

economy and not of law. He who solves them, who suggests a mode of ascertaining what ought to be paid for work to the satisfaction of master and man, above all, who will suggest a rule by which all can find profitable employment, one for his capital and the other for his skill or labor, will deserve a statute larger than WASHINGTON, a pension for himself and his heirs forever, and the everlasting gratitude of all.

PHILADELPHIA, PA.

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## THE CONSTITUTIONALITY OF SUNDAY LAWS.<sup>1</sup>

BY GEORGE STUART PATTERSON, ESQ.

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IN a most interesting and able article in the November number of the AMERICAN LAW REGISTER AND REVIEW, Mr. James T. Ringgold argues that Sunday laws are unconstitutional, in that the design of the legislatures enacting the same is to prefer one religion over another, in contravention of the Constitution of twenty-nine of the States, which constitutions declare in substance that no preference shall be given by law to one religious sect over another, and he also asks the question, "Are the courts justified in sustaining those statutes merely because some other purpose is incidentally effected at which the legislature might constitutionally have aimed?" Mr. Ringgold admits that the courts will not inquire into the motive of the legislature in passing any given statute, but he says if the legislature intended by the passing of a statute to accomplish something forbidden by the constitution of that State, then the statute is passed with an unconstitutional design and is unconstitutional; but can it not be said in reply that the only way of testing the constitutionality of the legislative design is by the effect of the statute when put in operation, and not by the opinion of any particular court as to what

<sup>1</sup> An answer to the article of Mr. James T. Ringgold in the AMERICAN LAW REGISTER AND REVIEW, Vol. XXXI, p. 723.

that particular statute was intended to effect, and if these statutes when put in operation have effected some purposes at which the legislature might constitutionally have aimed, they cannot be unconstitutional merely because in the opinion of the court the design of the legislature conflicted with the Constitution.

Mr. Ringgold first points out that religion concerns itself with two things, belief and conduct, and he adds that the regulation of conduct is a preference of one religion over another if the regulation be based upon religious grounds, no matter whether the statute regulating such conduct inculcate any particular belief or not. No doubt this proposition is true, but who shall say that this regulation of conduct is based upon religious grounds? Mr. Ringgold says the courts have said so, and cited numerous cases in the opinions of which the courts seem to hold that the regulation of conduct is based upon religious ground, but if we apply the test of constitutional construction that the constitutionality of the statute is to be determined by its effect, and if we find that in effect the statute accomplishes something which the legislature could constitutionally aim at, it does not make any difference that a particular judge, in delivering the opinion of the court, was of the opinion that the regulation of the conduct was based upon purely religious grounds.

The Mormon religion teaches polygamy, the Christian religion monogamy; is a statute, therefore, unconstitutional which forbids polygamy if the courts happen to be of the opinion that the framers of the statute designed to give a preference to the teaching of the Bible over those of the Book of Mormon? Suppose, for example, some particular religious sect taught perjury as a duty to their deity, would a statute making perjury a crime be unconstitutional because the courts were of the opinion that the design of the legislature in passing the same was to give a preference to the teachings of the Christian religion in prohibiting false swearing? Now, what is the effect of the passage of these Sunday laws? Their effect is to create a compulsory holiday of the first day of the week, and that is not only to

close public offices, but also to regulate the private business and acts of the citizens of the State. Can a State, therefore, create such a holiday. Mr. Ringgold says no one ever heard of a compulsory holiday. But suppose the legislature is of the opinion that it is detrimental to the health of its constituents that they should work more than six days a week, and knowing well that owing to the fierceness of competition that unless the statute imposes a penalty for disobedience of its provisions, the statute will be inoperative, a statute, therefore, is passed prohibiting all kinds of work or amusement on one particular day, is not such a statute as much a valid exercise of the police power of the State as a statute prohibiting gambling, and does it become unconstitutional merely because the day of the week to which this statute shall apply happens to be the day of the week which the Christian religion has set apart for a day of rest? I think it can be safely assumed that a large majority of the citizens of any of the States are Christians, ostensibly so at least, and if so, is it not better that the day which the legislature selects for rest shall be the day which is most convenient to the citizens of the State? But Mr. Ringgold says it is a matter of history that working every day in the week is not in itself necessarily detrimental to any person's health. That does not, however, affect the question, as the legislature and not the courts are judges as to the necessity or advisability of the statute, provided that the statute be passed in the exercise of the constitutional power of the legislature. It has been held that the restraint in the Federal Constitution upon the right of a State to impair the obligation of a contract is subordinate to the right of the State to exercise its police power; is not, therefore, this restraint in the State constitutions as to a preference of one religious sect over another subordinate also to the exercise of the police power of the State? But Mr. Ringgold would deny the right of an American legislature to restrain a man from earning his living on any particular day, and he asks, "is not the liberty of labor at will part of the inheritance of every citizen of a free country which he comes to 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." Why can it never be justified under any other than a "parental" form of government? If all laws regulating labor on account of its exhausting the body are essential attributes of a "parental" government, I fancy that those children who are prevented in engaging in certain employments by those laws, when they attain their majority and understand the beneficent effect of these "parental" restraints, will become earnest advocates of the "parental" form of government. And how do Sunday laws differ from these other than in the class of persons whom they affect?

When the legislature, in order to preserve the health of its constituents, enacts a law regulating the hours of labor in certain employments, and recognizing the fierceness of competition among the laboring classes prescribes a penalty for the breach of its provisions, is not such a law a proper exercise of the police power of the State, and will the supporters of such a statute have to seek the theory of "parental" government to justify its provisions? I take it, however, that the liberty of labor, so that its exercise will not conflict with the requirements of public policy, is part of the inheritance of every citizen of a free country which he inherits when he attains his majority, and the "liberty of labor at will" is not part of that inheritance, and if the legislature of a State can constitutionally pass ten or eight-hour laws which apply to six days in the week, why can they not pass twenty-four hour laws which shall apply to one day in the week, and shall these laws become unconstitutional merely because the day which the legislature selects happens to be the Sunday of the Christian religion? But the opponents of the constitutionality of Sunday laws may say, assuming that the right of the legislature to restrict a man from working is a valid exercise of the police power of the State, can the legislature also restrict a person's amusements when those amusements conform to all the requirements of public policy except the religious observance of Sunday? I think that this should

be answered in the affirmative, as the right to amusement is as much subject to the control of the police power of a State as the right to work. Mr. Ringgold concludes his argument by saying that the saving clauses of works of necessity and charity in these statutes betray their religious tendencies, because the test as to what constitutes a work of charity as applied by the courts is a religious one, but is not this test merely a convenient rule of construction, and does it work a preference of one religion over another?

Christianity, I take it, is part of the common law of this land, and among the essential doctrines of Christianity is the belief that one day in the week should be set apart for religious observances. Reading the constitutional prohibition of a preference of one religious sect over another, together with the common law doctrines as to Sunday, is not the object of the constitutional prohibition to prevent an established church or such a discrimination against any religious sect that the followers of that sect will be at a political disadvantage from the followers of another sect. Nor can the members of any religious sect be prevented by any act of the legislature, under this constitutional restriction, from exercising the rites of devotion prescribed by their religion, provided that in such exercise they do not conflict with the police regulations of the State. Certainly all religious sects are subject to the exercise of the police power of the State, and the acts of devotion practiced in some of the early religions of the world would certainly not be permitted in this country, even though their practice was taught as a religious duty, and though the statute forbidding the same gave a preference to the doctrines of the Christian religion over the doctrines of those particular religions, because every act of a citizen of a State is subject to the exercise of the police power of that State; and what acts conform to public policy in the State depends upon the teachings of good morals, which teachings also are dependent to a great extent upon the doctrines of the Christian religion.

The writer submits these views as possible answers to Mr. Ringgold's most able arguments.