

# LAW AND GOVERNMENT:

THE

ORIGIN, NATURE, EXTENT, AND NECESSITY

OF

DIVINE AND HUMAN GOVERNMENT,

AND OF

RELIGIOUS LIBERTY.

BY

HARMON KINGSBURY.

"Thy Commandment is exceeding broad."—Ps. 119 : 96.

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## PREFACE.

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TWENTY years ago, or more, a distinguished clergyman remarked, that "moral suasion," meaning good advice, was sufficiently efficacious, in regard to all matters connected with the first table of the Decalogue, to banish irreligion and immorality from the world, without the aid of human legislation. Such a remark, coming from such a source, arrested our attention at the time, and gave direction to much subsequent study of the principles of law and government, the results, mainly, of which, were embodied in this work years ago.

In the mean time, the public mind has been occupied, more and more, with discussions on topics here embraced ; much has been said which seemed calculated to weaken the obligations consequent on human government and the respect for law ; until it has been thought that good might be done by an effort to direct attention to the subject of **LAW AND GOVERNMENT**, in respect to their origin, nature, extent, and necessity, and to the nature and extent of **RELIGIOUS LIBERTY**.

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In these disquisitions no claim is set up for originality, or profundity of research. The Author will feel it to be a sufficient compensation for his toil if he has succeeded in collecting and arranging, for the consideration of the well-disposed of this generation, those *old truths*, by which our Pilgrim Fathers were guided, rather, which God has revealed to us, as he did to them and other ages, in his blessed Word.

In attempting to set forth the necessity and the obligation of LAW, it is by no means intended to undervalue the power of good advice, remonstrance, and entreaty. These means do in fact restrain multitudes from vice and irreligion. Yet there are other characters upon which their influence is hardly perceptible. Those who neither fear God nor regard man must be restrained by a power which can be both *seen* and *felt*, in the present life. Let good moral influences be multiplied as much as possible, but let the civil arm be at hand when these fail. Indeed, the existence of Law, with its penalty, is so manifestly right, and commends itself so to men's consciences, that it becomes, strictly speaking, moral influence, and may be termed an essential element of moral suasion.

It is wholly unreasonable to pretend that the views here presented, of the union of Law and good advice, in supporting good morals tends to a "union of Church and State;" on the contrary, neither government nor persuasion can fully perform its part, except

as it is free and independent of the other. The supporters of the strictest morals, are the best friends of the faithful administration of Law, and are the men who have ever resisted most strenuously and successfully the "union of Church and State."

If the common carpers about Church and State mean by their clamor to charge the friends of Law with a wish to give to the secular arm the right of controlling the conscience, or to give to any Church or ecclesiastical organization the power of controlling the government, or the right of *any* interference in the administration of the Law, the charge is false and slanderous.

But it by no means follows that civil government has nothing to do with religion, or religion nothing to do with government. Our Constitution recognizes religion as its basis:—not Paganism nor Mohammedanism, not Romanism nor sectarianism of any other sort, nor any organized form of human power, but *Christianity*—GENERAL CHRISTIANITY, as revealed to us in the sacred Scriptures.

The following discussion will show, beyond a rational doubt, that *the Bible is the fundamental Law of this nation*—THE GREAT FOUNTAIN OF COMMON LAW. By its principles all questions should be tried and settled.

To ascertain how far the present moral character of this nation, its laws and received opinions, are con-

formed to this STANDARD, and to recall it to its original profession and high destiny, is the great object of the subsequent pages.

In preparing most of these thoughts the Author has been greatly aided, especially as to *Part First*, by an esteemed and able jurist, and other literary gentlemen, whose services have contributed largely to its interest and value :—also he has made use of thoughts, and sometimes of words and sentences, in Sec. 3, Part I. :—from Rees' New Cyclopædia—Whewell's Astronomy and General Physics—Buck's Theological Dictionary ; and Combe on the Constitution of Man.

*New York, Jan., 1849.*

THE SABBATH:

BRIEF HISTORY

OF

LAWS, PETITIONS, REMONSTRANCES AND REPORTS,

WITH

FACTS AND ARGUMENTS,

RELATING TO THE

CHRISTIAN SABBATH.

BY

HARMON KINGSBURY.

"If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but his blood will I require at thy hand."—EZE. xxxiii.

"The profanation of the Sabbath is an offence against God and Religion."—  
BLACKSTONE.

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NEW YORK:

ROBERT CARTER, No. 58 CANAL STREET.

1840.

## LAWS OF THE STATES AND TERRITORIES.

It has proved a difficult task to obtain copies of all the latest enactments of the several States and Territories of these United States relating to the Sabbath; but though we may have failed to obtain them all, yet enough has been found to show that correct legislative action has once been had. It is painful, however, to say, that in some instances, the people have been receding from the high and righteous stand which they had taken. Acts of a different character from those which follow, and of a more recent date, may have been passed in some portions of our country, but the latest which we have seen will now be subjoined.

## MAINE.

In this State, traveling, ordinary labor, and business are prohibited on the Lord's day. Passed, 1834.

## NEW HAMPSHIRE.

*"Sec. 1st. Be it enacted by,"* &c. "That no tradesman, artificer, or any other person whatsoever, shall do or exercise any labor, business or work of their secular callings, (works of necessity and mercy only excepted,) \* \* on the first day of the week, commonly called the Lord's day, or any part thereof.

*"Sec. 2d. And be it further enacted,* That no person shall travel on the Lord's day between sun-rising and sun-setting, unless from necessity, or to attend public worship, visit the sick or do some office of charity, on penalty of," &c. Passed, 1799.

June 22, 1814, the Legislature, commenting on the second section, say, "That no license from a Justice of the Peace, for traveling on Sunday, will avail in behalf of any traveler, or carrier, with any team or carriage of burthen, or of any traveler in the style and capacity of a drover, with any horses, cattle, or other beasts: but all such license shall be utterly void."

In most of the States, all games, pastimes, amusements, recreations, sports, fishing, hunting and visiting are forbidden. Also the frequenting of places of public resort, except for moral and religious instruction, is prohibited.

## VERMONT.

*“An act to enforce the due observance of the Sabbath.*

“Considering that in every community, some portion of time ought to be set apart for relaxation from worldly labors and employments, and devoted to the social worship of Almighty God, and the attainment of religious and moral instruction, which are, in the highest degree, promotive of the peace, happiness and prosperity of the people. Therefore,

“*Sec. 1st. It is hereby enacted by,*” &c. “That the first day of the week shall be kept and observed, by the good people of this State, as a Sabbath, holy day, or day of rest from secular labors and employments; nor shall any person or persons [on that day] exercise any secular labor, business, or employment, except such as necessity and acts of charity shall require.” Passed, 1797.

## MASSACHUSETTS.

“*Sec. 1st. No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, (except only works of necessity and charity,)*” on the Lord’s day.

“*Sec. 2d. No person shall travel on*” that day, “except from necessity or charity.” Passed, 1791—1796.

## RHODE ISLAND.

“*Sec. 1st. Be, it enacted by,*” &c. “That no person in this State shall do or exercise any labor, or business, or work of his ordinary calling,” &c., “on the first day of the week, or suffer the same to be done by his children, servants or apprentices (works of necessity and charity only excepted).” Passed, 1679, 1750, 1784, 1798.

*Sec. 2d* forbids the employment of others to commit the aforesaid offences.

## CONNECTICUT.

*Sec. 2d* provides, “That no person shall, upon land or water, do any manner of secular business, work, or labor, (works of necessity and mercy excepted,)” on the Lord’s day.

“*Sec. 3d. No traveler, drover, wagoner, teamster, or any of*



their servants shall travel on the Lord's day, (except from necessity and charity.)" Passed, 1808.

In the revision of the laws of this State, 1821, Sec. 1st, we read, "Nor shall any traveler, drover, wagoner, or teamster travel on said day, except from necessity and charity;" and "it shall be the duty of the citizens of this State to attend the public worship of God, on the Lord's day; and that no person or persons shall do any secular business, work, or labor, [on that day] (works of necessity and mercy excepted.)"

But since Sunday mails have been established, the duty of certain citizens seems to be entirely disregarded; as may be seen in the compilation of laws ordered by the General Assembly of this State, in 1835, Sec. 7th. "No proprietor or proprietors, or driver of any coach, wagon, or sleigh, or other carriage, belonging to, or employed in any line of stages, or extra carriage; or proprietor or driver of any hackney coach, coachee, or chaise, sleigh, or other pleasure carriage, shall suffer or allow any person or persons to travel, except from necessity or charity, in such carriage on the Lord's day, on penalty of twenty dollars for every offence: Provided, that this act shall not extend to the owners or drivers of carriages employed for carrying the United States' mail through this State on the Lord's day."

What would the inhabitants of this State, from its earliest settlement down to 1810, have thought of such an exception? The bare suggesting of it would have called down upon its author the pity and indignation of ninety-nine-hundredths of all who then lived in the land of the Pilgrims. Once the good people of this State would not wink at the sin she now cherishes in her bosom. And who among her sons has inquired, why do ye so?

#### NEW YORK.

"Sec. 1st. *Be it enacted by,*" &c. "That there shall be no traveling, servile laboring, or working, (works of necessity and charity excepted,) \* \* or any unlawful exercises or pastimes by any person or persons within this State, on the first day of the week, commonly called Sunday." Passed, 1813.

Provision is made for those who uniformly keep the last day

of the week as a Sabbath; as is also the case in many of the other States; and for any person removing his family or household furniture, if such removal be not *commenced* on such day. But we find no provision for the Postmaster who changes and delivers the mail on that day.

## NEW JERSEY.

“*Sec. 1st. Be it enacted by,*” &c. “That no traveling, worldly employment or business, ordinary or servile labor or work, either upon land or water, (works of necessity and charity excepted,) \* \* shall be done or performed by any person or persons within this State, on the Christian Sabbath, or first day of the week, commonly called Sunday.” Passed, 1798.

No stages are allowed to be driven through this State on said day, except such as have the mail, and in cases of “necessity or mercy” clearly proved: and no wagoner, carter, drayman, drover, butcher, or any of his or their servants, shall ply, or travel with his or their wagons, carts or drays, or shall load or unload any goods, wares, or merchandise, or produce, or drive cattle, sheep, or swine, in any part of this State, on the first day of the week.”

In this and the two immediately preceding States, provision is made for the carrying of mails on the Lord’s day, and in this State for the Postmaster to labor on Sunday.

## PENNSYLVANIA.

“*Sec. 1st. If any person shall do or perform any worldly employment whatsoever on the Lord’s day, commonly called Sunday, (works of necessity and charity only excepted,)*” &c.; then follows the penalty. Passed, 1794.

## DELAWARE.

“*Sec. 1st. Be it enacted by,*” &c. “That if any person or persons within this State, \* \* shall do or perform any worldly employment, labor, or business whatsoever, upon the Lord’s day, commonly called Sunday, (works of necessity and charity only excepted,)” &c.; then comes the penalty.

“*Sec. 2d. And be it further enacted,* That if any carrier, ped

dlor, wagoner, or any driver of a traveling stage, wagon, or coachee, carter, butcher, or drover, with his horse, pack, wagon, stage, coachee, cart, or drove, shall travel or drive upon the Lord's day," &c.; then comes the penalty. Passed, 1795.

## MARYLAND.

"No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children, servants, or slaves, shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day, (works of necessity and charity always excepted.)" Passed, 1723.

## VIRGINIA.

"*Sec. 5th.* If any person, on the Sabbath day, shall himself be found laboring at his own, or any other trade or calling, or shall employ his apprentices, servants, or slaves, in labor, or other business, except it be in the ordinary household offices of daily necessity, or other works of necessity or charity;" then comes the penalty. Passed, 1792.

## DISTRICT OF COLUMBIA.

The same as in Maryland and Virginia.

## NORTH CAROLINA.

"*An act for the more effectual suppression of vice and immorality.*

"*Sec. 1st. Be it enacted by,*" &c. "That all and every person or persons whatsoever shall, on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety; and that no tradesman, artificer, planter, laborer, or other person whatsoever, shall, upon land or water, do or exercise any labor, business, or work of their ordinary calling (works of necessity and charity only excepted,) on the Lord's day, or any part thereof," &c.

## SOUTH CAROLINA.

"Whereas there is nothing more acceptable to God than the

true and sincere service and worship of him, according to his holy will, and that the holy keeping of the Lord's day is a principal part of the true service of God, which in many places of this province is so much profaned and neglected by disorderly persons;—1st, *Be it therefore enacted,*" &c. "That all and every person whatsoever, shall, on every Lord's day, apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and having no reasonable or lawful excuse, on every Lord's day shall resort to their parish church, or some other parish church, or some meeting, or assembly of religious worship," &c.

*Sec. 2d* forbids the worldly labor, business or work of all "tradesmen, artificers, workmen, laborer, or any other person, [on the Lord's day,] (works of necessity and charity only excepted.)"

*Sec. 4th* enjoins, "That no drover, wagoner, butcher, higler, they or any of their servants, or any other traveler or person whatsoever, shall travel on the Lord's day by land or water," except to and from a place of religious worship, and to visit the sick, &c.

*Sec. 8th* prohibits the working of slaves or servants on Sunday. Passed, 1712.

#### GEORGIA.

The preamble is nearly verbatim as the last above written.

*Sec. 1st* requires all persons to attend public worship.

*Sec. 2d* forbids, in language similar to the above, all labor "(except works of necessity and charity,)" on the Lord's day. Traveling and the working of slaves are also prohibited on that day. Passed, 1803.

#### FLORIDA.

Apprentices, servants, or slaves, are not allowed to labor or be employed in business on Sunday, "(works of necessity and charity excepted.)" Passed, 1828.

## ALABAMA.

"*Sec. 1st.* No worldly business or employment, ordinary or servile work, (works of necessity and charity excepted,) \* \* shall be done or performed by any person or persons within this territory on the Christian Sabbath," &c.

"*Sec. 2d.* No wagoner, carter, drayman, drover, butcher, or any of his slaves or servants, shall ply or travel" \* \* load or unload, or drive cattle in any part of this territory on Sunday. Passed, 1803.

## MISSISSIPPI.

*Sec. 2d* enjoins, "That no wagoner, carter, drayman, drover, butcher, or any of his slaves or servants, shall ply or travel with his wagon, cart, or dray," load or unload, or drive cattle, sheep, or swine, &c., on Sunday.

*Sec. 4th.* All labor, by any person, either free or bond, "(except works of necessity or charity,)" is forbidden in this State on Sunday. Passed, 1822.

## LOUISIANA.

No law has been found in regard to the observance of the Sabbath in this State.

## ARKANSAS.

"*Resolved,* by the General Assembly of the Territory of Arkansas, That the several justices of the peace, and other civil officers of this territory, in their respective districts, be requested to take special notice of and bring to justice, all offenders of the laws of this territory providing for keeping holy the Sabbath day."

The laws prohibiting Sabbath desecration referred to have not been found, but the above is evidence that such do exist.

## TENNESSEE.

"*Sec. 1st. Be it enacted,*" &c. "That if any merchant, artificer, tradesman, farmer, or any other person, shall be guilty of

exercising any of the common avocations of life, or of causing or permitting the same to be done by his, her or their children or servants, (acts of real necessity or charity excepted,) on the Lord's day," &c.; then comes the penalty:

"*Sec. 2d.* All and every person or persons whatsoever, shall, on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety," and all labor on land or water, "(except works of necessity and charity,)" is prohibited on that day. Passed, 1803.

## KENTUCKY.

"*Sec. 36th.* If any person, on the Sabbath day, shall himself be found laboring at his own or any other trade or calling, or shall employ his apprentices, servants, or slaves, in labor or other business, whether the same be for profit or amusement, (and no work or business shall be done or performed on the Sabbath day, unless it be the ordinary household offices of daily necessity, or other works of necessity or charity,) he shall forfeit," &c. Passed, 1822.

## MISSOURI.

*Sec. 28th* prohibits all labor on the first day of the week, "except works of necessity and charity;" nor are Courts permitted to sit on Sunday, except to receive a verdict or discharge a jury;—neither are they allowed to adjourn to that day. Approved, 1835.

## ILLINOIS.

*Sec. 1st* prohibits disturbing the peace and good order of society by labor or amusement on the Lord's day.

*Sec. 2d* prohibits noise and amusement, calculated to disturb the peace on that day. Passed, 1827.

Would not stage and boat horns, and the rumbling of carriages on Sunday, be a breach of this law?

## INDIANA.

*Sec. 1st* prohibits work at common labor on Sunday. Passed, 1817.

## OHIO.

"*Sec. 1st. Be it enacted*" &c. "That if any person of the age of fourteen years and upwards, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, shooting, or at common labor, (works of necessity and charity only excepted)"—then follows the penalty; and exceptions for those who keep the seventh day as a Sabbath,—those who are emigrating with their families,—watermen who wish to land their passengers; superintendents, or keepers of toll bridges, who wish to attend to the same; and ferrymen. Passed, 1831.

## MICHIGAN.

Believing "that in every community, some portion of time ought to be set apart for relaxation from worldly care and employments, and devoted to the social worship of Almighty God, and the attainment of religious and moral instruction, which are in the highest degree promotive of the peace, happiness, and prosperity of a people," Therefore, "*Be it enacted* by the Governor, and Judges of the Territory of Michigan, That the first day of the week shall be kept and observed by the good people of this Territory, as a Sabbath, holy day, or day of rest from all secular labor, or employments, (works of necessity and charity excepted.)"

## LAW OF CONGRESS.

"*Sec. 3d.* And he [the Postmaster-General] shall provide for carrying the mail of the United States by stage, carriages, or horses, as he may judge most expedient; and as often as he, having regard to the productiveness thereof as well as other circumstances, shall think proper. \* \* He shall, also, have power to prescribe such requisitions to the deputy Postmasters, and others employed under him, as may be found necessary."

"*Sec. 5th.* That if any person shall obstruct or retard the pas-