Just How Likely Is a National Sunday Law?

Editor's Note: Below I would like to share selected portions of a sermon given on August 19, 1989 at the Westminster Seventh-day Adventist church (Westminster, Maryland) by Frank D. Coleman, a practicing attorney.[1] Only his opening remarks, dealing with Rev 13, have been omitted as being already familiar to readers of *Historicism*.

At issue in the second part of the sermon is whether Ellen G. White's warning that restrictive Sunday laws will one day be enacted here in America, both locally and nationally, could ever be fulfilled. What she says concerning Sunday legislation might seem very remote to some, in view of the religious freedoms we have always enjoyed here in the past and the guarantees enshrined in our Constitution that they will continue to be safeguarded indefinitely. But to an attorney Ellen White's warnings are not unlikely at all. We now let Mr. Coleman resume his talk and explain why.

The First Amendment

What I want to know is, what do we do with the First Amendment? What do we do with the United States Constitution? What do we do with, "[They] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ."?[2] How do we get around that? Is the Spirit of Prophecy leading us correctly?

We know that in September 1787 the United States Constitution was presented to the states for ratification. It was printed in the newspapers and disseminated throughout the states. And we also know from reading what occurred that there was no greater point of dissension with the Constitution than the fact that it did not contain a Bill of Rights.

Thomas Jefferson was in France serving as our ambassador, our American Minister, and he wrote to James Madison that the most important thing that he did not like was the fact of the absence of a Bill of Rights. Now some were opposed to the creating of the Bill of Rights because they thought that the enumeration of some rights would indicate that there were other rights not mentioned which were not being reserved for the people. In fact, Alexander Hamilton wrote, "Why declare what the government can't do, when no power has been granted to it to do what the people are concerned about it not doing?"[3] And Noah Webster sarcastically wrote that to complete such a list of rights a provision was necessary

> ". . . that Congress shall never restrain any inhabitant of America from eating and drinking, at seasonable times, or prevent his lying on his left side, in a long winter's night, or even on his back, when he is fatigued by lying on his right side."[4]

Nevertheless, it was not possible for the United States Constitution to be ratified without promises that there would be a Bill of Rights, and thus, as soon as it was ratified the work began

on a Bill of Rights. And the first amendment that came out of that work, and the first clause of the first amendment, and the first right reserved to the people was that, "[They] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." It is clear as can be, is it not? What the Spirit of Prophecy says cannot happen, at least not without a constitutional amendment, because the language is clear. It says "no law." There is no equivocation; there is no ambiguity; it is clear. No establishment of religion; no law prohibiting the free exercise thereof.

Interpretation of the First Amendment

Well, let us analyze it just a little closer. We learn by looking at it that the clause is divided into two provisions, referred to as an establishment clause--thus, "[They] shall make no law respecting an establishment of religion"--and what they call a free exercise clause--thus "[They shall make no law] prohibiting the free exercise thereof; . . ." It is two clauses.

The "free exercise" clause

Let's look first at the "free exercise" clause because that is a little easier. Further analysis tells us that "free exercise" doesn't mean "free exercise", and that "no law" doesn't mean "no law."

In the case of Reynolds v. the United States (an 1878 case), there was a member of the Mormon Church who had been convicted for his polygamous practices of having more than one wife, and the Supreme Court in rendering the decision that was to address his dissent that this violated his practice of the freedom of religion, says that:

> It could not have been intended by the framers of the Constitution that the words of the amendment should be taken literally. Suppose one believed that human sacrifices were a necessary part of religious worship, or that a wife religiously believed that she should throw her body and burn it upon that of her dead husband, would it seriously be contended that the government should not prevent these practices from happening?[5]

Then in another case (an 1890 case), Davis v. Beason, the Supreme Court clearly says,

> It was never intended or supposed that the Amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of society. . . . However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subject of punitive legislation. There have been sects which deny as part of their religious tenets that there should be any marriage tie, and advocate promiscuous intercourse of the sexes as prompted by the passions of their members. And history discloses the fact that the necessity of human sacrifices, on special occasions, has been a tenet of many sects. Should a sect of either of these kinds ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretense that, as religious beliefs, their supporters would be protected in their exercise by the Constitution of the United States.6

And so, the conclusion is that free exercise really means that the government can restrict the expression or exercise of religion by showing a compelling governmental interest, such as saving lives, and that there is no alternative for the protection of that governmental interest than the limitation on the free exercise of religion. And so, is this how the Spirit of Prophecy will come to pass and will be fulfilled? A law concerning Sunday observance is determined to be so important a governmental interest as to be deemed compelling, and that there is no alternative for its protection.

The "establishment" clause

Well, let us look a little further. Let us look at this establishment clause: ". . . no law respecting an establishment of religion; . . ." Now exactly what that means has been addressed in an important Supreme Court case. Let me read it to you, because it should give us some reassurance. In Everson v. the Board of Education it says that,

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against the establishment of religion by law was intended to erect [Ah, some familiar words!] 'a wall of separation between church and state.'"[7]

That gives us some satisfaction and some great relief, does it not? "A wall of separation between church and state." Praise the Lord! Now let me read for you from Article 27, Section 492 of the Annotated Code of the State of Maryland, as it exists today, August 19, 1989:

> No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fowling, hunting, or unlawful pastime or recreation.[8]

And that which we just read, which we thought was so clear, is not so clear after all. Let me read again from Title 18, Section 7361 of the Code of the State of Pennsylvania, as it exists today, August 19, 1989:

> A person is guilty of a summary offense if he does or performs any worldly employment or business whatsoever on Sunday (works of necessity, charity, and wholesome recreation excepted). . . . [As used in this section] "wholesome recreation" means golf, tennis, boating, swimming, bowling, basketball, picnicking, shooting at inanimate targets and similar healthful or recreational exercises and activities.[9]

The law as it exists today! Well, how can that be? I don't understand. I thought it was so clear. There was a Supreme Court case (McAllen v. the State of Maryland, a 1961 case) that tells us exactly how it can be, which is a case that addressed the Section of the Maryland law which I just read to you--Article 27, Section 492. In that case the Supreme Court tells us with regard to that provision, that there is no dispute, that the original laws which dealt with Sunday labor were motivated by religious forces, but what we must decide today is whether present Sunday legislation, having undergone extensive changes from the earliest forms, still retains its religious character.

You see, when the colonies were formed they brought with them a large history of English common law that pertained to Sunday closing laws.

In 1237, Henry III forbade the frequenting of markets on Sunday; the Sunday showing of wools at the staple was banned by Edward III in 1354; in 1409, Henry IV prohibited the playing of unlawful games on Sunday; Henry VI proscribed Sunday fairs in church yards in 1444 and, four years later, made unlawful all fairs and markets and all showings of any goods and merchandise; Edward VI disallowed Sunday bodily labor by several injunctions in the mid-sixteenth century; various Sunday sports and amusements were restricted in 1625 by Charles I.[10]

And the law of the colonies at the time of the Revolution had Sunday closing laws which were largely based upon a statute known as 29 Charles II, section 7, passed in 1677, which reads like this:

> "For the better observation and keeping holy the Lord's Day, commonly called Sunday: [You have heard those words before!] be it enacted that all the laws enacted and in force concerning the observation of the day, *and repairing to the church thereon*, be carefully put in execution; and that all and every person and persons whatsoever shall upon every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, laborer, or other person whatsoever, *shall do or exercise any worldly labor or business or work* of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted); and that no person or persons whatsoever shall publicly cry, show forth, or expose for sale any wares, merchandise, fruit, herbs, goods, or chattels, whatsoever, on the Lord's day, or any part thereof." (Emphasis added.)[11]

And amazing as it may be, we find that the settlers of this great land came here fleeing religious persecution, and we would think that when they came here one of the first things they would have done is say, "Everyone can practice their religion as they see fit. Please let us practice our religion as we see fit." But you know the very first thing they did was to set up laws concerning their religion and began persecuting others who did not see their way. And so the colonies had Sunday laws. Starting in 1650 the Plymouth Colony proscribed servile work, unnecessary traveling, sports, and the sale of alcoholic beverages on the Lord's Day, and enacted laws concerning church attendance. The Massachusetts Bay Colony and the Connecticut and New Haven Colonies enacted similar prohibitions.

The religious orientation of the colonial statutes was equally apparent. For example, it was said, "And to the end the Sabbath may be celebrated in a religious manner, . . ."[12] They enacted laws.

A 1653 enactment spoke of Sunday activities "which things tend much to the dishonor of God. The reproach of religion, and the profanation of His holy Sabbath, the sanctification whereof is sometimes put for all duties immediately respecting the service of God." . . . These laws persevered after the Revolution and, at about the time of the First Amendment's adoption, each of the colonies had laws of some sort restricting Sunday labor.[13]

However--and here we begin to see the Supreme Court taking a right-hand turn from this road they started down--it identifies that early on there were other reasons recognized for these laws. For example, in the mid-1700's Blackstone, the famous legal scholar from whom today we have even yet Blackstone's law dictionary, wrote:

> "[T]he keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes; which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness."[14]

And so we see that there is a turning away from the religious reasons for these laws. And in fact, the Supreme Court notes that the proponents of Sunday closing legislation are no longer exclusively representative of religious interests. Recent New Jersey Sunday legislation was supported by labor groups and trade associations. Today they have other supporters. The Supreme Court quotes from an earlier Supreme Court case, setting forth this same reason why it is good to have such laws:

> "Laws setting aside Sunday as a day of rest are upheld, not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and work shops and in the heated rooms of our cities; and their validity has been sustained by the highest courts of the state." . . . "In its enactment, the Legislature has given the sanction of law to a rule of conduct which the entire civilized world recognizes as essential to the physical and moral well-being of society. Upon no subject is there such a concurrence of opinion among philosophers, moralists and statesmen of all nations, as on the necessity of periodical cessations from labor. One day in seven is the rule, founded in experience, and sustained by science. * * * The prohibition of secular business on Sunday is advocated on the ground that by it the general welfare is advanced, labor protected, and the moral and physical well-being of society promoted."[15]

And so, the Supreme Court tells us that the establishment clause does not ban law which merely coincides with religious laws as well. It spells out that

> . . . the "Establishment" Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions. In many instances, the Congress or state legislatures conclude that the general welfare of society, wholly apart from any religious considerations, demands such regulation. Thus, for temporal purposes, murder is illegal. And the fact that this agrees with the dictates of the Judaeo-Christian religions while it may disagree with others does not invalidate the regulation. So too with the questions of

> adultery and polygamy. . . . The same could be said of theft, fraud, etc., because those offenses were also proscribed in the Decalogue [i.e., the Ten Commandments].[16]

Conclusion

And so, the conclusion is reached that in light of the evolution of our Sunday closing laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is not difficult to discern that as presently written and administered, most of them, at least, are of a secular rather than of a religious character, and that presently they bear no relationship to establishment of religion, as those words are used in the Constitution of the United States.

Throughout this century and longer, both the federal and state governments have oriented their activities very largely toward improvement of the health, safety, recreation and general well-being of our citizens. . . . Sunday Closing Laws, like those before us, have become part and parcel of this great governmental concern wholly apart from their original purposes or connotations. The present purpose and effect of most of them is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the state from achieving its secular goals. To say that the States cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare, rather than one of mere separation of church and state.[17]

And so, that law which I read to you, presently as it exists as part of the Code of Maryland is constitutional and a legal law for secular reasons--not considerations of religion.

But you say to me, Wait a second. Isn't there a better way to go about accomplishing that same thing? Aren't there some alternatives that could have been explored? For example, why not give each person--if we are so concerned about them having one day of rest--the right to designate his sabbath. Then employers must give that person off on that day? Wouldn't that accomplish the same thing? Well, the Supreme Court thought of that, and they said, No, it's not the same.

> It is true that if the State's interest were simply to provide for its citizens a periodic respite from work, a regulation demanding that everyone rest one day in seven, leaving the choice of that day to the individual, would suffice.
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> However, the State's purpose is not merely to provide a one-day-in-seven work stoppage. In addition to this, the State seeks to set one day apart from all others as a day of rest, repose, recreation, and tranquility–a day which all members of the family and community have the opportunity to spend and enjoy together, a day in which there exists relative quiet and disassociation from the everyday intensity of commercial activities, a day in which people may visit friends and relatives who are not available during working days. . . .
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> Moreover, it is common knowledge that the first day of the week has come to have special significance as a rest day in this country. People of all religions and people with no religion regard Sunday as a time for family activity, for visiting friends and relatives, for late sleeping, for passive and active entertainments, for dining out, and the like.[18]

And so, the Supreme Court says, No, that is not good enough. Well, you say to me, what about granting an exception to those people who regard another day--Monday, Wednesday, Saturday--as their day of religion, as their sabbath? Well, not long ago the Maryland law was amended. It originally did not have this exclusion. But now it does, and it says that this law

> . . . shall not apply:
> (1) To any person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath [Praise the Lord!] and who actually [It doesn't stop there!] refrains from secular business and labor on that day, and whose business establishment or establishments or employer's business establishment or establishments (whether a sole proprietorship, partnership, or corporation) are actually closed on that day; . . .[19]

As a prosecutor, I would seek to prove that you don't fit that exception. Tony works for the phone company. Is it closed on Saturday? His employer is not closed on Saturday. And what about your individual activities? Do you conscientiously believe? And I know that Tanya works in a nursing home from time to time on Saturday. Is she disengaging from secular business on that day? And I am in partnership with other attorneys. I can't control them if they want to meet with a client on Saturday. And thus, [because of] my partnership with those individuals with whom I am associated (and they conduct business on Saturday), I don't fit the exception.

So I suggest to you that the laws are already on the books. I suggest that the basis for their passage is already approved. I suggest to you that their constitutionality has already been tested. I suggest that only the penalty needs to be changed, and the Spirit of Prophecy will be fulfilled.

Note: I would like to thank Mr. Coleman, first, for delivering the present sermon, second, for releasing it to *Historicism* for publication, and third, for giving generously of his time to clarify points I did not understand during the editing process. I would also like to thank my mother, Margaret V. Hardy, for transcribing the tape. This was an invaluable service! Quotations from legal documents have been copy edited against the documents themselves rather than the tape. Also, unnoticeable liberties have been taken with the wording in a handful of passages.

[1]Frank Coleman graduated from Columbia Union College in 1972 and then studied law at the University of Baltimore (1977). From 1979-83 he served as Assistant State's Attorney for Carroll County, Maryland. Since 1986 he has had a partnership (Silbiger & Coleman) where he specializes in criminal, personal injury, and domestic cases.

[2]Article 1 goes on to say, "or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (quoted in Clinton Rossiter, ed., *The Federalist Papers: Alexander Hamilton, James Madison, John Jay* [New York: Mentor, 1961], p. 542).

[3]The exact wording of this statement is: "[A Bill of Rights] would contain various exceptions to powers which are not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?" (Alexander Hamilton, see ibid., no. 84, pp. 513-14).

[4]Quoted in Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constiutional Convention: May to September 1787* (Boston: Little, Brown and Company, 1966), p. 246.

[5]98 U.S. [*U.S. Supreme Court Reports*] 145 (1878).
[6]133 U.S. 333 (1890).
[7]Quoted in McGowan v. State of Maryland, 366 U.S. 443; 81 S.Ct. 1101; 6 L. Ed. 2d 393 (1961).
[8]27 Md. [*Maryland Annotated Code*] 492, 1988 Supplement, p. 529.
[9]18 Pa.C.S.A. [*Pennsylvania Consolidated Statutes Annotated*] 7361.
[10]366 U.S. 431-432.
[11]Ibid., 432. "(Emphasis added.)" is part of the quotation.
[12]Ibid., 433.
[13]Ibid.
[14]Ibid., 434.
[15]Ibid., 436.
[16]Ibid., 442.
[17]Ibid., 444-45.
[18]Ibid., 451, 452.
[19]27 Md. 492, 1988 Supplement, p. 529.