in the future than it has in the past, in affording a satisfactory answer to this question.

But if an impenetrable cloud is cast over the force and application of the Sunday law by the presence of this word "charity," on what a bottomless, trackless sea are we launched by the use of that other word "necessity!" The tossings and flounderings, the hopeless "seeking after a sign," the vain beating toward a harbor which does not exist, which we find in the cases on this subject are really painful to a sensitive mind. Among others, the eminent Judge and Senator Thurman, of Ohio, once wrestled with this subject in a long opinion.[1] But the outcome of it all is that there is no way of defining "necessity," though the learned judge does not say this in so many words. In the first place, we do not know whether necessity is a question of law or of fact, or of both combined.[2] And secondly, it is unsettled whether the necessity must be that of the doer of the act or whether it is sufficient if his doing of it was a necessity to somebody else.[3]

It is, however, when we leave these preliminary questions, and come to consider the nature of this necessity—of which we are to determine the existence or non-existence in any given case—when we study the *thing in itself*, as some philosophers say, that we fully appreciate the hopelessness of interpreting or applying a Sunday law with any degree of uniformity or fairness. Only a few points need be mentioned to vindicate this position. We are told that the necessity need not be "absolute,"[4] yet it must be "imperious,"[5] and mere "convenience" is not enough;[6] that it varies with the individual, so that a rich man might be punishable for working on Sunday to save his property from destruction, while a poor man would not be,[7] and also "with the exigencies of trade;"[8] and so on and so forth. Here, as under all of our preceding heads, the illustrations might be multiplied indefinitely without materially strengthening, the moral, which is that a "chaos of thought and passion all confused" has inspired the enactment of Sunday laws, stimulates their enforcement, and manifests itself in every judicial attempt to either, justify, explain, or apply them.

Baltimore, Md., Oct. 20, 1892.

[1] See.McGatrick *v.* Wason, 40.,566.

[2] It is one of fact in Indiana, Edgerton's Case, 68 Ind., 588: of law in Vermont, Lyon *v.* Strong,; Vt., 219: and of law and fact in Alabama. Hooper *v.* Edwards, 25 Ala., 528.

[3] In England, a barber is not excused by the fact that his Sunday shaving was a necessity for his customer. Phillips *v.* Tuness, 4 Cl. & F., 234. But it is said that here the apothecary is justified in selling a medicine which is a necessity to the sick. L. & N. R. R.'s Case, 89 Ind., 291.

[4] Flag *v.* Millbury, 4 Cush., 243.

[5] Ohmer's case, 34 Mo. App., 115.

[6] Allen *v.* Duffie, 43 Mich., 1.

[7] See Witcomb *v.* Gilman. 35 Vt., 297.

[8] McGatrick *v.* Wason, 4 O., 566.

SUNDAY LAWS IN THE UNITED STATES.[1]

BY JAMES T. RINGGOLD, ESQ.

[From the *American Law Register and Review,* Philadelphia, Pa.]

THE constitutionality and the construction of "Sunday laws" have been considered by the courts of this country in nearly one thousand cases. So far as the mere weight of authority can settle anything, it is settled that such laws are valid under the Federal Constitution, and under the constitution of every State in which their validity has been contested.

There are traces of a union of Church and State elsewhere in the body of American law (as in statutes against blasphemy, qualifications required of witnesses, etc.), but Sunday laws are by far the most conspicuous portion of this inheritance of ours from the English form of government.

To say that Sunday laws represent a union of Church and State, and that the weight of authority sustains such laws in the United States, may sound to some like an impeachment of our judiciary, because the absolute separation of the two is commonly regarded as an axiom of American politics. Yet both propositions are demonstrable.

The second, of course, is established by a mere counting of the cases. The reading of them is enough to establish the first. Occasionally an objection is made to Sunday laws as interfering with the rights of property, etc. But in every case their constitutionality has been assailed, and in most cases it has been exclusively assailed on the ground that they are infringements of religious liberty. And not one of the judges who have sustained them on other than religious grounds has ever ventured the assertion that they are passed, or that their enforcement is asked for, on any other ground than this. And a statute which is passed or the enforcement of which is asked for on religious grounds represents a union of Church and State, *pro tanto,* no matter what other grounds the courts may allege for its enforcement.

It is difficult to formulate a general statement in American constitutional law, outside of the Federal system, because the language of the State con-

[1] In a book entitled, "Sunday: Legal Aspects of the First Day of the Week," by the present writer (Jersey City: Frederick D. Linn & Co.), an effort has been made to collect and classify all the cases of importance on the subject which have been decided in England and America to date (1891). In the following article, the intention is to cover the entire ground as thoroughly as may be, but it has not been deemed necesary to cite many caes which simply go to the same point. Under each branch of the discussion the aim is to present a typical case, the ruling or *dictum* of which fairly, represents the average spirit of the cases of its class. So far as the writer knows, no argument has yet been presented in favor of Sunday laws which is not noticed here, and it has been his conscientious endeavor to give them all their best and strongest expression.

stitutions differs widely, and the language of the statutes on any particular subject is equally at variance. The force of this proposition is lessened, but it is by no means nullified by the interesting fact discovered and noted by Mr. Stimson (see the preface to his invaluable "American Statute Law"), that there are in the Union, "streams of legislation," that is to say, groups of States (of which he finds three, with some anomalies) whose legislation follows a uniform line, different from that followed by States of another group.

One of Mr. Stimson's "streams of legislation" is followed by twenty-nine States, whose constitutions declare in substance that no "preference" shall be given by law to one religious sect over another. If we admit that there is a like intent inspiring the somewhat diversified phraseology of the provisions for "religious equality," etc., in States outside of this stream—as we must admit, unless we are prepared to admit that a union of Church and State may be effected in such States—then we may frame this general statement regarding Sunday laws, as the result of the decisions to date: It is concluded that they would be invalid in any State, if they gave a "preference" to one religion over another, and it is denied that they give any such preference.

The constitutionality of a statute may be regarded from two standpoints—that of its design, and that of its effect. "Design" here must not be confounded with "motive." The legislature may be influenced by corrupt motives in the accomplishment of a design within its constitufional authority. Nothing is better settled than that upon this consideration the courts will never enter.[1] But suppose the legislature, by no means corruptly, but in all honesty and sincerity, aims at the accomplishment of a design which it is forbidden by the Constitution to accomplish. And let us strengthen the case by assuming that if the statute passed with such an aim is sustained by the courts, the result will be the accomplishment of the unconstitutional design. Are the courts justified in sustaining the statute merely because some other purpose is incidentally effected at which the legislature might constitutionally have aimed?

Now, religion concerns itself with two things, belief and conduct, and the distinction between one religion and another is two-fold—one requires a certain belief and certain conduct which the other forbids or does not require. Hence, it is not enough to say concerning the Sunday law: "What religion or religious creed or dogma is inculcated in that statute? or what religion is prohibited? . . . Does it ask that any citizen shall believe in the God of the Bible or its teachings, or the doctrines of the Bible, the Koran, or of Confucius, or the Talmud, or the Old or the New Testament? Certainly not;"[2] because, though no religious creed or dogma be inculcated, yet a "preference" may be given by a statute to one religion over another by the mere regulation of conduct. And this preference is given whenever conduct

[1] *Ex parte* Mc Cardle, 7 Wal., 506, 514; Doyle *v.* Continental Ins. Co., 94 U. S., 535.
[2] Sundstrom's Case. 25 Tex. App., 133. See also Specht's Case., 8 Pa. St., 325.

the prohibition on work removed than the prohibition on play. They think that a Sunday law prohibiting play alone would be more likely indirectly to drive people into church on Sunday, which is their minor purpose in having such laws. Being themselves essentially of a gloomy and non-playing cast of mind, they consider that the prohibition of other people's play would naturally tend more to take those people of a gloomy cast of mind for the time being, than the prohibition of work, and therefore would tend more strongly to force others into their way, which is their main and central object in Sunday laws and in life generally.

The survey of the subject would not be complete without some reference to the savings of "necessity," and "charity," which are made in all Sunday laws.

The very presence of the word "charity" is sufficient to betray the true nature of these laws as religious dogmas enacted into statutes. The interpretation of the word has, of course, to be made accordingly. And hence it is correctly said that *"the means which long established and common usage of religious congregations show to be reasonably necessary to advance the cause of religion, may be deemed works of charity."*[1] But, apart from its fatal disclosure of the religious character of the statute, the presence of this word, like that of "necessity," introduces a degree of uncertainty as to the application of the law, which it is safe to say would cause the courts to hold it void altogether if it were anything else but a Sunday law. Well has a learned judge of Vermont observed, "The statute excepts all acts of necessity and chatity. These are lawful, and who is to judge what are such? If the jury, it will depend on the religious opinions of each jury, and of course be pregnant with the utmost uncertainty. If the court, as matter of law, then *it will nearly convert a bench of laymen into an ecclesiastical council for 'necessity' and 'charity' in connection with the Sabbath must very much depend 'upon the creed or religious belief of the individual to whom the question is submitted. . . . How ungracious for a court to mark the law upon this duty for all denominations to be governed by, and with judges usually belonging to different religious boddies. It would be like a synod composed of the dignitaries of several sects*."[2]

The uncertainty involved, in the use of the word "charity," apart from the religious aspect of the question, may be illustrated by the preceding case.[3] This held that a contract of subscription towards the erection of a church was valid as an act of charity. If so, on what ground is the actual building of the church on Sunday unlawful? Or the quarrying of the stone for its walls, or the dressing of timber for its interior? In a word, where are we to stop in the degree of closeness of connection between the act in question and "the advancement of the cause of religion?" It does not seem possible that the subtlest judicial ingenuity will succeed any better

[1] Dale *v,* Knapp, 98 Pa., 389. [2] Lyon *v.* Strong. 6 Vt., 236.
[3] Dale *v.* Knapp, *supra*.

conception that idleness is a good thing in itself, to be sought for its own sake, and that the State is conferring a great boon upon them by allowing them the opportunity of indulging in it. No more immoral or dangerous doctrine could be preached by any legislation than this. Rest is necessary; but its value lies not in itself; it is valuable only in so far as it fits us better for our work. Public holidays may have a historical value: that their general effect on the manners of the mass is demoralizing, few will deny. Leisure is a dangerous possession in the hands of the wisest and best. Let the managers of factories, the heads of schools, and the like be heard to testify to the slipshod character of "Blue Monday's" work, and we shall appreciate the profundity of that unknown philosopher who gave it as his decided conviction that the crying need of the country is not more holidays, but more days to get over them.

Industry is a virtue; idleness is a vice. But our Sunday laws make a complete topsy-turvification of this fundamental principle of morals, for fifty-two days in the year. On these days, industry is branded as a crime, and idleness is required as a condition of good citizenship. That the immoral lesson thus taught is correctly learned, is shown by the constant demand for more public holidays, and for limiting the hours of work by the State, and other laws which are strangely misnamed as "labor legislation," being in reality, like the Sunday laws, legislation for the promotion of idleness. And thus we have another illustration of the great principle, and the evil tree of Sunday law brings forth after its kind.

A word may be said in reference to the "merely idle pastimes, subversive of that order, thrift, and economy which is necessary to the preservation of society," alluded to in a previous extract.[1]

It is of course self-evident that no pastime can have this subversive effect on Sunday, which has not the same effect on any other day. And it is equally self-evident that with the pastimes of its people, no American legislature has authority to meddle on the ground of its subverting effects on thrift or economy; while as to the subversion of order, no Sunday law is required to justify interference by the police at any time, either with pastime or work.

But the use of this word "pastime" is worthy of attention, because it alludes to a certain portion of all Sunday laws, which by its very presence utterly refutes the theory that these laws are intended for the secular benefit of the peolple, and which has been already commented upon. A Sunday law, to be complete, must combine the two prohibitions of work and play; if a law does not prohibit both, whatever else it may be, it is not a Sunday law. And as play is the very best known antidote to the corrosive effects of work, it follows that no Sunday law is intended to guard against these effects. And it may be added that there is good ground for the claim that those who are interested in the existence and enforcement of Sunday laws, if they hold to part with either prohibition, would a great deal rather have

[1] Landers *v.* R. P., *ante*.

is regulated on religious grounds, according to the special prescription of any religious sect, or when the design of a statute is to punish an offense against religion as *such*. That Sunday laws do embody the proscription of a certain sect for the "observance" of that day is indisputable. Are they passed on religious grounds? Are they designed to punish offenses against religion as such? Blackstone classifies them with the provisions against "apostasy," "heresy," "nonconformity," and the like, all of which things he calls "offenses against God and religion."[1]

This classification is followed in the "Codes" and Digests of Statutes of nearly every State and Territory in the Union. In dealing with the Sunday laws the courts uniformly allude to them as provisions against "profanation" or "desecration."[2] But only a sacred thing can be profaned or desecrated; and whether a thing be sacred or not is altogether a matter of religion. So that to punish profanation or desecration is to punish an offense against religion *as such*.

That Sunday laws are passed on religious grounds is perfectly well known to every reasonable person. Mr. Tiedeman correctly says: "The most common form of legal interference *in matters of religion* is that which requires the observance of Sunday as a *holy day.* In these days the legal requirements do not usually extend beyond the compulsory cessation of labor, the maintenance of quiet upon the streets and the closing of all places of amusements; *but the public spirit which calls for the compulsory observance of these regulations is the same which in the colonial days of New England imposed a fine for an unexcused absence from divine worship*. Although other reasons have been assigned for the State regulation of the observance of Sunday in order to escape the constitutional objections that can be raised against it if it takes the form of a religious institution, those who are most active in securing the enforcement of the Sunday laws *do so because of the religious character of the day,* and not for any economical reason. . . . The effectiveness of the laws is measured by the influence *of the Christian idea of Sunday as a religious institution*."[3] So says Judge Cooley; "It is clear that these laws are supportable on authority *notwithstanding the incovenience which they occasion to those whose religious sentiments do not recognize the sacred character of the first day of the week*."[4] And what is this but saying, and saying with perfect correctness, that Sunday laws simply embody the views of those who *do* recognize the "sacred" character of the first day of the week, and are therefore passed on religious grounds alone? "The Jew," says Judge Cooley in a previous paragraph, "may plausibly urge that the law *discriminates against his reli-*

[1] Bk. IV., ch. 4.

[2] "*e. g.*," Wood *v*. Brooklyn,. 14 Barb., 425; Lindenmuller's Case, 33 Barb, 548: Nenendorff *v*. Duryea, 69 N. Y., 557: Nesbit's Case, 34 Pa., 85.

[3] "Limitations of Police Power," pp. 175-6. see 76. The italics are those of the present writer, here and in other citations.

[4] "Constitutional Limitations," p. 58s. ch. xiii (ed. 1890)

gion, and, by forcing him to keep a second Sabbath in each week, unjustly, though by indirection, *punish him for his belief*." Why "plausibly?" Is not the discrimination perfectly plain? May it not be *conclusively* urged ?

But the fact is clear enough, without authority, that Sunday laws embody a religious dogma, and that they constrain the citizen on religious grounds alone. There are two sides, again, to this religious character of Sunday laws—the side of the constrainer and the side of the constrained. So far as the latter is concerned, the real spirit of such legislation has been frankly stated by a North Carolina judge, who says that work on Sunday "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,"*[1] A plainer truth, one more clearly and fully appreciated by Sunday-law advocate's, while they seek to ignore and even deny it, was never printed. So far, then, as the constrained are concerned, the object of Sunday laws is to compel them to perform a religious duty, and to punish an offense against religion *as such*. And as this religious duty is exacted by some religious communions and not by all, the "preference" among religions is established.

In strict accordance with this view are the New Hampshire decisions on the point of what constitutes a "disturbance" of one person by another on Sunday. At first sight it might seem unobjectionable to provide that no work should be done on Sunday "to the disturbance of others," as is done in New Hampshire. But the value of the qualification, if it had any, is destroyed by the judicial construction. The Court has taken the North Carolina view that the statute was intended to prevent "acts calculated to *turn the attention of those present from their appropriate religious duties* to matters of mere worldly concern,"[2] and hence it is settled in that State that business, however quietly conducted on Sunday, "disturbs" those engaged in it, and that a man is "disturbed," though he be willing and even anxious to do business on Sunday, by the doing of it, or by any act, however voluntary, which *tends to distract him from religious observances*."[3]

There is no mitigation, then, of Sunday law rigor in the use of the proviso about disturbance. Nor is the New Hampshire Court to be reproached for pandering to the spirit of Puritanism in construing its law, proviso and all, as intended to apply to individual conduct, without any reference whatever to its actual effect on others. How the words "to the disturbance of others" came to be inserted in the New Hampshire statute it may not be practicable to ascertain; but there can be no doubt that they would have been promptly stricken out if it had been suggested to the framers of that statute that such words might be taken to mean that a man might do as he pleased on Sunday if he only did it quietly. There is no doubt that the Court, as in duty

[1] Williams's Case, 4 Sec. 400. [2] George *v.* George, 47 N. H. 27.
[3] See Varney *v.* French, 19 N. H., 223; Thompson *v.* Williams, 58 Id., 248.

every kind are prone to start with the statement, as if it were an axiom of thought, that "we are so constituted physically that the precise portion of time indicated by the Decalogue, must be observed as a day of rest and relaxation, and nature, in the punishment inflicted for a violation of our physical laws adds her sanction to the positive law promulgated at Sinai."[1] Yet this statement, so often made in substance on the Bench and elsewhere in order to justify Sunday laws, is absolutely without any foundation whatever, and is absurd on its face and is contradicted by the most familiar facts.

It is absurd on its face. The amount of rest required and the advisable periodicity of it is the result of three factors—the man, his work, and his environment; and, as the first of these is never the same in any two instances, the result is never the same. To attempt to lay down a uniform rule on this subject is as preposterous as it would be to require everybody to eat the same amount and the same kind of food every day. What is said above, about the punishments of "nature" applies here as it was not intended to apply. The whole matter belongs to her domain and is subject to *her* laws alone. The time for rest is proclaimed by her when she makes a man tired, and his punishment may safely be left in her hands, if he disobeys her mandate to rest.

Of course there are no facts adducible which even appear to sustain so monstrous a proposition as that everybody always needs the same amount of rest at the same interval. The facts are all the other way. Preachers who work hard all the time, and do double work on Sundays; doctors who can never rest at any stated interval; lawyers, journalists and others, who frequently work day in and day out for months without a holiday—all these compare favorably for robustness and longevity with that conscientious Sunday rester, the farmer. Races of men, as the Greeks and Romans of old, the Chinese, Japanese, etc., to whom the idea of resting at stated intervals never occurred, yet have survived and flourished. Not long ago the Methodist Bishop, Andrews, gave it out as something "he could not understand" that they had no Sabbath in China, and yet the laboring men lived to old age! Of course the good Bishop shut his eyes at home, and opened them in China. He was under that delusion so common with men of his calling that the existence of a law is proof of its enforcement. He did not know, or chose to ignore the fact, that thousands of his fellow-Americans who know, no Sabbath are as healthy, long-lived, and at least as active in the world's work as the strictest Sabbatarian in his communion.

Besides negativing the arguments by which Sunday laws have been defended, and calling attention to the positive objection to them as the embodiment of a union of Church and State, it may be well to point out another undesirable characteristic of such legislation. Although Sunday laws do not make the day a holiday, yet they have this in common with laws establishing holidays—that they tend to encourage among the people the

[1] Lindenmaller's Case, 33 Barb., 548.

in Palestine.[1] But in every civilized country the union exists to a greater or less extent. It was to guard against it, that all such provisions as those forbidding a preference among religions have been inserted in the American Constitutions. It exists in the very teeth of such provisions wherever a Sunday law is found.

The advocates of these laws appreciate their danger, and hence we see in some later cases an invention known as "the holiday theory" of Sunday laws brought to the rescue of a failing cause. Said an Arkansas judge: "The power of the legislature to select a day as a holiday is everywhere conceded. The State from the beginning has appropriated Sunday as such."[2] And he added that the same principle which upholds the right of the State to close its offices on certain days authorizes it "to prescribe a penalty for the violation of the Sunday law." The extract *ante* from Mr. Tiedeman sufficiently refutes this parallel so far as it affects the question of the origin and purpose of Sunday laws. Its fallacy is equally apparent from their contents. Who ever heard of such a thing as a compulsory holiday? Who ever heard of a statute which established a public holiday and closed all places of public amusement, and provided a penalty for those who should undertake to amuse themselves in private upon the day in question? Desperately as some are clinging to this last spar, it must share the fate of the other wrecked arguments by which it is sought to support Sunday laws on constitutional grounds.

There are cases, however, which take "a secular view" of such legislation without going so far as to claim that it makes a holiday of Sunday. According to these "the evident object of the statute was to prevent the day from being employed in servile work, which is exhausting to the body, or in merely idle pastime, subversive of that order, thrift, and economy which is necessary to the preservation of society."[3]

Let us consider these clauses separately. Has it ever been claimed that it is within the power of an American legislature to compel a man to abstain from earning his living by "servile labor," because the legislature in its wisdom, considers such labor as "exhausting to the body"—ever claimed, that is, except in connection with Sunday laws? Who made of the legislature a physician to order off a man from any labor, "servile" or otherwise, because of its effect upon his body? Is not the liberty of labor at will, part of the inheritance of every citizen of a free country which he "comes into" when he attains his majority? The interference with labor on account of its "exhausting the body" is parental, and can never be justified under any other than a parental government. So that if this interference were necessary or even desirable, it would not be practicable in any State whose constitution contains a guaranty of personal liberty.

As a matter of fact, however, it is neither necessary nor desirable, though many of the cases assume that it is both; and Sunday-law advocates of

[1] See Milman's "History of the Jews." [2] Scoles's Case, 47 Ark., 476.
[3] Landers *v.* R. R., 12 Abb. Pa. (N. S.), 338.

bound, gave effect to the legislative intent in its view of the objects of the Sunday law.

There are other considerations which may be noted here in connection with the subject of "disturbance." Even if the New Hampshire Court were wrong, and the word was meant to apply to others than the doer of the act in question, there would be no saving efficacy in the phrase. We are at once confronted with the difficulty—who is to determine whether or not one man is disturbed on Sunday by the act of another? If the first man's assertion is to be taken as conclusive on the subject, of course there is no use in having such words in the statute. But when we admit that the question of disturbance *vel non* is one for judicial determination in any given case, we see at once that this qualification involves a fatal confession of the nature and purpose of all Sunday laws. For, without any statutes, wherever the common law, or any other logical system of jurisprudence prevails, that is, among any civilized people, work which "disturbs" others is unlawful at all times. To "disturb," in the eye of the law, is to infringe on some right or privilege which it creates or recognizes. When, therefore, the law recognizes a privilege as existing on Sunday which exists on no other day, and considers that acts will amount to a "disturbance" of others on Sunday which will not amount to such disturbance on any other day, we must ask ourselves what this special privilege of Sunday is, which is thus honored. It cannot be the right "peaceably to assemble." In every American constitution this right is guaranteed expressly or impliedly, and it exists at all times. Nor does it matter what the purpose of assembling may be, unless it be tainted with treason. People may assemble at any hour of the day or night, and talk religion or infidelity, or politics or dress reform, and if anybody disturbs their assembly, the police will lock him up. The right of assembly and the question of what constitutes a disturbance of, or an infringement of, that right does not in the smallest degree depend on the object of the assembly, as religious or otherwIse, nor does it depend in the smallest degree on the time of the assembly, as on Sunday or Monday. The standard of the law, its test of the right and its violation is the same for all assemblies and all periods. What special "right" is it, then, which is disturbed on Sunday by certain acts which disturb no rights on any other day? Let a Pennsylvania Court answer for us: "There are other rights intimately associated with rights of conscience which are worth preserving. *The right to rear a family with a becoming regard for the institutions of Christianity, and without compelling them to witness hourly infractions of one of its fundamental laws,*"[1]—that is to say, Sunday statutes are passed to compel one man to observe a "fundamental law" of Christianity for the benefit of another man's children. But a statute passed for the purpose of enforcing a law, fundamental or otherwise, of any particular religion gives a "preference" to that religion, unless an equal privilege be accorded to a like law of every other religion.

[1] Johnston's Case. 22 Pa. 102.

These authorities are adduced, not in order to establish the proposition that Sunday laws embody a preference of one religion over another, but merely, as is proper in an article written for a law magazine, to show that this fact has at least in some cases, been frankly recognized by the courts. It would be equally a fact if all the courts in the country denied it. All the decisions of all the courts cannot make black white. The decision of a court may settle whether or not a Sunday law is enforceable, but it can have no effect upon the question of the origin, or the inspiring motive of such legislation. So the more numerous decisions (more numerous especially among the later cases) which take what is known as the "secular view" of Sunday laws, are of no account whatever as evidence of the correctness of that view, because that is question not of law at all, but of historic fact.

It has been said that the law will prevent the disturbance of a meeting without regard to its character as religious or otherwise. Like many other things in law, this disregard results from its refusal to attempt impossibilities. The law has no test whereby to determine whether a meeting is religious or not. This being claimed as the character of a spiritualist camp-meeting in a Sunday-law case, the court left the point to the jury.[1] The "unseemliness" of controversies over such a point, the impossibility of settling any rule for deciding them, the purely religious nature of the dispute, are self evident. It is a mere evasion to leave such a question to a jury. An American jury has no authority to decide any question of which American law can take no cognizance. Neither jury nor judge can decide in this country the right and title of any system of belief to be called religious. It is a usurpation for a jury to render a verdict on such a question. It is quite as much a usurpation for a judge to render and enforce a judgment on such a verdict by a jury of others as it would be for him to do so after sitting as a jury himself.

But even were it practicable for American law to discriminate between a religious assembly and any other, on the protection afforded against disturbance, no reason whatever exists for attempting such a discrimination. The simple fact is—though, like many other facts, it is constantly "blinked" in the discussion of this subject—that a religious assembly is disturbed by just precisely the same acts which would disturb any other assembly, and by no other acts whatever. From this point of view all sorts and conditions of men are alike. The orderly and regular conduct of a caucus and a church service, the ability of those present to keep abreast of what is going on, and to influence others—these things require precisely the same police conditions in the one case as in the other.

This, again, is not a matter of law, but fact. The Seventhday Adventists, that remarkable people whose headquarters are at Battle Creek, in Michigan, lately protested before Congress through their clear-headed and eloquent representative, Mr. Alonzo T. Jones, against the attempt of the great religious organizations of the country to have a Federal Sunday law enact-

[1] Feital *v.* Middlesex R. R., 109 Mass., 398.

ed. Mr. Jones consistently—he and his people are nothing if not consistent to the core—disclaimed any desire to have his "seventh day" substituted for Sunday, declaring, with perfect correctness, that all such legislation involved that union of Church and State which his organization is pledged to oppose with unrelenting hostility. But he also laid special stress on the fact that his brethren were not disturbed in any manner whatever in their "seventh day" observances by other people's pursuit of their regular occupations—and therefore they did not need the law, even if they felt it right to ask its aid, in order to enable them to observe their day according to their wish. We have among us Jews and Seventh-day Baptists, and their experience is the same—that no "Sunday law" is needed to protect them in the full enjoyment of their Scriptural Sabbath. We have also Roman Catholics and Episcopalians who observe such fasts and feasts as Lent, Christmas, Good Friday, "saints' days;" etc.; by holding religious assemblies. Not one of them has ever complained that these assemblies are in any wise disturbed by the steady course of the world's daily work and traffic.

The case is still stronger when we come to those who are specially interested in Sunday laws, to whose agency such laws and their spasmodic enforcement are due. These may be broadly grouped as "Evangelicals." Such persons make a regular practice of holding "prayer-meetings" on weekdays. The claim has never been advanced that these assemblies are disturbed by the ordinary labor of those who fail to attend them. So, also, with the great "revivals" to which some of them are addicted. Day after day, every day and night in the week, they assemble for religious purposes on such occasions. It has never been remarked that the week-day services are disturbed any more than those held on Sunday—that they are any less satisfactory to those who conduct them, or less profitable in the ratio of "conversions" to attendance.

So that we see our proposition, that nothing can disturb a religious meeting which does not disturb any other kind of meeting, proven by daily experience of the life around us. And we see further that, as the disturbance of religious meetings at any time will be prevented by the "police-power" of the State, no "Sunday law" is needed to prevent such disturbance. And we are thus brought face to face with the truth of the matter—namely, that the only disturbance involved in Sunday work, is the disturbance of one man's right to constrain another to a certain line of conduct as a religious duty; and that Sunday laws are therefore passed with a religious purpose, and designed to punish offenses against religion as *such*, and so constitute a "preference" by the State of one religion over another.

As this true character of Sunday laws becomes more and more evident to the American people, the demand for their repeal grows stronger and stronger. Nor is this demand to be thwarted by quibbling over what constitutes a union of Church and State. Like other unions, this may be complete or partial. The only instance in history of a complete union of the two, or an absolute identity of Church and State, was the polity of the Hebrews