evil on society, and that without compulsion men will not seek the necessary repose which their exhausted natures demand. He asserted on the contrary, that mankind seek repose from toil from the natural influences of self-preservation, in the same manner as they seek shelter, relief from pain, or food to appease their hunger, that it is impossible to proportion the amount of rest required by society owing to the varied natures of different persons; that such laws were like the sanitary laws of the ancients, which prescribe the mode and texture of people's clothing, or which prescribe and limit the amount of food and drink; that they were an invasion, without reason or necessity, of the natural
rights of citizens which are guaranteed by the fundamental law. There being no utility for the day of rest except for religious purposes, he concludes that the end of the law has been given to enforce "a purely religious idea" "under the pretense of a civil, municipal, or police regulation." (1). The function of the legislature, and the judicial department are distinguished, and it is said this question belongs to the province of the latter, one of whose main objects is the protection of the constitutional rights of the citizens, that it is one not merely of expediency or abuse of power, but of usurpation of power. Such a statute also infringes the liberty of a citizen by restraining his right to acquire property.

Judge Barnett said that the act violated the constitution because it established a compulsory religious observance, and not because it makes a discrimination between different systems of religion. 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; and the legislature cannot compel the citizen to--or omit that the constitution leaves to his

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(1) ex parte Newman, 9 Cal. 500
election. As to this act it matters not in principle whether few or many are concerned. It is not the function of the court to inquire into the motives which induced the act to discover the existence of the power. Rights of acquiring, possessing, and protecting property, which are rights guaranteed to all, are interfered with by this Sunday statute; for could the legislature regulate the time and quantity of labor, it could as well prescribe the hours to work, rest, and eat.

There are also dissenting opinions in later cases in California which hold like views to those given. (1)

(1) In re Morton, 36 Cal. 177.
CHAPTER V.

CASES AFFIRMING THE CONSTITUTIONALITY OF SUNDAY LAWS.

The cases which deny the constitutionality of Sunday laws are exceptions to the general rule; in nearly every state where statutes prohibiting work and labor have been called in question they have been sustained. Thus the later decisions in California, where there had been the strongest opposition to Sunday laws, followed the dissenting opinion of Judge Field in the earlier case. (1).

In nearly every state laws regulating the observance of Sunday have been upheld though they inconvenience some who do not observe the sacred character of the day. (2).

(1) Ex parte Andrews, 18 Cal. 378.

(2) Spirnau vs. Union Passenger R.R. Co. 54 Pa. St. 401.
Cheever vs. State, 10 Ark. 259. Fox vs. Abel, 2 Conn. 541.
Wight vs. Geer, 1 R.I. 474.
State vs. Barber, 18 Vt. 195. Towle vs. Larrabee, 26 Me. 464.
Commonwealth vs. Harrison, 11 Ky. 507.
Commonwealth vs. Jeandelle, 2 Grant 506.
Mayor of Nashville vs. Linck, 12 L. & N. (Tenn.) 499.
Disturbing the public peace by exhibitions and
dramatic performances on Sunday has been prohibited by
statute, and such enactments are constitutional. (1).

The sale of liquor on Sunday has frequently been
forbidden under the authority of the state constitutions.
(2). This is within the domain of the police power of
the legislature in regard for the civil well being of
the community. (3).

Statutes requiring Sunday observance do not as it
is sometimes asserted prejudicially affect the inalien-
able rights of citizens guaranteed by the constitution(4).
The rights of property are not interfered with by stat-
utes prohibiting work on Sunday. The mode of acquisition

(1) Lindenmuller vs. People, 33 Barb. 348.
Kuendorff vs. Buryes, 59 N.Y. 557.

(2) Ex parte Bird, 13 Cal. 130.
Karkisch vs. Mayor and Council of Atlanta, 44 Ga. 204.
People vs. Griffin, 1 Id. 476. Schlicht vs. State, 71 Ind. 246.
State vs. Guerney, 37 N.J. 49.

(3) Ex parte Burke, 54 Cal. 419.

(4) Ex parte Koser, 50 Cal. 177. Scales vs. State, 1 S.W.
People vs. E. 11th, 57 Mich. 328, decided Feb. 20, 1894.
It was attempted to show that prohibiting barbers from
conducting business on Sunday was depriving of liberty
and property without due process of law, contrary to the
constitutions of Michigan and of the United States.
may be prescribed by the legislature, and the conduct and relations of the members of society in respect to property rights regulated. (1). In other words the exercise and enjoyment of certain rights may be restrained and controlled, though of them the owner cannot be deprived, for the tranquility and morality of the public is comprehended in the duty of the government. (2).

Perhaps the greatest stress in attempting to prove theunconstitutionality of Sunday statutes has been laid on the argument that religious liberty is infringed, and preferences given to one religion over another, contrary to the fundamental theories of American government. In nearly every case however the courts have denied the truth of such assertions, it sometimes being held that the very purpose of the law is the protection of the day so as to afford opportunity for conducting and attending religious worship, an object had in view by the founders of the constitutions. (3).

(1) Ex parte Andrews,18 Cal.376,(1881).

(2) Lindenmuller vs. People 37 Ill.359. People vs. Hoym, 20 Howard Pr.73. Kingsold p.17.

Many of the cases which have arisen state that the Sunday laws have no binding force on those who observe the seventh instead of the first day of the week, but their constitutionality has been sustained. (1).

In some states there are exceptions made in favor of those who observe some other day than Sunday, which have in one case (2), have been upheld (3). Moreover in Ohio it has been held that some such exception is necessary to the validity of the statute (4).

Besides cases dealing with the constitutionality of the general Sunday laws there are those which deal with certain acts which are concerned with particular classes or localities (5), for such laws may be passed

Frolickstein vs. Mayor of Mobile, 40 Ala. 725.

(2) Shreveport vs. Levy, 26 La. 671.

(3) Lindenmueller vs. People, 17 Barb. 546.
John vs. State, 78 Ind. 132.
City of Canton vs. Kist, 9 Ohio St. 459.
People vs. Bellent, 57 N.W. (Mich) 1694.

(4) Cincinnati vs. Rice, 13 Ohio 226.

(5) People vs. Griffin, 16 Wyo. N.W. 475.
Ex parte Burke, 53 Cal. 87. Ex parte Komer, 60 Cal. 177.
Ex parte Westerfield, 55 Cal. 565.
by municipal corporations. (1). The only requirement in
this class of cases is that the laws shall be general
to the class or locality to which they apply, and public
in their character. (2). Discriminations in occupations
may be made by the legislature if reasonable, and of the
reasonableness the courts are to judge. (7).

A case arose in New York in regard to the constitu-
tionality of a Sunday statute, whose provisions by
their terms applied to New York City alone, the objection
being based on its title, but the act was sustained (4),
as not contrary to the constitutional provision that no
local bill shall be passed embracing more than one sub-
ject, and that to be embraced in the title.

There have been several instances in which Sunday
laws have been objected to on the ground that they violat-
ed the provisions of the constitution of the United
States regarding interstate commerce. It is held that

(1) Newton vs. Nashville vs. Linck, 12 Lew. (Tenn.) 499.
Canton vs. fruits, Ohio St. 139.
Kwisch vs. Mayor and Council of Atlanta, 44 81. 204.
(2) Cooley Constitution. ) Limitations, 797.
(3) Liberman vs. State, 26 Nebr. 166. Simpson p. 70.
(4) Euentorfa vs. Barrows, 69 81. 577.
Restrictions of transportation of merchandise where the state is the initial and terminal point are valid. (1).
and an indictment against a railroad company for carrying freight was sustained in West Virginia, the purpose of the law being to promote the mental, moral, and physical well-being of the people, and in no manner to undertake to regulate interstate commerce. (2).

The law in many cases has been declared as well settled that the question as to the constitutionality of the Sunday statutes which require cessation from labor and amusement to be no longer an open one. (3).

(1) Binsmore v. People, 13 Abbott's New Cases 476.
State v. Railroad, 4 West Va. 787. (1884).

Poltz v. State, 33 Ind. 393.
Mayor of Nashville v. Innes, 2 Let. (Tenn.) 429.
Cooley Constitutional Limitations, 748.
CHAPTER VI.

THE RESOLUTION ON WHICH SUNDAY LAWS ARE BASED.

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Having examined the position taken by the courts throughout the several states regarding the constitutionality of the Sunday laws, it may be well to examine the reasoning on which the conclusions are based. In many instances it is impossible to find any precise line of argument. Everything which will sustain the position taken is brought forward. But in general the decisions which favor the constitutionality of Sunday statutes do so on the grounds that they are either religious or civil regulations. Allowance of course must be made for the individual opinions of judges, and for difference in religious sentiment in the different parts of the country, but it may perhaps be stated generally that in the more recent decisions, and in those in the newer states, there has been a tendency towards the latter rather than the former reasoning. (1)

By some an analogy is drawn between Sunday laws and laws which punish profanity, by others they are

(1) Ringgold Co.
sustained as sanitary regulations. (1).

Those cases which uphold the constitutionality on religious grounds are of two classes, first those which are concerned with preventing any interference with the religious practices of other people, and second those which look only at the individual man. (2)

It is variously stated in the opinions of a number of judges that Sunday is a holy day, one of peculiar sanctity. (3). Though by some it would seem to be attributing ecclesiastical functions to a legislature not commonly ascribed in the theory of our jurisprudence, the authority for the peculiar sanctity of Sunday is conferred according to several cases by virtue of statute. (4).

Others would base the sanctity on divine authority,

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(1) Cooley Constitutional Limitations, 784.

(2) Ringgold, 32.

(3) People vs. Ruggles, 8 Johnson, 290.
Boytton vs. Page, 15 Wendell, 429.
Campbell vs. International Society, 4 Bosworth 716.
Commonwealth vs. Jeandelle, 7 Phil. 589.
Moore vs. Hagan, 2 Dev. 477. Davis vs. Fish, 1 Green (Iowa) 406.

Moore vs. Dr. vs. Dew (Ken.) 477.
Weldon vs. Colcutt, 32 Ga. 449.
proclaiming the day to be set apart by divine command. (1)

Of the latter class some assert that the authority came
from the Mosaic law, and certain passages in the Bible (2)
held binding on the Jews, though a careful study of these
passages would seem to lead to an opposite conclusion. (3)

Others assert that the necessity for the observance of
Sunday originated with the Saviour and the Apostles (4).

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(1) Lindemulder vs. People, 33 Wash. 548.
Commonwealth vs. Woole, 15 Eng. & Racec 747.
Stockman vs. State, 16 Ark. 183.
Davis vs. Fish, 1 Green (Ark.) 406.
Osler vs. Smith, 85 Ga. 44.
Kings coal, 35.

Kilgour vs. Mills, 6 G. & J. (Id.) 26.

(2) Leviticus XXV 9-12, XXVI 27-32.
Exodus XX 8-11. XXXI 14, 15. XXV.2
II Chronicles XXVI 20-21.
Numbers XX 12 et sec.
Deuteronomy V 12-15.

Keli vs. Crew, 12 Ga. 183, "Law proclaimed to all the
world from the sinking top of Mt. Sinai".

Hill vs. Milner, 42 Ga. 457.

(3) Lessey, Drayton lectures.

Dr. Whately, Thoughts on the Sabbath.

(4) State vs. Williams, 4 Ind. (N.S.) 400, 404.


Pouce vs. Atwood, 13 Mass. 545.
But whatever may be the authority for the sanctity of the first day of the week, its violation is an act of immorality, punishable by the state as a sin and a vice. (1) Thus acts otherwise perfectly lawful may be prohibited on Sunday by the civil jurisdiction with authority, which one would expect might be exercised only by an ecclesiastical tribunal, but such policy is well sustained by many decisions which seek to prevent the "desecration" of the day. (2) In so far as the legislature attempts to enforce by civil authority the sanctity imposed by Divine command, it would seem to be identifying church and state. But refraining from work is held to be a part of the religious duty of the

(1) People v. Eagles, 9 Johnson 390.
Muller v. Roesser, 4 R. D. Smith, 234.
Kurzach v. Mayor and Council of Atlanta, 14 Ga. 204.
Swisher v. Williams, Wright, (Ohio) 754.

(2) Hood v. Brooklyn, 14 Barb. 425.
People v. Rutter, 7 Johnson 231.
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Kuehler v. Munich, 69 Ill. 559.
Commonwealth v. Zyrne, 1 Sears & Hale, 347.
Moore v. Human, 2 Duv. (Ken.) 437.
Colton v. Riley, 4 Ala. 56.
Brackett v. Edgerton, 14 Minn. 174.
individual. (1). It is said that the special purpose of the day is protected by law in that the people may enjoy religious worship and instruction, and conduct and attend religious worship undisturbed by secular cares and amusements. (2).

It is not deemed necessary generally to justify Sunday law requirements as to work on Divine authority in express words. The reasoning usually found is about as follows. (3). The observance of Sunday is a part of Christianity, which is part of the common law, and as such is part of our law, and constitutional limitations on legislative authority in matters of religion and guarantees of religious liberty are to be construed with reference to these fundamental principles. If so construed the legislature is not restrained from prohibiting work on Sunday. To the Christian it is argued that it is


(3) Ringgold p. 48.
fit that Sunday should be observed though the selection of the day is at the option of the legislature. (1).

The common law of England has been adopted by nearly all the states by the language of their constitutions; though sometimes only "so far as applicable" to the existing conditions. Thus Christianity it is held is made part of the fundamental law of the commonwealth, subject to the provision that there shall be no preferences of one form of religion to another. It underlies the whole administration of the government, both national and state, and enters into the positive law. (2).

"The right to repose and quiet upon the Lord's day rests upon the same basis with the law which declares Christianity to be part of the common law; and would have existed though the statutes prohibiting work upon the Lord's day had never been enacted." (3)


The most disastrous consequences it is stated would follow did not the law enforce the observance of Sunday; such consequences as would shake the foundations of Christianity: (1).

Besides inhibitions of labor, the statutes attempt also to prohibit all amusement on Sunday. Many of the early laws had this distinctly in view. It is taken for granted by the legislature that Christianity has not merely required the observance of Sunday, but has described the manner of observance as well. (2). Several courts however have doubted the policy of rigidly defining the nature of the observance, (3), and the idea of refraining from certain things because induced by a fear of penalties is an acceptable mode of worship, is openly repugnated. (4).

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(1) Commonwealth vs. Jeancelle, 4 Phil. 313.
Amba vs. State, 20 Mo. 214.

(2) King, 81.

(3) Loom vs. Strong, 8 Vt. 219, Strock’s dissenting opinion.

(4) Amba vs. State, 21 Mo. 214.
The second class of cases which sustain the constitutionality of Sunday laws on religious grounds do so with a view of not benefiting the individual but of protecting other people from disturbance in their worship. Good order and the public peace and morality must be preserved. (1) Each religious sect should be enabled by law to keep up its religious worship and enjoy the benefits derived from a day of religious retirement. (2).

There are in a few decisions statements that so far as the statutes attempt to prohibit work on Sunday as a religious duty they are unconstitutional. Whether religion is a sound basis on which to found a government than liberty and the voice of the people may be questioned, but there is surely no doubt but that the laws as they exist are not founded on religion. (3).

(1) People vs. Moore, 6 Haw. 76, 85, Neendorff vs. Duryea, 39 L. 557, Dennis vs. Atwood, 15 Kern. 24.


(3) Lyon vs. Strong, 3 Vt. 29. Thompson vs. State, 15 Ind. 449. Melvin vs. Ashley, 7 Jones, 6 N.C. 377. Frolickstein vs. Mayor of Mobile, 40 Ala. 725.
The theory that Sunday laws are to be upheld not as religious but as civil regulations finds support in many cases, and without doubt the weight of recent authority is in favor of this reasoning.

It is reasonable to put restraint upon the right to engage in lawful employment, and to do otherwise lawful acts because such is necessary to the successful maintenance of a general day of rest. (1). Nature and experience have shown that some rest must be selected for: a cessation of labor and amusement, and even if the day be the same as the one celebrated by a majority of the people as a day of sanctity that can be no objection. The legislature is deemed to be authorized to add penalties to those already established by nature for a violation of her laws. (2). The power to provide for the observance of a certain day is derived from the general authority to regulate the business of the community, and provide for its moral and physical welfare. (3). It is held in

(1) Tiedeman, 192.

(2) Kingman, 86.

(3) Commonwealth vs. Kilroy, 126 Mass. 68.
   Lindemann vs. Shute, 1 Mass. 546.
   Commonwealth vs. Holi, 261 S. 51, 3 Mass. 32.
New York that transactions which are void are void not because immoral per se, but because prohibited by law. (1)

The government has no power over matters of religion, and preferences which would be given were the law founded on the Christian duty of keeping the day holy, are directly prohibited by the Constitution. But acts dangerous to the public welfare, whether sanctioned by a particular religion or not may be forbidden, and no religious preference would thereby be given. (2)

Sunday is a day of rest merely, selected by the legislature by virtue of its police power, as the day in (3) accordance with the feelings of a majority of the people.

(1) Boyles vs. Smith, 12 Wend. 57.

(2) But see Mining Co., 60.

(3) Bloom vs. Richardson, Ohio St. 37, Hudson vs. Geary, 4 R. I. 407. Frickstein vs. Mayor of Mobile, 10 U.S. 705.

Nestarick vs. Wason, 4 Ohio St. 166.


Coombe ed. vs. Louisville and Nashville R. R. Co. 30 Ky. 289.

In Parte Holder, 80 U.S. 177. State vs. Williams, 4 Ind. 407.

State vs. Gilmer, 19 Ind. 132, 136. (1827).

Keglish vs. State, 9 Ind. 118.

Cooles vs. State, 9 Ind. 725.
Labor is in such a degree dependent on capital that the law must often step in to restrain the power of capital, and though perhaps in theory it may be true that men are independent and free to work as they choose in fact it is false, and is contradicted by every day's experience. (1).

Noisy trades and amusements and other like disturbances are prohibited in conformity with the limitations of the police power, being in the nature of nuisances and frequently punished as such. (2). But in Tennessee it is held that Sunday violations are not per se to be construed as nuisances. (3).

In Arkansas the validity of Sunday laws is upheld by likening them to statutes appointing certain days as "holidays". (4). But generally the compulsory feature of Sunday rest is regarded as fatal to such analogy. (5).

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(1) Field in ex parte Newman, 9 C.J. 618.

(2) State v. B., 16 Ind. 396, 26 Ind. 396.

(3) Tiedeman, Sec. 100.

(4) Mayor of Indianapolis v. Linck, 12 Tenn. 439.

(5) Scales v. State, 47 Ark. 471.


Riegio. 30.
Not only is the welfare of the citizen benefitted by the civil institution of Sunday, but the stability of the state and the interests of society makes its observance necessary, and to some extent compulsory. (1).

The public convenience is promoted by the uniform resting of the community. (2).

Sometimes the institution of Sunday as a social measure is based on absolute necessity, sometimes on mere expediency. The exact amount of rest prescribed by the decalogue is deemed proper, more would be superfluous. (3)

In addition to the benefit derived from the Sunday laws to the physical and mental well-being of society, certain cases propose civil regulations for the spiritual benefit of the people, looking to the prevention of anything which will inconvenience those religiously inclined. (4)

While the legislature is not limited by the Constitution it has the discretion to enact any laws within its

(1) Lindenmuller vs. People, 33 Ark. 93.
   Frickstein vs. Mayor of Mobile, 60 Ala. 727.

(2) Calvin vs. Haskel, 7 Jones (K.C.) 725.
   State vs. E., C.R.L. Co. 117, 114 vs. 383.

(3) Idem.

limitations, and it belongs to this branch of the government and not to the judiciary to decide as to the extent and scope of such legislation. There is no right to exercise supervision over this discretion. (1).

Neither has the constitution anything to do with the motives of the legislature in passing an act. It is concerned merely with questions of power, not whether the power was wisely or unwisely exercised, not whether from pure or impure motives. If it were admitted that the law had its origin in the religious opinions of the members of the legislature, nothing in favor of its constitutionality would be advanced, and nothing conceded against it. (2).

Men have by the constitution "an inalienable right of acquiring, possessing, and protecting property," but subject to such restriction by the legislature as the public good may require. The power to legislate for the good order, the peace, welfare, and happiness of society and the means by which these ends are effected, are left to the discretion of the legislature. The existence of the discretion implies a liability to abuse, but because

(2) Ex parte Newman, 3 Cr. 518.
the discretion of the legislature may be abused its acts are not for that reason void, and the people must look to their elections to prevent abuse. (1). That the law operates with inconvenience to some is no argument against its unconstitutionality. Such inconvenience is an incident to all general laws. (2).

The phraseology of the title of an act should not control its intent, and although the words "Christian" Sabbath" or "Sunday" were used they are to designate the day and afford no evidence that the intention was to enforce a religious institution, such would be contrary to the institution. (1).

The fact that SundayRain's recognition in the constitution as a day of rest is to be taken into consideration. (3). Some of the early decisions would go so far as to understand "Christian" before the word

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(1) Held in Ex parte Herron, 3 01.J.318,524.

(2) Idem.
   Specht vs. Sampson, 9th. S. 91. St. 725.

(3) Held in Ex parte Herron, supra.
   Bills become law if not signed within a certain number of days. After being presented to the executive as though he had signed it, Sundays being excepted.
religion, in the provisions of the constitutions.(1)

It is held that the ideas and principles of the framers of the constitutions and the men for whom they were made should be noted in their construction. (2)

Others could construe the constitutions entirely by the language found in the instrument itself,(3) and would hold that the acknowledged and specified purposes of the statute may be disregarded in deciding upon its constitutionality.(4)

The grounds therefore for sustaining the constitutionality of Sunday laws are varied, differing greatly in the different jurisdictions, often with no other reason than the individual inclinations of the judges.

(1) This would of course deprive the provision of its obvious meaning, and it is wrong historically because it was intended that the Hebrew should be placed on a complete level with the Christian in all matters of government. Kinsgoid.

(2) State v. Dies, 25 No. 11.

(3) Hoerner, Sunday and Sunday laws, 18 Amer. L.R. Rev. 791.

CHAPTER VII.

CONCLUSION.

The question as to how far the legislature may go in the passage of Sunday laws will probably be long in dispute. For as to the merit of such laws men will doubtless continue to differ. Some will consider them absolute necessities, others merely expediencies for the good of society or of the individual, while some will deem them uncontrived for, and shown by experience to fail of their purpose. (1). By some they will be proclaimed as of divine authority, binding as the laws of God; by others as immoral and unchristian. (2). By some they will be considered as truly a part of the fundamental law of this country, while others will brand them as un-American and as contrary to our institutions.

(1) As Lex Times 361. Rev. M. L. Wiser, Origin and Results of Sunday Legislation, "Top. Science No. 11." as t. the merit of statutes for physical rest, no evidence of any requirement in the Bible prior to Moses, none in Greece, none among Egyptians, Persians, or Chaldeans, where people have been physically strong. Winthrop 27, 75, 160 sq.
The difference of opinion as to the day which should be selected as the one for rest is an example of the disagreement which arises in the controversy. It is generally held that the selection is entirely within the discretion of the legislature, and not at all to be governed by religious motives: (1). The day has been established for centuries, and its enforcement by the government is easier than would be another: (2). But the religious character suggests to many the reason for a preference of Sunday over some other day. Were this the justification for the selection it would seem that the Jew in his observance of Saturday, or the Mohammedan of Friday, not to mention the numerous classes who have different or no particular days (3), should be equally protected with the Christian of Sunday; which carried out for every sect would be to withhold from all the benefits which are supposed to result from the observance of the day.

(1) Cases cited, etc.

(2) Thiroux, 185.

(3) Chinese and Tibetans have a week of five days, Buddhists confess their sins and do penance on the days of the full and new moon. During the French Revolution the week was lengthened to ten days. National Convention of France, 3 annale, Ann.3, (Dec. 24, 1793). 18 Amer. Law Review, 701.
Though generally Sunday is regarded as extending from midnight to midnight, other limits have at various times been assigned by the authorities, as from sunrise to sunset (1), or from midnight to sunset (2).

The fact that the best means of promoting rest, one granting that such is necessary is, of personal taste at once gives rise to a difference of opinion. For what is beneficial to one person may be entirely injurious to another, and inasmuch as mere cessation of activity without change of scene or interest may not be rest at all, the question arises as to what are proper pursuits. (3).

Legislators have hardly considered the history of Sunday regulations, and even among judges there has been exhibited a vast deal of ignorance as to the origin and growth. But only by being considered historically, and examined in reference to the different modes of life and customs can they be thoroughly understood. As religious thought tends to more liberality, a relaxation from the strictness and exaction in Sunday legislation follows.

(1) F. x. vs. Abel, 9 corn. 34.

(2) Bryant vs. Inhabitants of Ridgeland, 39 N. L. 197.

As to the common law see Hüber vs.English, 4 Stroh. 497.

Shaw vs. Docie, 3 N. Y. 492. State vs. Green, 37 N. Y. 463.

(3) Tiedeman, 72. Woerner, 18 Amer. Law Rev. 709.
For whether or not as they at present exist Sunday statutes are based on religion (1), it cannot be disputed that they originated from the union of authority in the church and the state. In earlier times they were designed by religious enthusiasts, not by physiologists; men who felt and expressed a supreme contempt for the physical body and its welfare, and who would have ridiculed the idea of sustaining such statutes because of the physical advantage to the individual or the social welfare of the community. It is hardly too much to say that the theory of a sanitary basis for Sunday statutes is an afterthought of the courts. (2)

There is a vast difference between the heretical strictness and European looseness of the observance of Sunday, and while there are extremists on both sides the tendency at present is to sanction neither. Men of religious inclinations who see in Sunday laws a means for spiritual and moral good, and those who desire one day of the week as a day of rest, believing that such is

(1) Terry, Ch.J. in Jones v. Lehman, 164 U.S. 569, "The effectiveness of the laws is measured by the influence of the Christian idea of Sunday as a religious institution."

(2) Ringgold, 101.
demanded by society will look to a continuance of such laws. (1) But on the other hand the tendency towards only such legislation as is actually necessary, and the strong desire for liberty, especially in religious matters will restrict such laws.

Followers of no creed may attempt to compel sentiment or religion by legislation, but they must insist that they shall not be disturbed by noisy surroundings. How far quiet and innocent means of amusement may be prohibited by the state is an unsettled question. It may encourage idleness, but may it compel it? (2). To what extent the legislature is empowered to interfere with the affairs of a citizen in the use of his person or his property,

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(1) Adam Smith said:—The Sabbath is a political institution of inestimable value, independent of its claims of divine authority.

Lord Macaulay:—while industry is sus pended, while the plough lies in the furrow, while the exchange is silent, while no more ascends from the factory, a process is going on quite as important to the wealth of the nations as any process which is performed on more busy days, the machine of machines, is repairing and winding up so that he returns to his labors on Monday with clearer intellect, with livelier spirits, with renewed corporeal vigor.

Cladestone:—from a moral, social, and physical point of view, the observance of Sunday is a duty in absolute consequence.

(2) Melvin vs. Halley, 7 Jones, 368. Tiedeman, Sec. 100.
And how far it may make individual interests subserve the public good are questions which may well be controverted.

The state may through its police power regulate the conduct of individuals, but the limits of this power are not at all well defined. And especially where its operation would seem to conflict with the obvious meaning of the constitution, which conferred the power, must it be exercised with care and prudence. (1). So far as the act done on Sunday is a trespass on the rights of others it may be prohibited, but personal vice is to be distinguished from trespass.

Some of the arguments used to sustain the constitutionality of Sunday statutes are not only historically wrong, but when carried out to their full extent are illogical, and lead to inconsistencies and absurdities. (2).

(1) Cooley,725.
Kingsley,105 et seq.

(2) Tiedman,Sec.181.
Kingsley,57 et seq.,100-110.
Yet so long as the necessity of religion, and of periodic respite from labor is recognized, so long will the observance of Sunday either for rest or for worship be protected by statutes, and though constitutional objections will doubtless be continually raised, they will probably as in the past have little weight with the courts.

A. A. Lakey.
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