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Cover Page Footnote

Carmen Tortora Professor of Law, Quinnipiac University School of Law. Thanks to Jeff Cooper, Philip Hamburger, Linda Meyer, and Sarah French Russell for their helpful comments on earlier drafts of this article. I'd also like to blame them for any remaining errors, but they're all my fault

NEW LIGHT ON THE HISTORY OF FREE EXERCISE EXEMPTIONS: THE DEBATES IN TWO EIGHTEENTH-CENTURY STATE LEGISLATURES

Stanton D. Krauss+

As Justice Gorsuch pointed out in his concurring opinion in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719, 1734 (2018), there is an ongoing debate about whether the First Amendment ever requires the recognition of religion-based exemptions to neutral and generally applicable laws. The leading proponent of such exemptions has argued that the original understanding of the Free Exercise Clause supports his claim, and that the existence of such exemptions in preconstitutional American statutes—which he believed to have been granted because legislators thought them mandated by "the free exercise principle"—is one factor pointing in that direction. His initial, and most influential opponents reviewed the historical record and rejected both these positions. But none of these men presented a single instance in which a lawmaker explained his support or opposition to a religion-based statutory exemption. Nor have the academics and practicing lawyers who have continued this constitutional debate.

This article, which presents and analyzes the debates in two eighteenth-century state legislatures that adopted Sunday closing laws including exemptions for sabbatarians (people whose religious beliefs required them to regard Saturday as the Sabbath and refrain from working on that day), thus fills a key gap in the literature. The evidence presented here undermines the pro-exemption claims. And it points to the need for further research into newspaper accounts of Founding Era debates in American state legislatures.

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INTRODUCTION

In a provocative 1990 article, Michael McConnell argued that the original understanding of the Free Exercise Clause supports the claim that the Clause requires the recognition of exemptions to many generally applicable secular laws.[1] One factor he cited in support of this conclusion was the recognition of religion-based exemptions in preconstitutional American statutes,[2] which he asserted "seem[ed]" to have been "granted because legislatures believed the free exercise principle required them[.]"[3] A trio of scholars responded by canvassing the historical record and rejecting both of these positions.[4] Yet none of those four men presented a single statement in which a member of one of those legislatures explained his support or opposition to a religion-based statutory exemption. Many years later, the existence of a constitutional right to religion-based exemptions "remains controversial,"[5] these works remain the leading

1. Michael McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409, 1410 (1990).

2. *Id*. at 1466–73.

3. *Id*. at 1473.

4. *See* Gerard V. Bradley, *Beguiled: Free Exercise Exemptions and the Siren Song of Liberalism*, 20 HOFSTRA L. REV. 245, 264, 266–67 (1991); Philip A. Hamburger, *A Constitutional Right of Religious Exemption: An Historical Perspective*, 60 GEO. WASH. L. REV. 915, 917, 929–31 (1992); Ellis M. West, *The Right to Religion-Based Exemptions in Early America: The Case of Conscientious Objectors to Conscription*, 10 J.L. & RELIGION 367, 370–71, 378 (1993).

5. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n., 138 S. Ct. 1719, 1734 (2018) (Gorsuch, J., concurring) (citing McConnell, *supra* note 1, and Hamburger, *supra* note 4). For more recent contributions to this conversation, *see, e.g.*, Brandon J. Nestor, *The Original Meaning and Significance of Early State Provisos to the Free Exercise of Religion*, 42 HARV. J.L. & PUB. POL'Y 971, 972 (2019); Vincent Phillip Muñoz, *Two Concepts of Religious Liberty: The Natural Rights and Moral Autonomy Approaches to the Free Exercise of Religion*, 110 Am. Pol.

historical treatments of the question, and this evidentiary void remains undisturbed.

The last of those streaks ends here. After sketching the history of the reporting of legislative proceedings in eighteenth century England and America, this paper will examine the legislative histories of two Sunday closing laws—one enacted in New York in 1788, the other in New Jersey a decade later—that included limited exemptions for people whose religious beliefs required them to observe the Sabbath on Saturday. While the newspaper reports of the lower houses' debates show that some Assemblymen favored the exemption for the reason McConnell suggested, these reports, and the legislative histories as a whole, undermine McConnell's claims. And they point to the need for further research into newspaper accounts of Founding Era debates in American state legislatures.

I. PUBLIC ACCESS TO LEGISLATIVE DEBATES: A BRIEF HISTORY

The failure of McConnell and his interlocutors to adduce any direct evidence of why early legislators voted to adopt a religion-based statutory exemption to a generally applicable secular law (or why they opposed one) might not surprise people familiar with the literature on the history of the reporting of Anglo-American legislative proceedings. Since the seventeenth century, Parliament "believed . . . that its debates were neither [to be] seen nor heard by the public."[6] Thus, "strangers" were formally forbidden to attend its sessions and were subject to eviction at the request of any Member. In addition, the unauthorized disclosure of anything said or done in either House was punishable as a breach of parliamentary privilege.[7] However, after the expiration of the Licensing Act

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Sci. Rev. 369, 369 (2016); and Ellis West, *The Case Against a Right to Religion-Based Exemptions*, 4 NOTRE DAME J.L. ETHICS & PUBL. POL'Y 591, 592–93 (2014). [After this article was accepted for publication, three Justices advocated the recognition of such a right. *See* Fulton v. Philadelphia, 141 S. Ct. 1868, 1882–1931 (2021) (Alito, J., joined by Thomas and Gorsuch, JJ., concurring in the judgment). With respect to the historical questions discussed in this paper, their analysis follows McConnell's.]

6. Charlene Bangs Bickford, *Throwing Open the Doors: The First Federal Congress and the Eighteenth-Century Media*, *in* INVENTING CONGRESS: ORIGINS AND ESTABLISHMENT OF THE FIRST FEDERAL CONGRESS 166, 167 (Kenneth R. Bowling & Donald R. Kennon eds., 1999).

7. On the Parliamentary privileges referred to in the text, see WILLIAM R. ANSON, THE LAW AND CUSTOM OF THE CONSTITUTION 142–44 (1886); Bickford, *supra* note 6, at 167–69; LAURENCE HANSON, GOVERNMENT AND THE PRESS 1695–1763, at 2–3, 32–33, 73–83 (1936); KENNETH MACKENZIE, THE ENGLISH PARLIAMENT 58–62 (1950); DUDLEY JULIUS MEDLEY, A STUDENT'S MANUAL OF ENGLISH CONSTITUTIONAL HISTORY 271–73 (4th ed. 1907); J.R. POLE, POLITICAL REPRESENTATION IN ENGLAND AND THE ORIGINS OF THE AMERICAN REPUBLIC 402–04 (1966).

Two further facts should be noted. First, the publication of anything that might tend to undermine the reputation of any Member of Parliament, or of either or both Houses thereof, was punishable in the offended House as breach of privilege and in the courts as seditious libel. *See* LEONARD W. LEVY, EMERGENCE OF A FREE PRESS 7–12, 14 (1985). Second, the Commons regularly ordered the publication of its votes and proceedings, as recorded by its clerk. These documents reported actions taken, not words spoken in debate. *See* MACKENZIE, *supra*, at 59–60

in 1695, the public's interest in political matters and the political interests of the Members themselves made the effectuation of the latter privilege a practical impossibility. At last, while the House of Commons sporadically continued to enforce its ban on the presence of strangers, it stopped challenging the unauthorized publication of its debates in the press after a spectacular 1771 incident involving John Wilkes, and the Lords (whose turn it was to be challenged by Wilkes) soon did likewise.[8]

The legislatures in the colonies that were to rebel in 1776 claimed the same privacy-protective privileges as their role model in London, and printers on this side of the Atlantic seem generally to have been content not to report those bodies' debates. But the imperial crisis and the successful revolution that followed led to significant changes, starting with the welcoming of outsiders to hear those debates. The installation of a public gallery by the Massachusetts House of Representatives in 1766[9] meant that for "the first time in any colony . . . ordinary people could come to see their elected representatives debate and vote on particular issues."[10] The Pennsylvania Assembly opened its doors to voters in 1770,[11] and Pennsylvania, New York, and Vermont enshrined a qualified open doors requirement in their new constitutions in 1776 and 1777.[12] Within a few years all of the other state legislatures were admitting spectators,[13]

(In this country, colonial and early state legislatures published similar journals. For representative extracts, see App. I, Items I.1–3, II-V, VII, VIII, IX.2 & 3, and X-XIV; and App. II, Items I.1 & 7, II, III.2, and IV).

8. *See* ANSON, *supra* note 7, at 145; Bickford, *supra* note 6, at 169–70; MEDLEY, *supra* note 7, at 273–74.

9. *See* POLE, *supra* note 7, at 69–70.

10. GARY B. NASH, THE UNKNOWN AMERICAN REVOLUTION: THE UNRULY BIRTH OF DEMOCRACY AND THE STRUGGLE TO CREATE AMERICA 98 (2006). In the same year, another gallery was built by Virginia's House of Burgesses, but only Burgesses' guests and Councilmen were permitted to observe debates therefrom. S.M. Pargellis, *The Procedure of the House of Burgesses*, 7 WM. & MARY Q. (2d Ser.) 73, 75 (1927). In May of 1776, the revolutionary Convention confined admission to the former class of visitors. Proceedings of the Convention of Delegates, Held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday, the 6th of May, 1776, *in* 6 PETER FORCE, AMERICAN ARCHIVES (4TH SER.): CONTAINING A DOCUMENTARY HISTORY OF THE ENGLISH COLONIES IN NORTH AMERICA, FROM THE KING'S MESSAGE TO PARLIAMENT, OF MARCH 7, 1774, TO THE DECLARATION OF INDEPENDENCE, BY THE UNITED STATES 1509, 1542 (1837) (Order of May 26, 1776).

11. *See* POLE, *supra* note 7, at 278.

12. *See* PA. CONST. OF 1776, sec. 10, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS 3085 (Francis Newton Thorpe ed., 1909); N.Y. CONST. OF 1777, art. XV, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra*, at 2632; VT. CONST. OF 1777, ch. II, sec. XII, *reprinted in* 6 THE FEDERAL AND STATE CONSTITUTIONS, *supra*, at 3744.

13. Some were constitutionally required to do so. *See, e.g.*, DEL. CONST. OF 1792, art II, sec. 9, *reprinted in* 1 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 571; KY. CONST. OF 1792, art I, pt. 21, *reprinted in* 3 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 1266; N.H. CONST. OF 1792, pt. 2d, sec. VIII, *reprinted in* 4 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 2476; PA. CONST. 1790, art I, sec 15, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3094; TENN. CONST. OF 1796, art. I, sec. 19, *reprinted in* 6 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3416; VT. CONST.

at least to their lower houses.[14] Moreover, the Pennsylvania and Vermont constitutions specifically provided, "[t]he printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government."[15] Nonetheless, one of our leading historians has suggested that the first American newspaper "to report debates without legislative harassment" may have been the "*Charleston Evening Gazette*, which in 1785 began to cover debates in the South Carolina House of Representatives."[16] And another wrote that the 1786 debate in the Pennsylvania General Assembly about reviving the Bank of North America's charter is "the only important one we have recorded of state legislative proceedings in the 1780s[.]"[17]

II. THE LEGISLATIVE HISTORY OF THE RELIGION-BASED EXEMPTION IN NEW YORK'S AN ACT FOR SUPRESSING IMMORALITY (1788)

However, it turns out that this last statement is wrong. The proof lies in an item that first appeared in New York's *The Daily Advertiser* of February 22, 1788.[18] This article reported events that had occurred in the Assembly ten days earlier. Sitting as a Committee of the Whole (COTW), the House was considering a bill produced by Assemblyman Samuel Jones and Speaker Richard Varick, who had been appointed in 1786 to collect, revise, and digest the statutes

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1786, ch. II, pt. XIII, *reprinted in* 6 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3757; VT. CONST. OF 1793, ch. II, sec. 13, *reprinted in* THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3767. Others, like Connecticut, *see infra* note 14, did so by choice. The times, means, and motives of their actions merit scholarly examination.

14. On the one hand, the constitutional provisions cited in notes 12 and 13 applied to both houses in all the states with bicameral legislatures. But in some states, sunshine came later to the upper than the lower chamber. For example, while its House of Representatives opened its doors to the public in the eighteenth century, Connecticut's upper house, the Council of Assistants, met in private until the adoption of the state's constitution of 1818. *See* CONN. CONST. OF 1818, art. III, sec. 11, *reprinted in* 1 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 540; 19 THE PUBLIC RECORDS OF THE STATE OF CONNECTICUT 201 (2007). And on the federal level, the House began allowing the public to witness its proceedings a week into its first session, *see* Charlene Bangs Bickford, *Public Attention is Very Much Fixed on the Proceedings of the New Congress": The First Federal Congress Organizes Itself*, *in* INVENTING CONGRESS: ORIGINS AND ESTABLISHMENT OF THE FIRST FEDERAL CONGRESS, *supra* note 6, at 138, 141, 146, but the Senate continued to meet behind closed doors until 1794, *see* Roy Swanstrom, *The United States Senate, 1787-1801: A Dissertation on the First Fourteen Years of the Upper Legislative Body* 238–52, *reprinted as* S. DOC. NO. 64 (1962).

15. *See* PA. CONST. OF 1776, sec. 35, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3090; *see also* VT. CONST. OF 1777, ch. II, sec. XXXII, *reprinted in* 6 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 3746–47.

16. Bickford, *supra* note 6, at 171. For a 1773 South Carolina proceeding for the unauthorized publication in the *South-Carolina Gazette* of a Protest written and submitted to the Council (which deemed itself the Upper House of the colony's legislature) by two of its members, see *Powell's Case*, *reported in* 2 NEWSPAPER REPORTS OF DECISIONS IN COLONIAL, STATE, AND LOWER FEDERAL COURTS BEFORE 1801, at 1328, 1328–56 (Stanton D. Krauss ed., 2018).

17. GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 256 (1991).

18. The relevant portions of this article may be found in Item IX of Appendix I.

then in force in the state.[19] The first clause of that bill, which was based upon a 1695 statute the revisers believed still to be in effect, forbade ordinary labor (among other things) on Sunday.[20] Egbert Benson, who had been the Empire State's Attorney General since 1777 and was one of Dutchess County's representatives in this session of the Assembly,[21] moved to reject that clause.[22] His motion was seconded by John Dongan, and the newspaper reported the ensuing discussion and vote.

Benson asserted that the clause was unconstitutional, and its colonial predecessor invalid, because they violated Article XXXVIII of New York's Constitution of 1777, which provided:

> that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind: *Provided*, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.[23]

His argument was straightforward and invoked the example of the state's Jews by way of illustration. Because Jews observe the Sabbath on Saturday, the clause would force them to forego two days of work, rather than one, and would therefore amount to a discriminatory tax on the "free exercise" of their religion. In addition, Sunday observers would be free by working to disturb the sanctity of the Jews' Sabbath, which would independently deny Jews the equality required by Article XXXVIII.[24]

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19. For the attribution of this bill to the revisers, see Item VII.1 of Appendix I. For the appointment of Jones and Varick as revisers, see An Act for Revising and Digesting the Laws of this State (Apr. 15, 1786), *reprinted* in 2 Laws of the State of New York, Passed at the Sessions of the Legislature Held in the Years 1785, 186, 1787 and 1788, inclusive . . . Republished by the Secretary of State . . . 247–48 Albany 1886). For Varick's speakership in the Eleventh Session of the Assembly, see 2 Edgar A. Werner, Civil List and Constitutional History of the Colony and State of New York 457 (1891).

20. For the text of this clause, see Item VIII of Appendix I. The 1695 in question is An Act Against the Prophanation of the Lords Day, Called, Sunday (1695), *reprinted in* THE LAWS OF HER MAJESTIES COLONY OF NEW-YORK, AS THEY WERE ENACTED BY THE GOVERNOUR, COUNCIL AND GENERAL ASSEMBLY, FOR THE TIME BEING, IN DIVERS SESSIONS, THE FIRST OF WHICH BEGAN APRIL THE 9TH, ANNOQ; DOM. 1691, at 23, 23 (1710).

21. For Benson's tenure as Attorney General, see 1 Werner, *supra* note 19, at 219. For his status in the Assembly, see 2 *id.* at 457.

22. Unless otherwise indicated, all references to the Assembly's consideration of this bill are drawn from App. 1, Item IX.1.

23. N.Y. CONST. OF 1777, art. XXXVIII, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 2637. It should also be noted that Article XXXV stipulated that colonial statutes "repugnant to this constitution, be, and . . . hereby are, abrogated and rejected." *Id.* at 2636.

24. Benson owned that, "[i]f the Bill was only to prohibit sports and idle diversions, he should have no objection to it," but did not explain why the requirement of equality did not extend that far. *See infra* App. I, Item IX.1. And he said nothing whatsoever about, for example, the clause's

Peter Sylvester and Samuel Jones spoke against this motion. In their view, since the clause required no one to worship on Sunday and permitted Jews to observe their Sabbath on Saturday, it didn't infringe their liberty of conscience. Neither, they believed, did it "give any undue preference, nor make any discrimination." Although they're not said to have presented an explanation for the latter claim, in defending the value of Sunday legislation, Sylvester did remark that "no inconvenience or oppression had been complained of in consequence of [the 1695] law."

The motion was defeated by a vote of 34-5. And though Sylvester said that he wouldn't object to an amendment allowing Jews to "work in their houses [on Sunday] if they made conscience of it, and to do such things as would not interfere with the public worship of others," there is no evidence that such a provision was proposed,[25] and the Assembly appears to have passed the bill without one.[26]

When it reached the Senate, John Lawrence tried to add a caveat to the end of Clause 1:

> provided that nothing in this clause contained, shall prevent or interfere with the free exercise and enjoyment of the religious profession and worship of any person or persons within the State, also provided that the enjoyment of the same shall not be construed to

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restrictions on Sunday fishing and sales. However, he plainly believed that Article XXXVIII's proviso didn't mean that religion-based conduct could be penalized whenever the legislature decided that conduct was immoral, *cf.* Hamburger, *supra* note 4, at 917 n.8 (noting that "the word 'licentiousness' was frequently used to refer to immoral . . . behavior"), or made it illegal, *cf id.* at 917 n.8, 918–19 (noting that "'licentiousness' was frequently used to refer to . . . prohibited behavior," claiming that "disturb-the-peace caveats apparently permitted government to deny religious freedom . . . upon the occurrence of illegal actions").

25. The obvious question this presents is whether there is any reason the Assembly minority might have been averse to making a motion to remedy in this manner the constitutional defect they perceived in Clause 1. The answer might be found in some comments Benson made about the propriety—as opposed to the legality—of this provision. "If there were any of our citizens who neglected [to observe a Sabbath]," he remarked, "Government ought not to interfere in it, as they were responsible only to the Deity." And he added, "It was arrogance in any Legislature to interfere and make laws to support religion, as the Great Author of our religion has declared that he will take care of it." Perhaps, for reasons that will be discussed in the text accompanying notes 33-41 below, they believed that an exemptionless law would fail of enactment or be struck down by the courts, and they preferred those alternatives.

26. No copy of the Assembly-approved bill has survived. However, there are strong reasons to believe that an exemption of the sort to which Sylvester referred had not been engrafted onto the bill before the Assembly sent it on to the Senate. The first is the absence of any reference to such an amendment in the report of the House debates or the House journal. Next, there is the fact that when the Senate took up the bill, the provision on swearing—which became Clause 4 after precisely such an exception became Clause 3 —was still referred to as Clause 3. *See infra* App. I, Item X.3. Finally, had such an amendment been adopted, there would have been no reason for Senator John Lawrence to have made the proposal discussed in the text following this footnote.

> excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State.[27]

This amendment would have acknowledged only those exemptions that the courts deemed required by Article XXXVIII,[28] so it's logical to ask what would have been the point of adopting it. The Senate's discussions on the bill are unreported, so we can only guess at an answer. Perhaps it was thought advisable to avoid doubts about the legitimacy of judicial review by converting the problem to one of statutory construction.[29] Or maybe the proviso was meant to

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27. For Lawrence's motion and the vote thereon, see Item X.3 of Appendix I.

28. The proviso largely tracks the language of Article XXXVIII, but it replaces the latter's ban on "discrimination or preference," which Benson and others (with respect to whom, see the text accompanying notes 38–39, below) emphasized in their arguments against the constitutionality of Clause 1, with "interfere with." Since it is inconceivable that the amendment was meant to reduce the effective scope of the constitutional provision by deleting these words, and no one appears to have sought to add them to the proviso, I presume that "interfere with" was regarded as their equivalent.

29. At that time, the leading New York case relating to judicial review was Rutgers v. Waddington (N.Y.C. Mayor's Ct. 1784), which is most thoroughly reported in 1 THE LAW PRACTICE OF ALEXANDER HAMILTON: DOCUMENTS AND COMMENTARY 282 (Julius Goebel, Jr., ed., 1964) [hereinafter THE LAW PRACTICE OF ALEXANDER HAMILTON]. *Rutgers* was an action to recover for the use of the plaintiff's property during the British occupation of New York City. *See id.* at 398. The court decided that the application of the Act to three of the years included in Rutgers's claim would contravene the law of nations, *see id.* at 398–99; that the law of nations was part of New York's law, *see id.* at 402; and that, particularly in light of the Articles of Confederation, no state could modify that law, *see id.* at 403–06. Absent clearer statutory language, the court said it would not presume that New York's legislature had intended to do so. *See id.* at 416–18. Therefore, despite the fact that the words of the Trespass Act encompassed those three years, the court interpreted it as inapplicable to this part of the case.

Two consequences followed from this decision. One was that the plaintiff's recovery was significantly reduced. The other was that the court avoided considering the argument, made by defense counsel Alexander Hamilton, *see id.* at 380–81, that it should resolve any conflict between the Trespass Act and the law of nations by deeming the former to that extent void and following the latter.

The court opened its discussion of the statutory interpretation question posed by the case by noting that lawyers on both sides had agreed that the Act should not be construed to apply to every case within its literal scope, that it "must . . . receive a *reasonable interpretation* according to the *intention*; and not according to the *latitude of expression* of the legislature." *Id.* at 414. However, it continued,

> the uncontroulable power of the legislature, and the sanctity of its laws, have been earnestly pressed by the counsel for the Plaintiff; and a great number of authorities have been quoted to establish an opinion, that the courts of justice, in no case ought to exe[r]cise a discretion in the construction of a statute.

Id.

Although these positions might appear to be in conflict, the court deemed that an illusion.

> The supremacy of the Legislature need not be called into question; if they think fit *positively* to enact a law, there is no power which can controul them. When the main object of such a law is clearly expressed, and the intention manifest, the Judges are not

insure that, if a court did decide that Clause 1 was overbroad, it would not strike the clause down (as Benson had sought to do) but would interpret it as providing for any required exemptions. Whatever its intended meaning, Lawrence's motion failed by a 7-5 vote.

However, a clause (Clause 2) appears subsequently to have been added to the bill that made it a defense to a prosecution for working on Sunday, that the worker habitually abstained from work for religious reasons on Saturday, and that his Sunday labor didn't "disturb other persons in the observance of the first day of the week, as holy time."[30] The Assembly concurred in the amended bill,[31] and on receiving the Council of Revision's approval,[32] An Act for Suppressing Immorality became law.

> at liberty, altho' it appears to them to be *unreasonable*, to reject it: for this were to set the *judicial* above the legislative, which would be subversive of all government.
>
> But when a law is expressed in *general words*, and some *collateral matter*, which happens to arise from those general words is *unreasonable*, there the judges are in decency to conclude, that the consequences were not foreseen by the Legislature; and therefore they are at liberty to expound the statute by *equity*, and only *quoad hoc* to disregard it.
>
> When the judicial make these distinctions, they do not control the Legislature; they endeavour to give their *intention* it's proper effect.

Id. at 415.

Of course, everyone knew perfectly well that the state legislature had meant the Trespass Act to nullify the law of nations in cases like this. And the Assembly quickly responded to the decision. Though rejecting a proposal to recommend that the judges who supported it be replaced at the end of their terms, the lower house overwhelmingly approved a resolution condemning the decision:

> *Resolved*, That the judgment aforesaid, is in its tendency, subversive of all law and good order, and leads directly to anarchy and confusion; because, if a court instituted for the benefit and government of a corporation may take upon them to dispense with and act in direct violation of a plain and known law of the State, all other courts, either superior or inferior may do the like; and therewith will end all our dear bought rights and privileges, and Legislatures become useless.

VOTES AND PROCEEDINGS OF THE ASSEMBLY, &C. 34 (N.Y., 1784).

While it is not clear what any of this implied with respect to the use of judicial review to prevent the legislature from violating the state constitution, it is evident that many of the participants in the debates over An Act for Suppressing Immorality were intimately familiar with this episode. Egbert Benson and John Lawrence represented the *Rutgers* plaintiff. *See* THE LAW PRACTICE OF ALEXANDER HAMILTON, *supra*, at 292, 301. Richard Varick was one of the judges who decided the case. *See id.* at 306. Thirteen Assemblymen who voted on the resolution (eight in favor, five against) were still in the legislature. Seven veterans of the 1784 Assembly who had not voted on the resolution, including John Lawrence, also sat in the legislature in 1788. *See* 2 Werner, *supra* note 19, at 456–57 (listing the members of the 1784 Assembly); *see also id.* at 417, 457 (listing the members of the 1788 legislature). The recorded vote on the resolution appears at VOTES AND PROCEEDINGS OF THE ASSEMBLY, &C. 33 (N.Y., 1784).

30. The text of the enacted law is set forth in App. I, Item XV. The Senate journal reveals that unspecified amendments were adopted on February 18, *see* App. I, Item X.3, and Clause 2 must have been inserted by one of them.

31. *See* App. I, Item XIII.

32. *See* App. I, Item XIV.

This is therefore a case in which, before the drafting of the First Amendment, a legislature created a religion-based exemption to a generally applicable law.[33] But, contrary to McConnell's surmise, the lower house obviously felt it wasn't compelled to do so. And it isn't clear whether the upper house disagreed. More precisely, it isn't clear why, after rejecting John Lawrence's motion, the Senate passed the new exemption clause. Some Senators might have believed the exemption was constitutionally mandated and that the legislature should recognize it without waiting for the courts to decide the question, or without regard to the courts' opinion. Others might have preferred the new clause to Lawrence's because they (like Sylvester) deemed the exemption a humane or prudent indulgence. But Senators might even have had a good reason to support this clause if they believed it was bad public policy and not constitutionally required.

A clue as to why this could have been the case can be found in the first speech that Benson gave in support of his motion to reject Clause 1. In that speech, he observed that a proposal, similar to the Act for Suppressing Immorality, was defeated a few years earlier for the same reason he gave for turning down its 1788 version. He knew because he had been a member of the lower house in 1780. In fact, he had made a motion to reject the first clause of the 1780 bill, which paralleled the first clause of the 1788 bill.[34]

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33. It might be objected that Clause 1 was a religion-based, rather than a secular, law. Of course, that would make the case for a "free exercise" exemption constitutionally stronger, and a rejection of that case in this instance more significant. In any event, Peter Sylvester argued that the Sunday closing provision endorsed by the assembly was defensible on purely secular grounds. (New Jersey Assemblyman Henry Southard made the same claim with respect to the Sunday closing law his state adopted in 1788. *See* note 65, below. And when the Supreme Court ultimately affirmed the constitutionality of a group of exemptionless Sunday closing laws, it found that they were based on secular concerns. *See* McGowan v. Maryland, 366 U.S. 420, 431–49 (1961); *id.* at 495–511 (Frankfurter, J., concurring); Two Guys v. McGinley, 366 U. S. 582, 592–98 (1961); Gallagher v. Crown Kosher Super Market, 366 U.S. 617, 624–30 (1961) (opinion of Warren, C.J.).

Neither McConnell nor his adversaries discussed Sunday closing laws in connection with this aspect of their historical analysis. However, McConnell and Bradley did discuss cases in which sabbatarians demanded to be excused from complying with these laws in their analysis of the light that early judicial decisions shed on whether "the free exercise principle" was understood to require the recognition of exceptions to generally applicable secular laws. *See* McConnell, *supra* note 1, at 1506–07, 1510; Bradley, *supra* note 4, at 278, 280–82, 293–95, 298–302. *Also see* note 42, below.

34. For the relevant clause of the 1780 bill, the making and defeat of the motion to reject it, and the Assembly's decision to pass the bill, see App. I, Item I.

Benson's repeated arguments against the constitutionality of exemptionless Sunday closing bills resolves another question raised by McConnell. The House of Representatives' 1789 debate on the proposed militia exemption clause of what became the Second Amendment was "the only discussion in the First Congress specifically bearing on religious exemptions from generally applicable legal duties." McConnell, *supra* note 1, at 1500. McConnell therefore examined it for evidence as to whether the Representatives believed "the free exercise principle" ever required the recognition of exceptions to generally applicable secular laws. *See id.* at 1500–03. Egbert Benson, who (like John Lawrence and Peter Sylvester, *see* 2 Werner, *supra* note 19, at 650) was now one of New York's Congressmen, objected to this provision, which would have excused from militia

That motion, like its later counterpart, failed, and the bill passed the Assembly. This time, the bill was endorsed by the upper house with amendments that seem not to have mitigated the impact of *its* first clause.[35] After those amendments were endorsed by the Assembly,[36] the bill went to the Council of Revision for review.[37]

The Council of Revision, a creation of New York's Constitution of 1777, consisted of the Governor, the Chancellor, and the members of the state supreme court.[38] The Council was given the power to veto bills it deemed "improper."[39] However, its vetoes could be overridden by a two-thirds vote in each house of the legislature.[40]

When the 1780 bill reached the Council, it was reviewed by Governor George Clinton, Chief Justice Richard Morris, and Justice Robert Yates.[41] They vetoed the bill and gave four reasons for so doing.[42] The second reads as follows:

> 2. Because the first enacting clause prohibiting every person from following any worldly employment or labor on Sunday will impose a hardship on those who, from a religious persuasion, refrain, some other day in seven, from labor; and thus will in effect defeat the design of the Constitution, which "doth ordain, determine and declare that the free exercise and enjoyment of religious profession and worship, without discrimination or *preference*, shall forever hereafter be allowed within this State to all mankind;" and the design of the bill might be equally effected and this objection obviated.[43]

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service people "religiously scrupulous" about bearing arms. McConnell was unsure whether his position reflected, and was based on, the view that "the free exercise principle" never requires a right to exemption from a generally applicable secular law, *id.* at 1502–03, but Benson's arguments in the New York Assembly dispel these doubts.

35. See Item II of Appendix I for the Senate's amendment and passage of the bill.

36. *See infra* App. I, Item III.

37. *See infra* App. I, Item V.

38. *See* N.Y. CONST. OF 1777, art. III, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 2628–29.

39. *Id.*

40. *Id.*

41. *See infra* App. I, Item VI.

42. *See id.* They evidently acted unanimously, there being no recorded indication of a dissent. *Cf.* ALFRED B. STREET, THE COUNCIL OF REVISION OF THE STATE OF NEW YORK; ITS HISTORY, A HISTORY OF THE COURTS WITH WHICH ITS MEMBERS WERE CONNECTED; BIOGRAPHICAL SKETCHES OF ITS MEMBERS; AND ITS VETOES 370 (Albany 1859) (noting Governor's dissent from an objection to a bill).

43. *See infra* App. I, Item VI. Subscribed to by two of its three Justices, this portion of the Council's veto message was in some respects comparable to an advisory opinion of the New York Supreme Court, but (given the effect of a suspensive veto) it had far greater impact. And the Justices therein decided that the first clause of the 1780 bill, and the 1695 statute on which it was based, were unconstitutional, which meant that the colonial law had been "abrogated and rejected" by Article XXXV of the state constitution, the text of which may be found in App. I, Item IV. Of

No override vote was taken, and the bill died.

The Council's membership was unchanged in 1788.[44] It was entirely possible that the same men would participate in the decision whether to veto the current bill, and there was no reason to think they had changed their minds about the constitutionality of Clause 1. Even if Chancellor Robert R. Livingston and Justice John Sloss Hobart, who had not taken part in the 1780 decision, were to join in the review of this bill,[45] there was no guarantee that the Council would respond differently to the 1788 Assembly bill than it had to its predecessor. And that means it's possible that the Senate added the exemption clause because some Senators believed that, while legally unnecessary and undesirable as a matter of public policy, its adoption was preferable to losing the entire bill via conciliar veto or allowing the Justices to decide the constitutional question in their judicial capacity. In other words, it is by no means obvious that either house voted to insert this clause because a majority of its members believed that New York's constitution or "the free exercise principle required" it.[46]

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course, this decision buttressed Benson's 1788 claims that the colonial law was no longer in force and that Clause 1 of the 1788 bill was unconstitutional.

But it is also significant for another reason. As noted above, *see supra* note 32, McConnell and Bradley canvassed early court decisions for further evidence of whether "the free exercise principle" was thought when the First Amendment was adopted to mandate exemptions from any generally-applicable secular laws. *See* McConnell, *supra* note 1, at 1503–11; Bradley, *supra* note 4, at 272–302. The Council of Revision's 1780 decision was rendered thirteen years before the earliest case identified by either man as touching on whether a constitutional free exercise guarantee required the recognition of a religion-based exemption from a secular law, thirty-three years before what McConnell deems the earliest judicial opinion expressly to discuss that question (he omits People v. Ruggles, 8 Johns. 290 (N.Y. Sup. Ct. 1811), discussed by Bradley, because that was a blasphemy prosecution based on a law McConnell regards as "specifically directed at religion," McConnell, *supra*, at 1503, and thirty-seven years before the earliest Sunday closing law case mentioned in either article. Moreover, unlike the first and third of these cases, this decision condemned a statute lacking such an exemption, and it did so seven years before the Constitutional Convention.

It should be noted that Egbert Benson unsuccessfully argued in *Rutgers* that the Council's unexplained approval of a bill should be treated as a judicial decision. *See* THE LAW PRACTICE OF ALEXANDER HAMILTON, *supra* note 29, at 416. But even if the New York courts would not have regarded the suspensive veto of the 1780 bill as an adjudication of its unconstitutionality, the veto message did reflect the Justices' views on the question. And if the Justices could not have engaged in judicial review from the bench, it might have represented the only chance they'd have to express their opinions in an official capacity.

44. *See* 1 Werner, *supra* note 19, at 207 (list of Governors), 375 (list of Chancellors), 388 (list of Supreme Court Justices).

45. The surviving records don't reveal who (in addition to Governor Clinton) participated in the Council's review of the 1788 bill, although the fact Richard Morris informed the Assembly that the Council had approved it, *see* App. 1, Item XIV, strongly suggests that he was among their number.

46. Given the known threat of a conciliar veto and the fact that the Assembly ultimately agreed to Clause 2, the failure of the revisors or Assemblymen like Peter Sylvester to propose such an exemption is puzzling. Two plausible explanations suggest themselves. Perhaps most Assemblymen hoped that the Council would change course or that its veto would be overridden.

III. THE LEGISLATIVE HISTORY OF THE RELIGION-BASED EXEMPTION IN NEW JERSEY'S AN ACT FOR SUPRESSING VICE & IMMORALITY (1798)

Newspaper reports of the New Jersey Assembly's deliberations on a bill that led to the adoption of that state's 1798 Act for Suppressing Vice and Immorality[47] cast further light on this subject.[48] The first section of a 1704 law proscribed drunkenness, swearing, cursing, and working on the Sabbath.[49] Seventy-two years later, the state adopted a constitution providing (in Article XVIII) that "no person shall ever . . . be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience" and (in Article XIX) that

> no Protestant inhabitant of this Colony shall be denied the enjoyment of any civil right, merely on account of his religious principles; but that all persons, professing a belief in the faith of any Protestant sect, who shall demean themselves peaceably under the government, as hereby established, shall be capable of being elected into any office of profit or trust, or being a member of either branch of the Legislature, and shall fully and freely enjoy every privilege and immunity, enjoyed by others their fellow subjects.[50]

Nonetheless, a 1790 enactment reinforcing the establishment of Sunday as a day of worship, like its colonial predecessor, made no exception for observers of the

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Alternatively, they may have preferred that other people (i.e., the Council) be politically responsible for the adoption of any such provision.

47. For the text of this statute, see Item V of Appendix II. The newspaper reports are set forth in Items I.2 and I.3 of Appendix II.

48. Obviously, the Act wasn't a pre-constitutional enactment. Nonetheless, this history is at least as probative of the original understanding of the Free Exercise Clause as the judicial decisions considered relevant by McConnell, the earliest of which was rendered fifteen years later. *See* note 39, above.

49. For the text of this statute, see An Act for Suppressing of Immorality (Dec. 12, 1704), *reprinted in* SAMUEL ALLINSON, ACTS OF THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW-JERSEY, FROM THE SURRENDER OF THE GOVERNMENT TO QUEEN ANNE, ON THE 17TH DAY OF APRIL, IN THE YEAR OF OUR LORD 1702, TO THE 14TH DAY OF JANUARY 1776 3 (1776). Sections 2 and 3, dealing with a number of other moral offenses, were repealed in 1796 by Section 79 of An Act for the Punishment of Crimes. *See* N.J. REV. STAT. 264 (1821).

50. N.J. CONST. OF 1776, arts. XVIII, XIX, *reprinted in* 5 THE FEDERAL AND STATE CONSTITUTIONS, *supra* note 12, at 2597–98.

seventh day.[51] However, a statute passed five months later did exempt those people from performing a number of civic duties on Saturday.[52]

The previously mentioned 1798 bill, entitled An Act for the Prevention of Vice and Immorality, was meant to replace these three laws with one which was more expansive in its scope and more detailed in its regulation of the procedures for enforcing its strictures. As originally proposed, the bill contained no religion-based exemption from its Sunday closing rules, but, after the COTW had completed its consideration of the provisions included in that draft, it added a section allowing sabbatarians to do some work on Sundays.[53] However, for unknown reasons, the bill was narrowly defeated when it came to a vote after its third reading in the full House.[54] The following week, a bill called An Act for the Suppression of Vice and Immorality was introduced in its place.[55] Although the newspaper report of the Assembly proceedings declared its "principles" to be "nearly the same" as those of its rejected predecessor[56]—in fact, we can't be certain about the extent to which they differed—,[57] it was passed by an

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51. *See* An Act to Promote the Interest of Religion and Morality, and for Suppressing of Vice Among All Ranks of People Within this State (June 12, 1790), *in* ACTS OF THE FOURTEENTH GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY. AT A SESSION BEGUN AT PERTH-AMBOY ON THE 27TH DAY OF OCTOBER 1789 AND CONTINUED BY ADJOURNMENTS 619–21 (New Brunswick 1789). The newspapers didn't report any debates from this session of the Assembly. And the Assembly's printed Journal doesn't indicate whether any motions were made to amend the law, either in the COTW or in the Assembly proper. *See* VOTES AND PROCEEDINGS OF THE FOURTEENTH GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY BEING THE SECOND SITTING 27, 46, 50, 60 (New-Brunswick 1790) (entries of May 28, June 4, 7, & 9, 1790) [hereinafter 1790 New Jersey Assembly Journal]. The Journal of the Legislative Council states that the bill was amended by that body, but no mention is made of the substance of those amendments, either in that Journal or in the Assembly's. *See* JOURNAL AND PROCEEDINGS OF THE LEGISLATIVE-COUNCIL OF THE STATE OF NEW JERSEY 25, 28 (New-Brunswick 1790) (entries of June 10 & 11, 1790); 1790 New Jersey Assembly Journal, *supra*, at 67, 69 (entries of June 11 & 12, 1790). Thus, the record doesn't reveal whether anyone ever proposed that this act include a religion-based exemption to the Sunday closing law.

52. *See* An Act for the Relief of Certain Religious Societies in this State (Nov. 12, 1790), *in* ACTS OF THE FIFTEENTH GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY. AT A SESSION BEGUN AT BURLINGTON THE 26TH DAY OF OCTOBER 1790, at 680 (Burlington 1790).

53. *See* note 56 and accompanying text, below.

54. *See infra* App. II, Item I.4.

55. *See infra* App. II, Item I.5.

56. *See infra* App. II, Item I.6.

57. No copy of either bill is known to exist. The newspaper reports set forth in Items I.2 and I.3 of App. II are our only source of information about the substance of the proposed Act for the Prevention of Vice and Immorality. A comparison of that information to the text of the Act for the Suppression of Vice and Immorality reveals a number of things. First, the structure of the rejected bill is the same as that of the enacted law. *See* note100, below. Second, it is possible to identify five substantive differences between the two. Third, four of those differences appear minor: the $2 fines in Sections 1 and 13 of the law were $1 in the bill; the $14 penalty in Section 2 of the former was $10 in the latter; and the age of minority in Section 10 of the law was fourteen, whereas it was ten in the bill. Fourth, the final difference—in the manner of identifying the people who would be

overwhelming margin in the Assembly.[58] The Legislative Council (the upper house of New Jersey's legislature) made some unidentifiable amendments to the bill,[59] with which the Assembly concurred,[60] and the Act became law. Section 4 of that law, derived from the exemption added to the defeated bill, resembles its counterpart in New York's Act for Suppressing Immorality.

The question, of course, is why Section 4 was adopted. And that's why the newspaper account of the debates on the proposed Act for the Prevention of Vice and Immorality is important. Four of the five columns taken up by these discussions are devoted to Section 4.[61] They report comments by eleven of the Assemblymen. Like *The Daily Advertiser*'s piece on the proceedings of the New York Assembly, this account is not a complete or verbatim transcript of the discussion. Moreover, although the representatives examined Section 4 from the perspectives of public policy and constitutional law, it isn't always clear which type of argument a speaker was making. Still, this report gives us an indication of the thinking of a significant portion of the lower house.[62]

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entitled quietly to work at home on Sundays under Section 4—seems to have been far more significant. Indeed, it could help explain why the first bill gave way to the second.

Judging by the number of times it changed its mind, the Assembly appears to have found the question of how to identify those favored people the most vexing problem it faced while considering these two bills. The original proposal extended that exemption to "any person known to keep that day [i.e., Saturday]" as a sabbath, and the COTW evidently adopted Section 4 with this language intact. When the bill came before the full house, William Coxe successfully moved to replace Section 4 with one adding a requirement that someone claiming the right to work on Sunday produce a certificate of membership in a Sabbatarian church. The next day, at Coxe's behest, the provision was again reconsidered, and language was added "to prevent those people from labor, &c. on the seventh day." But the enacted law, while requiring a claimant to prove that he "keeps the seventh day . . . as a sabbath," devoted to religious exercises rather than work, doesn't include a certificate requirement. *See infra* App. II, Item V, § 4.

Lacking the bill introducing the Act for the Suppression of Vice and Immorality, we cannot be certain that this change was not introduced by one of the Legislative Councils amendments to that bill, about which see note 58, below. Moreover, because we don't have the text of the defeated bill, we cannot be certain that it didn't differ from the enacted law in other, important, ways. But inasmuch as Section 4 was introduced to accommodate the needs of Piscataway's Seventh Day Baptists, *see infra* note 101 and the accompanying text, and the Baptists had conscientious scruples about obtaining certificates of church membership, *see* Leonard W. Levy, The Establishment Clause 34, 50-51 (2d. ed. rev. 1994), it is also possible that the initial bill was rejected, at least in part, because Assembly members became aware of this problem with the provision.

58. *See infra* App. II, Item I.7.

59. *See infra* App. II, Item II.2.

60. *See infra* App. II, Item III.1, III.2.

61. All references to the Assembly's discussion of Section 4 are based upon App. II, Item I.3.

62. Thirty-five members participated in the final vote on this bill. *See infra* App. II, Item I.7. By contrast, thirty-nine members of the New York Assembly voted on Egbert Benson's motion, but only four are reported as having spoken on the exemption question. *See infra* App. I, Item IX.1. However, there is no guarantee that the newspapers mentioned the contributions of all the men who took part in either debate.

It reveals that at least three of those speakers supported Section 4 because they believed "the free exercise principle required" it. Reasoning from first principles, William Sanford Pennington posited that all states are bound to protect their citizens' right to "exercise . . . their religious opinions" unless those "opinions were . . . injurious to society." Finding that the adoption of this provision would be socially harmless,[63] and that in its absence Section 1's ban on Sunday labor would harm sabbatarians—the discussion of Section 4 focused on a community of Seventh Day Baptists represented in the Assembly by the man who proposed this exemption[64]—by taxing their exercise of that right, he argued that Section 4 could not be rejected. In a subsequent speech, Pennington expressed his position in different terms: everyone has the right to choose a religion and worship God as his conscience dictates, and the proposed bill needed amendment because it violated this right. Artis Seagrave echoed these views, and added that this religion-based exemption was also required by the principle of religious equality. Finally, Gershom Dunn, who introduced Section 4 in the COTW, agreed that Section 4 was necessary as a matter of public policy (lest sabbatarians be restricted to "partial liberty of conscience"[65]). But he also asserted that, inasmuch as "it was a civil right for a man to work 6 days," the exception was required by Article XIX.[66]

The newspaper account shows that at least two Assemblymen—Robert Campbell and Henry Southard—opposed Section 4. On the one hand, they thought it was bad public policy. From their perspective, duties to God are paramount. Believing that God had ordained that Sunday be devoted to worship, they couldn't acquiesce in the legitimation of any (what to them was) sinful work on that day. If that harmed sabbatarians, even if it made them emigrate, that was a lesser evil. In fact, the harm caused to sabbatarians by enforcing the ban on Sunday labor would be outweighed by the social harm that Section 4 would

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63. Pennington, as well as the other two speakers mentioned in this paragraph of the text, explained that this was so because Sunday labor would only be countenanced by this provision if it disturbed no one's Sabbath observance. Gershom Dunn also argued that seventh-day observers are just as virtuous as Sunday observers.

64. See note 101 for the identification of this sect and the fact that Gershom Dunn represented many of its members in the Assembly.

65. Compare this remark with this language from a proposal James Madison made during the deliberations on Virginia's 1776 Declaration of Rights: "all men are equally entitled to the full and free exercise of religion, according to the dictates of conscience." James Madison, *Autobiography* (ca. 1827), *reprinted in* 1 THE PAPERS OF JAMES MADISON 175 (William T. Hutchinson & William M. E. Rachel eds., 1962). Of course, the word "full" didn't mean the free exercise right was absolute; and Madison's proposal went on to say, "Unless the preservation of equal liberty and the existence of the State are manifestly endangered." *Id.* On the meaning of the caveats in New York and New Jersey's constitutional provisions, see notes 23 and 64.

66. Plainly, Dunn didn't understand Article XIX's restriction of its guarantee of equal civil rights to Protestants "who shall demean themselves peaceably" to justify the denial of civil rights to anyone whose religion-based conduct violated any law *Cf.* Hamburger, *supra* note 4, at 918–19 (claiming that "disturb-the-peace caveats apparently permitted government to deny religious freedom . . . upon the occurrence of illegal actions").

cause (i.e., children would see people working on the Sabbath, which would undermine their sense of its holiness).[67] Moreover, they claimed, any harm suffered by the sabbatarians would be caused not by Section 1, but by their choice of a religion. On the other hand, Southard denied that Section 1 was inconsistent with Article XIX, asserting that the only civil right protected by that provision was the right to be elected to certain positions.

The newspaper story also suggests that some Assemblymen may have voted for this provision although they did not feel "the free exercise principle required" them to. In sketching the remarks of Thomas Armstrong and William Edgar, the report uses the word "indulgence" to describe Section 4. If that's how these two men actually characterized the section, they would clearly fall into this camp. Speaker Silas Condict, like Edgar, appears to have thought Section 1 infringed sabbatarians' rights of conscience and approved of the relief granted to them by Section 4. Nonetheless, the statement that he "*wished* to avoid pinching any man's conscience," which could represent nothing more than a hope that procedural problems that Condict identified in Dunn's proposal could be worked out (as they were), could also signify that Condict viewed his support of the provision as a matter of generosity, rather than right or duty. Then there is the case of Aaron Kitchel. Like Campbell and Southard, Kitchel denied that Section 1 taxed sabbatarians for devoting Saturday to religious exercises—he blamed their choice of a religion for their inability (absent Section 4) to work six days. Still, he "could submit to" the proposed exemption, which "indulged" seventh-day observers; but (as Campbell and Southard charged) that exemption would promote immorality by undermining the Sabbath. The account of his speech is ambiguous as to whether he was willing to assent to Section 4 despite this (in his view) unfortunate consequence, or whether the latter would cause him to reject the former.[68]

Thus, as was the case with respect to the Empire State's Assembly in 1788, some members of the New Jersey Assembly voted for this religion-based exemption to place a ban on Sunday labor because they thought the State constitution or "the free exercise principle required" it, but we can't take it for granted that a majority of the members agreed.[69] However, with respect to the

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67. Southard noted that there was also a secular justification for rejecting this exemption, but the newspaper doesn't report what it was.

68. This ambiguity is not resolved by the fact that the only vote we know he cast in connection with respect to the rejected or the enacted bill was one in favor of the engrossed enacted bill. *See* App. II, Item I.7. However, that vote does distinguish his position from that of Robert Campbell, who declared that he would vote against the rejected bill if it allowed the profanation of what he regarded as the only true Sabbath, and who actually voted no on both the engrossed enacted bill and the amended bill that emerged from the Legislative Council. *See infra* App. II, Item I.7, Item III.2. (Kitchel didn't participate in the latter vote. *See* App. II, Item III.2. Henry Southard voted aye on both occasions, which means he voted in favor of the law containing Section 4 even though he opposed that section. *See infra* App. II, Item 1.7, Item III.2.)

69. There is no reported tally of votes on Section 4 of either New Jersey bill. In fact, there are only three reported vote tallies in the entire legislative history of the Act for Suppressing Vice

Garden State's statute, we also can't rule that possibility out. Nor can we rule out the possibility that a majority in neither house of either state's legislature believed it was required by their constitution or that principle to allow sabbatarians to work on Sunday. In other words, these records (to say the least) undermine Michael McConnell's claim about the reason early legislatures created religion-based exemptions to generally applicable secular laws, and the constitutional claim that it supported.

To be sure, these are only the reports of the legislative debates on two Sunday closing laws providing exemptions for seventh-day observers. I accidentally discovered them while doing unrelated work. Comparable reports may exist from other states, as well as reports of debates concerning exceptions to other generally applicable secular laws. More broadly, such reports may cast light on eighteenth century American legislatures' views on other questions of state or federal law. Future scholarship, and a deeper understanding of our legal history, would be greatly facilitated by a publication of all the surviving newspaper reports of state legislative debates from this era.

APPENDIX I.

Item I. Proceedings in the House of Assembly, March 8-10, 1780

1. Proceedings of March 8

Mr. *Bay*, from the Committee of the whole House, on the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality," reported the Proceedings thereon to have been as follows, *viz*.

That the first enacting Clause was read in the Words following, *to wit*,

"Be it enacted by the People of the State of New-York, *represented in Senate and Assembly, and it is hereby enacted by the Authority of the same,* That if any Person shall do any Kind of Work, or follow any worldly Employment or Business whatsoever, on the Lord's Day, commonly called Sunday, Works of Necessity or Mercy excepted; or shall use or practise any Game, Play, Sport or Diversion whatsoever, on the said Day, and be convicted thereof, upon the View of any Justice of the Peace, or the Oath or Attestation of one credible Witness; the Person so offending, shall, for every such Offence, forfeit the Sum of with Costs and Charges of Prosecution."

That Mr. *Benson* then made a Motion, That the 38th Article of the Constitution of this State, should be read.

The said 38th Article of the Constitution being read; Mr. *Benson* made a Motion, That the said first enacting Clause should be rejected.

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and Humanity. One is the unrecorded vote in which the first bill was defeated. The others, both recorded votes, are the ones mentioned in the previous footnote.

That Debates arose on the said Motion, and the Question being put, it passed in the Negative, in Manner following, *to wit*,

FOR THE NEGATIVE

Mr. Hathorn, Mr. Palmer, Mr. Whiting, Mr. Vrooman, Mr. Gilbert, Mr. Purdy, Mr. Drake, Mr. Whiteside, Mr. Seely, Mr. Mitchell, Mr. Lott, Mr. Harpur, Mr. Williams, Mr. Cantine, Mr. Grover, Mr. Van Deusen, Mr. N. Payn, Mr. Boyd, Mr. Quackenbos, Mr. Hopkins, Mr. Othoudt, Mr. *Speaker*, Mr. Schoonmaker, Mr. Brinckerhoff, Mr. B. Coe, Mr. Moffat, Mr. F. Bancker, Mr. Gordon.

FOR THE AFFIRMATIVE

Mr. Dodge, Mr. Pell, Mr. Erasher, Mr. Smith, Mr. Dunscomb, Mr. Sacket, Mr. Gardineer, Mr. Baker, Mr. Waggoner, Mr. Benson.

That the Committee had made some further Progress in the said Bill, and directed him to move for Leave to sit again.

Ordered, That the said Committee have Leave to sit again.[70]

2. Proceedings of March 9

Mr. *Bay*, from the Committee of the whole House, on the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality," reported, That the Committee had gone through the Bill, and made Amendments; which he was directed to report to the House; and he read the Report in his Place, and delivered the Bill, and Amendments, in at the Table, where the same were again read and agreed to by the House.

Ordered, That the Bill, and Amendments, be engrossed.[71]

3. Proceedings of March 10

The engrossed Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality," was read the third Time.

Resolved, That the Bill do pass.

Ordered, That Mr. *Harpur* and Mr. *Seely* carry the said Bill to the Honorable the Senate for Concurrence.[72]

Item II. Proceedings in the New York Senate, March 10, 1780

A Message from the Honorable the House of Assembly, by Mr. *Harpur* and Mr. *Seely*, was received, with a Bill for Concurrence, entitled, "An Act for the

70. THE VOTES AND PROCEEDINGS OF THE ASSEMBLY OF THE STATE OF NEW-YORK; AT THEIR THIRD SESSION, BEGUN AND HOLDEN IN THE ASSEMBLY-CHAMBER, AT KINGSTON, IN ULSTER COUNTY, ON MONDAY, THE NINTH DAY OF AUGUST, 1779, at 143 (Fishkill, N.Y. 1780) (entry for Mar. 8, 1780) [hereinafter Assembly Votes and Proceedings].

71. *Id.* at 148 (entry for Mar. 9, 1780).

72. *Id.* (entry for Mar. 10, 1780).

more effectual Suppression of Vice and Immorality;" which was read the first Time, and ordered a second Reading.[73]

The Bill, entitled, . . . And the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality;" were respectively read the second Time, and committed to a Committee of the Whole.

. . . .

Mr. *Parks*, from the Committee of the Whole, on the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality," reported, That they had gone through the Bill, and agreed to several Amendments thereto; which Report he read in his Place, and delivered in at the Table, where it was again read and agreed to.

The said Bill, with Amendments, was then read the third Time; and on Mr. President's asking, Whether the Bill, with the Amendments, should pass? Debates arose, and the Question being put, it passed in the Affirmative by all the Members present, except Sir *James Jay*.

Resolved, That the Bill, with the Amendments, do pass.

Ordered, That Mr. *Fonda* carry the Bill, with a Copy of the Amendments, to the Honorable the House of Assembly.[74]

Item III. Proceedings in the House of Assembly, March 13, 1780

A Message from the Honorable the Senate, was delivered by Mr. *Fonda*, with the Bill therein mentioned, that the Senate have passed the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality," with the Amendments therewith delivered.

The Bill, and Amendments, were read; and the Amendments being respectively read a second Time, were respectively agreed to by the House, and the Bill amended accordingly.

Ordered, That Mr. *Harpur* and Mr. *Quackenbos* carry the Bill, and Amendments, to the Honorable the Senate; and inform them that this House have agreed to the Amendments to the said Bill, and amended the same accordingly.[75]

Item IV. Proceedings in the New York Senate, March 13, 1780

A Message from the Honorable the House of Assembly, by Mr. *Quackenbos* and Mr. *Harpur*, was received, with the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality;" informing, that they had agreed to the Amendments of the Senate to the said Bill, and that the same is amended accordingly.

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73. VOTES AND PROCEEDINGS OF THE SENATE OF THE STATE OF NEW-YORK; AT THEIR THIRD SESSION, HELD AT KINGSTON, IN ULSTER COUNTY. COMMENCING, AUGUST 24, 1779, at 101 (Fishkill, N.Y. 1779) (entry of March 10, 1780) [hereinafter Senate Votes and Proceedings].

74. *Id.* at 104–05 (entry of March 11, 1780).

75. Assembly Votes and Proceedings, *supra* note 70, at 152 (entry for Mar. 13, 1780).

The said Bill, as amended, being examined:

Ordered, That Mr. *Klock* return the Bill to the Honorable the House of Assembly.[76]

Item V. Proceedings in the House of Assembly, March 14, 1780

The Honorable the Senate returned, by Mr. *Klock*, the Bill, entitled, "An Act for the more effectual Suppression of Vice and Immorality."

Ordered, That Mr. *Quackenbos* and Mr. *Pell* carry the said Bill to the Honorable the Council of Revision.[77]

Item VI. Veto Message of the Council of Revision, May 12, 1780

Poughkeepsie, *May* 12, 1780. Present - Governor Clinton; Morris, Chief Justice; Yates, Justice.

A bill entitled "*An act for the more effectual suppression of vice and immorality*," was before the Council, which adopted the following objections, reported by the Chief Justice, viz.:

1. Because they conceive the wording of the preamble is not agreeable to the design of the bill, and should it pass into a law will be derogatory of the honor of the Legislature, and therefore inconsistent with the public good. The preamble recites that, "Whereas religion and good morals are the only solid foundations of liberty and happiness. And whereas profaneness and many immoral practices have of late greatly increased within this State, the more effectual measures for the encouragement of the one and the suppression of the other ought speedily to be adopted," so that referring to the next antecedents (unless we pass over a period) it would appear that profaneness was to be encouraged.

2. Because the first enacting clause prohibiting every person from following any worldly employment or labor on Sunday will impose a hardship on those who, from a religious persuasion, refrain, some other day in seven, from labor; and thus will in effect defeat the design of the Constitution, which "doth ordain, determine and declare that the free exercise and enjoyment of religious profession and worship, without discrimination or *preference*, shall forever hereafter be allowed within this State to all mankind;" and the design of the bill might be equally effected and this objection obviated.

3. Because, in the second enacting clause, it is doubtful whether under this bill it will be an offense to be guilty of drunkenness, or profanely to curse or swear as in the bill is mentioned, unless it is done in the presence or hearing of a justice of the peace, especially as all penal statutes of this nature ought to be construed strictly and most favorable to defendants.

76. Senate Votes and Proceedings, *supra* note 73, at 105 (entry of March 13, 1780).

77. Assembly Votes and Proceedings, *supra* note 70, at 154–55 (entry of March 14, 1780).

4. In the fourth enacting clause it is enacted that the several Courts of General or Quarter Sessions of the Peace shall have cognizance and jurisdiction of the same offenses; and the offenses being created by this bill the construction will be that the cognizance and jurisdiction of them are restricted to the Courts of Sessions only; and although the Justices of the Supreme Court and of Oyer and Terminer are directed to charge the grand jury specially to inquire of those offenses, such indictments, if found, can never come into the sessions from the courts above by any known process, and thus the offenders can never be tried, and of course escape punishment.

The Legislature refused to pass the bill; consequently it did not become a law.[78]

Item VII. Proceedings in the House of Assembly, January 23-24, 1788

1. Proceedings of January 23

Mr. Jones, pursuant to the law for revising the laws of this State, laid before the House the following bills, viz. A bill, entitled, *An act for suppressing immorality* . . . .

The said bills were severally read the first time, and ordered a second reading.[79]

2. Proceedings of January 24

The bill entitled, *An for suppressing immorality* . . . were severally read a second time, and committed to a committee of the whole House.[80]

Item VIII. Section 1 of the Draft Bill of An Act for Suppressing Immorality (1788)

Mr. Doughty, from the committee of the whole House, on the bill, entitled, *An act for suppressing immorality*, reported, that after the said bill has been read in the committee, the first enacting clause being read, is in the words following, viz.

"Be it enacted by the people of the State of New York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same, That there shall be no travelling, servile labour or working (works of necessity and charity excepted) shooting, fishing, sporting, playing, horse-racing, hunting or frequenting of tippling-houses, or any unlawful exercises or pastimes, by any person or person within this State, on the first day of the week, commonly called

78. STREET, *supra* note 42, at 232–33.

79. JOURNAL OF THE ASSEMBLY OF THE STATE OF NEW-YORK, AT THEIR ELEVENTH SESSION, BEGUN AND HOLDEN AT POUGHKEEPSIE IN DUTCHESS COUNTY, THE NINTH DAY OF JANUARY, 1788, at 38 (Poughkeepsie 1788) (entry of Jan. 23, 1788) [hereinafter ASSEMBLY JOURNAL].

80. *Id.* at 39 (entry of Jan. 24, 1788).

Sunday, and that every person of the age of fourteen years or upwards, offending in the premises, shall for every such offence, forfeit and pay to the use of the poor of the city or town where such offence shall be committed, the sum of six shillings, and that no person shall cry, show forth or expose to sale, any wares, merchandise, fruit, herbs, goods or chattels, upon the first day of the week, commonly called *Sunday*, except small meat, and milk and fish, before nine of the clock in the morning, upon pain that every person so offending, shall forfeit the same goods so cried, showed forth or exposed to sale, to the use of the poor of the city or town where such thereof convicted before any Justice of the Peace for the county, or any Mayor, Recorder or Alderman of the city where the offence shall be committed, upon the view of the said Justice, Mayor, or Recorder, or Alderman, or confession of the party offending, or proof of any witness or witnesses upon oath, then the said Justice, Mayor, Recorder or Alderman, before whom such conviction shall be had, shall direct and send his warrant under his hand and seal, to some Constable of the city or county where the offence shall have been committed, commanding him to seize and take the goods so cried, showed forth or exposed to sale, as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties, by distress and sale of the goods and chattels of such offenders, and to pay the money arising by the sale of such goods so seized, and the said other forfeitures or penalties, to the Overseers of the poor of the city or town where the said offence or offences shall have been committed, for the use of the poor thereof; and in case no such distress can be had, then every such offender, shall by a warrant under the hand and seal of the said Justice, Mayor, Recorder or Alderman, be set publicly in the stocks, for the space of two hours."[81]

Item IX. Proceedings in the House of Assembly, February 12-15, 1788

1. Proceedings of February 12

HOUSE OF ASSEMBLY,

POUGHKEEPSIE

On Tuesday, Feb. 12, 1788.

When the House were in a Committee on the Bill, for the suppression of immorality; after reading the first clause of the Bill, which is to prevent any servile labour, drunkenness, or any kind of sports on the Sabbath day;

Mr. Benson moved, that the 38th article of the Constitution should be read; which being done, he moved that the said clause be rejected. (Mr. Dongan seconded the motion.) Mr. Benson's reason for this motion were, that he thought

81. *Id.* at 66 (entry of Feb. 12, 1788).

the Legislature had no power to pass the Bill, as it was repugnant to the Constitution; and that it was in itself manifestly improper; as the same principle that would establish any particular day for the worship of the Deity, might also describe the mode; and this would lead to intolerance and persecution. If there were any of our citizens who neglected that part of their duty, he thought that Government ought not to interfere in it, as they were responsible only to the Deity. He observed that the first law for establishing a particular day of the week as a day of worship, had originated in the days of James I,[82] that this law[83] had been adopted by the colony, which, if it had not been virtually repealed by the Constitution, would now be in force. By the Constitution, not only all religion was tolerated, but every religious sect placed in a perfect equality: the consequence therefore of passing the clause would not only be a violation of the rights of others, but of the Constitution: to illustrate this proposition, he said, a Jew, to be consistent with himself, is obliged to keep holy the seventh day of the week, which is Saturday; and to prohibit him from working on a Sunday, would be taxing him one sixth part of his time. This was not equal liberty, one of the boasted blessings of our Government. He stated, that in the year 1781, at Albany, a Bill had been brought forward, similar to the one now before the Committee; but which, on the very ground of its being against the Constitution, was not carried through the Legislature.[84] If any men, from religious motives were advocates for this Bill, they mistook themselves; the great author of our religion required no human laws to support it.

Mr. Sylvester said the Bill appeared to him to be as important as any that had ever been before the house. He did not think the arguments of Mr. Benson were by any means conclusive. He believed it would be difficult for him, by the most forced implication, to shew that the clause in question, was contradictory to the

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82. James II (1685-88) should be the monarch named in the text. Although Sunday laws had been enacted in England long before James I (1603-25) ascended the throne, *see* McGowan v. Maryland, 366 U.S. 420, 431–32 (1961), none were adopted there during either James's reign. Further, James I died decades before England's 1664 conquest of the land that became the Province of New York. On the other hand, the Duke's Laws (the Sunday closing provisions of which may be found in The Duke's Laws (1665), *reprinted in* 1 The Colonial Laws of New York from the Year 1664 to the Revolution . . . at 24–26 (Albany 1894)) were created and implemented in the Province while it was under the control of the Duke of York and remained in effect when he became King James II, and The Bill Against Sabbath Breaking (1685), *reprinted in* 1 The Colonial Laws of New York from the Year 1664 to the Revolution . . . at 173–74 (Albany 1894), was enacted while he was King.

83. Benson appears here to refer to the 1695 act mentioned above. *See supra* note 20 and accompanying text. (Given this law, it is hard to imagine how the Bill Against Sabbath Breaking could possibly "now be in force." Moreover, the 1695 act, and not the Bill, was repealed in the wake of the adoption of An Act for Suppressing Immorality. *See* An Act to Repeal the Acts Therein Mentioned (Mar. 12, 1788), *in* LAWS OF THE STATE OF NEW-YORK, PASSED BY THE LEGISLATURE OF SAID STATE, AT THEIR ELEVENTH SESSION, at 172 (N.Y. 1788) (repealing "An Act against the profanation of the Lord's Day called Sunday").

84. This appears to be a reference to the bill that is the subject of Items I-V of this Appendix. Whether the statement in the text accompanying this note that these events occurred in 1781 was Benson's error, the reporter's, or the printer's is unknown.

Constitution; and with respect to people of different religious denominations, they were not compelled to worship on that day.

As this was a subject on which he had great anxiety, he would attempt to shew that it would be an exceeding proper Bill, and that the House would do well to pass it. He wished his abilities were more adequate to so sublime a subject: it would be more masterly handled by the Clergy, whose study and profession would enable them to expatiate upon topics of this sort: but as there were no men of that order in the House, he hoped it might not be presumption in him to use his feeble efforts in attempting to support so good a law. He then spoke of the Constitution. He said it was only intended to give liberty of conscience to all religious denominations; but if by legal or equitable interpretation, it would bear a construction so as to repeal the old Sunday law; he thought it would be one good reason for a New Constitution.

If there was no pious inducements for the Committee to pass this law, he hoped, as they had been particularly tenacious of every antient custom, they would not be regardless of a custom (observing the Sabbath) that had been in use in this country from time immemorial, and confirmed by a law of the late colony; especially as no inconvenience or oppression had been complained of, in consequence of that law, nor had any abuses been committed by the persons entrusted with its execution. He asked why the Legislature of this State and of this country, as well as all courts of justice, omitted doing business on that day, and why it was called the Lord's day and not a law day. Why should we, said he, pretend to be so much wiser than our ancestors by abolishing this good custom, this reasonable service due to the Deity. Sabbath-breaking is an offence against God and Religion, hitherto punished by the municipal laws of this as well as other countries. In opposition to the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals that usually follows its profanation. The keeping one day in 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 of mankind; which otherwise might 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; it imprints on the minds of the people that sense of their duty to God, so necessary to make them good citizens; but which would be worn out and defaced by an unremitted continuance of labour, without any stated times of recalling them to the worship of their Maker.

In regard to any religious denominations who may have scruples of conscience respecting that day; as to himself, he had no objections to excuse them from the penalty of the law, provided they did not interrupt the public worship of others: manifold, he said, were the actions of his life that he regretted, and would recall if possible; but he never yet had reason to repine at the observance of the Sabbath, tho' he had never kept that day as duly as he ought

to have done. He had collected some sentiments from the writings of the primitive Fathers, who lived in the three first centuries of the Church, and other great writers, who considered this matter as well in a political as religious sense; and they, as well as his own breast, informed him that it was a profanation of the Lord's day, and a breach of the law of it, to neglect and omit the proper duty and business of that day, which is the immediate service of the worship of our God.

That the Eternal God is to be solemnly and religiously adored by the children of men, and that we are bound by acts of piety and devotion, to give unto him, the glory due unto his name, and pay our homage to him, none will question, who really believe that there is a God, infinitely perfect and blessed, and the fountain of all being and blessedness.

But, besides the morning and evening sacrifices, which the duty of every day requires, the wisdom of God, for the preserving and securing of divine worship in the world, hath instituted and appointed a particular time for the special solemnities of it, which is "one day in seven."

Now, said he, this instrumental part of religion, (for he would call it so) though it be not equally necessary with the essentials of it, the love of God, and faith in Christ; yet it was undoubtedly necessary, so much so, that revealed religion, and with it all religion, would in all probability, have been lost and forgotten, long e'er this, if it had not been kept up by the observation of Sabbaths.

The profanation of God's Sabbath, which he is very jealous for the honor of, is a sin that very justly brings judgments on the land. It is a sin, that kindles fires in the gates of Jerusalem. Jer. 17, 27. A sin, that brings yet more wrath upon Israel. Neh. 13, 17, 18. and therefore, all that wish well to the public peace, and those especially, who are entrusted with the preservation of it, and concerned in interest, as well as duty, to take care of the due sanctification of the Sabbath, so that, whatever guilt of this kind, particular persons may contract, it may not become national.

It appears by the light of nature, that there must be some such days observed: If God is to be worshipped by us, solemnly, and in concert, there must be some fixed and stated times for the doing of it; the designation of which, is necessary, both to preserve the thing itself, and to put a solemnity upon it.

The Gentiles had days set apart to the honor of their Gods, which they spent accordingly, in rest, from worldly labor, and by the solemnities of their religion, looking upon those, as peculiar days, distinguished from and dignified above other days. Doth not even nature teach men thus to own God, the Lord of time, and to constitute opportunities for the public, solemn worship of him? Now, if all people will thus walk in the name of their God, should not we walk in the like manner, in the name of the Lord our God?

By the old Testament, it appears, that one day in seven should be thus religiously observed. It is plain, that a Sabbath was instituted from the beginning; it was a positive institution in Paradise, as marriage was; the former, as necessary to the preserving of the church, and sacred fellowship, as the latter, to the support of families and human fellowship. When the scripture saith

expressly, that God rested on the seventh day, and that he blessed and sanctified it, because he so rested. To suppose, that Sabbaths were not kept in the Patriarchal age, because no mention is made of them in the history of that age, is absurd, since we have a record of the institution of the Sabbath in the beginning, and an account of the religious observation of a Sabbath before the giving of the Law upon Mount Sinai.

The first word of the fourth commandment, "Remember the Sabbath day," plainly shews, that it was the revival of an old commandment, which had been forgotten, viz. That one day in seven, should be sanctified to God: It is the solemn declaration of an ancient institution, and is of perpetual obligation, that the seventh day, not the seventh from the creation, which, in the revolution of so many ages, we cannot be infallibly certain of, but the seventh day, after six days of worldly labor, is the Sabbath of the Lord our God, and is so to be sanctified. And tho' God rested the seventh day from the creation; yet, in the fourth commandment, it is not said he blessed the seventh day; but he blessed the Sabbath day; or a Sabbath day, in that proportion of time, and sanctified it: And this part of the blessing of Abraham's seed, comes upon the Gentiles through faith.

It is evident to all, who read the New Testament without prejudice, that the first day of the week, should be observed and sanctified as a Christian Sabbath.

That a weekly Sabbath is to be religiously observed in the Christian Church, we not only find no repeal of the fourth commandment, in the New Testament, nor any reason for the repeal of it; but on the contrary, we find it expounded by our Saviour, and vindicated from the corrupt glosses of the Scribes and Pharisees; who, as in other things, were prophanely loose; so in this, they were superstitiously strict. Several occasions Christ took, to shew, that works of necessity and mercy, are no violation of the Sabbath rest. Had the law of the fourth commandment been to expire presently, our Saviour would not have been so careful to explain it; but it is plain, he designed to settle a point, which would afterwards be of use to his church, and to teach us, that our Christian Sabbath, tho' it is under the doctrine of the fourth commandment, yet it is not under the arbitrary injunction of the Jewish Elders.

Our Saviour has likewise told us, that the Sabbath was made for all men, and not for the Jews only; and that he himself was Lord of the Sabbath day: That it should be in a special manner his day, and devoted to him. He likewise supposed the continuance of a Sabbath, to be religiously observed by his disciples, at the very time of the destruction of Jerusalem, which put a final period to all the peculiarities of the Jewish œconomy; that he bids them pray, that their flight might not be in the winter, nor on the Sabbath day. And the apostle speaks of a Sabbath, or day of rest, which believers have now under the Gospel, like that day of rest, which God instituted, when he had finished the work of creation.

It is likewise evident, that the day which the Christian Church has in all ages observed, and doth still observe, which is commonly reckoned the first day of the week, is the day which is the will of Christ we should observe as our

Christian Sabbath. It is plain that the Apostles and first Christians did religiously observe the first day of the week as the day of their solemn assemblies for the divine worship, and that with a regard to the resurrection of Jesus Christ; this day was called the Lord's Day.

It was on the first day of the first week of time, that the blessed Spirit moved upon the face of the waters to produce a world, a world of beauty and plenty, out of confusion and emptiness; and it was upon the first day of another week, that he descended on the Apostles, and acted them to produce a church; justly, therefore, is the first day of the week consecrated to the honor of that divine person, to whom we owe both our being, and our new being, in order to our well being.

Mr. Benson said he was not contending against the observance of the Lord's Day; what he wanted was equal liberty, and an adherence to the Constitution.

Mr. Sylvester said, that rejecting the bill would be one of the most imprudent steps the Legislature could be guilty of, as disregarding that solemn day, would tend to no religion at all, except the religion of nature. The gentleman, he said, had asked what right the Legislature had to interfere in divine worship; he did not admit that it was an interference, to prohibit them travelling by churches and disturbing congregations. But with respect to Jews, and others, he should have no objection to new model the clause, so as not to prohibit them from work in their houses if they made conscience of it, and to do such things as would not interfere with the public worship of others. They, nor no one else, were by the Law compelled to go there; and that those Jews who are in the state had made no complaints: why, therefore, said he, should every thing be set afloat, especially as no difficulties had yet occurred? Will it said he, be to any purpose to suggest this further consideration, that the way to prosper in your affairs all the week, and to have the blessing of god upon you in them, is to make conscience of the Lord's day? That truly Great and good man, the Lord Chief Justice Hale, with whom the world was well acquainted, and whose works he did not doubt but many gentlemen present had read, tho' perhaps not on religion, wrote in a solemn manner to his children; that he had found by a strict and diligent observation, that a due observation of the Lord's day, had ever joined to it a blessing on the rest of his time; and that the week which he had so begun, was always blessed and prosperous to him; while on the contrary, whenever he had been negligent to the duties of that day, the rest of the week was unsuccessful and unhappy to his own secular employments.

Mr. Dongan thought that the Gentleman (Mr. Sylvester) had not come to the point in question at all. The Constitution he believed was in direct opposition to the Bill, and this assertion had not been confuted. But he did not object to it on that ground alone; he feared that it would lead to oppression.

Mr. Jones begged the indulgence of the committee for a few moments; the Bill under their consideration, was in general a compilation of the old Colony Laws, which it become the duty of the revisers of the Laws to bring forward. The question to be decided was, whether the Constitution had abrogated them;

if it has, then the Bill before the House could not be passed. He would proceed to consider what was the import of that article of the Constitution. If, said he, the Bill had declared that a man should go to one church or to another, or that he should hear service in any particular language, then it would, in his opinion, be against the Constitution; but there was not a thing in the Bill about religious worship, unless drunkenness, horse-racing, &c. were deemed acts of religion. Every man was left to worship the Almighty in the way that pleased him, and he might keep what day he pleased; but if he does not chuse to keep the Sabbath, do not let him disturb them that do. He wished not, however, to consider this Bill in a religious view at all. His opinion of the matter was, that the Legislature were passing this Bill, for the sake of good order in society, and not as men actuated only by religious motives. There was a power given by the Constitution, to prevent acts of licentiousness, and many things mentioned in that were really acts of licentiousness. He was free to declare that the Bill did not in any shape militate against the Constitution, as it did not give any undue preference, nor make any discrimination. This being the case, the single proposition to be considered was, whether it would be proper to enact this clause, or by a solemn act to declare, that all men might do just as they pleased on that holy day; for if there was no restraint, there might be horse-racing, &c. to the disturbance of all the serious part of the community, and to the great corruption of their morals. This he said was the sense of the community at large; and whether it was confined to one day or to another, yet there should be some assistance of the law to prevent disturbances on that day; on this principle he should vote for the Bill.

Mr. Benson said he did not consider the subject as trifling, and he trusted the honorable Gentleman last on the floor, had also an idea of its importance, tho' he did not believe he considered it as solemnly as he did. The gentleman had said there was nothing in the Bill contrary to the Constitution: he had declared that in his opinion the act was against the Constitution, and from the reasoning of the gentleman last on the floor, he was convinced of the truth of his assertion. If the Constitution was taken up and refined upon, as it must be before the Bill could pass, the whole might be refined away. The Bill did not declare that a man should worship the Deity in the same mode as those who passed it, but it declared that he should do as they did; and it was an indirect way of making one man adopt another man's belief. He referred again to the situation of the Jews. This was one of his objections. The Jew may not labor on our Sabbath, but on his, you permit every body to work. The gentleman who advocated this Bill in the first instance, had said, let the Jew work in his house. See, said he, what a refinement this is; and such he said must take place if the Bill passed. The gentleman was mistaken; the idea of fixing a day gave rise to all the persecutions of the age in which it originated; in the writings of the primitive fathers, the gentleman might also have found many errors that they established, and which proved fatal to numbers. Sir, said he, why is it that we will not do unto others, as we would they should do unto us? Suppose a Jew should say, you offend me

by working on the Saturday, and for which he will say he has a positive command; why has he not as good a right to a law to prevent his sect being disturbed, as any other sects in the community? They, by the Constitution, are to enjoy equal rights and privileges. It was a fact, he said, that unhappily for these people, to avoid the noise which is common on a Saturday; they were obliged to have their houses of public worship in retired places. If the Bill was only to prohibit sports and idle diversions, he should have no objection to it. He repeated it again, that passing this Bill would be a violation of the Constitution; and tho' in this instance it had for its object the observance of the Sabbath, yet it might go to every act of a man's life. The arguments the gentleman had used to shew the importance of the Sabbath, he did not differ with him about. He would ask the gentleman what he believed was the greatest sin? Why no doubt he would say disbelieving, and would not this law affect them that did not believe in revealed religion, tho' we have nothing to do with them? It was arrogance in any Legislature to interfere and make laws to support religion, as the Great Author of our religion has declared that he will take care of it. But it had been said that serious people required it; he wished to know how this could be proved; the gentleman had not yet done it. Suppose there was a majority of Jews in the State. Upon the same principles that this Bill would be passed, they might declare that Saturday should be set apart as a day of public worship, under the same restrictions and penalties. Besides the inconvenience respecting the Jews, there were many others that it would affect, when does the Sabbath commence? In New-England, people suppose it to begin on Saturday evening, as did many people in this State. And how was this to be defined? He did not wish to be understood, that he was against the observance of the Sabbath; on the contrary, he supposed it to be the duty of every man. If a man supposes he can consistently labor on that day, do not prohibit him. He wished that gentlemen would confine themselves to fair reasoning, and not to declamation. If, said he, this Bill is passed, the Constitution will be egregiously departed from. He would say no more on this subject, because it was one of those questions on which every man must decide according to those arguments his own mind would suggest. The question, said he is, whether you will pass a Law to prevent a man from doing what he conscientiously thinks he has a right to do.

Mr. Sylvester replied, that he was confident there could not but be a majority in the House, notwithstanding what had been said. As to defining the Sabbath, there was no Mathematician could do it. It was sufficient that a majority of the Christian world had adopted a day, and from which no inconvenience had arisen. As to the Constitution being departed from, he could not agree that this Bill could have such an operation.

Mr. Jones said, he was yet to learn that any thing in the Bill militated against the Constitution. If it could be made appear, it must be by refinement on refinement; but not a single argument had been yet offered, to convince him that it would in the smallest degree affect the Constitution.

The division was then called for.

FOR THE AFFIRMATIVE:

Messrs. Dongan, Benson, Graham, Low, John Livingston. 5.

FOR THE NEGATIVE:

Messrs. Jones, Carman, Cornwell, Taulman, Nevin, J. Smith, Sylvester, Baker, Patterson, Dewitt, Gilbert, Strang, Speaker, Frey, Van Ingen, Powers, Webster, Savage, Schoonmaker, Cantine, Hedges, Sands, Verplanck, Younglove, Clinton, Thomson, Lewis, Tompkins, Havens, Drake, Clarke. 34.[85]

2. Proceedings of February 13

HOUSE OF ASSEMBLY ,

POUGHKEEPSIE.

Wednesday, February 13, 1788.

. . . .

The House went again into a Committee on the Bill for the suppression of immorality:

Mr. Hedges in the Chair.

After some time spent on the Bill, the Committee rose and reported, that they had gone through and agreed to the same, when it was ordered to be engrossed for a third reading.[86]

Mr. Doughty, from the committee of the whole House, on the bill, entitled *An act for suppressing immorality*, reported, that the committee had gone through the bill, and made amendments, which he was directed to report to the House; and he read the report in his place, and delivered the bill and amendments in at the table, where the same were again read, and agreed to by the House.

Ordered, That the bill and amendments be engrossed.[87]

3. Proceedings of February 15

HOUSE OF ASSEMBLY,

POUGHKEEPSIE.

. . . .

85. THE DAILY ADVERTISER (N.Y., N.Y.), Feb. 22, 1788. According to the Assembly's Journal, this list omits the names of Messrs. Bruyn, Bloom, and P. Cantine. *See* ASSEMBLY JOURNAL, *supra* note 79, at 66 (listing them as having voted in the negative).

86. THE DAILY ADVERTISER (N.Y., N.Y.), Feb. 23, 1788.

87. ASSEMBLY JOURNAL, *supra* note 79, at 67 (entry of Feb. 13, 1788).

Friday, February 15.

. . . .

The Bill for the suppression of immorality, was read a third time and passed the House.[88]

The engrossed bill entitled, *An act for suppressing immorality*, was read a third time.

Resolved, That the bill do pass.

. . . .

Ordered, That Mr. Clinton and Mr. Tompkins, deliver the two last mentioned bills, to the Honorable the Senate, and request their concurrence to the said bills, respectively.[89]

Item X. Proceedings in the New York Senate, February 15–18, 1788

1. Proceedings of February 15

A message from the Honorable the Assembly, by Mr. Clinton and Mr. Tompkins, was received with the two following bills for concurrence, viz. the bill entitled, *An act for suppressing Immorality* . . . ; which were respectively read the first time, and ordered a second reading.[90]

2. Proceedings of February 16

The bill entitled . . . *An act for suppressing Immorality* . . . were respectively read a second time, and committed to a committee of the whole.[91]

3. Proceedings of February 18

Mr. Hathorn from the committee of the whole, on the bill entitled, *An act for suppressing immorality*, reported, that in proceeding on the bill by paragraphs, at the end of the first clause, which prohibits all servile labouring, travelling, pastimes or exercises whatsoever, on the Lord's day, called Sunday, Mr. Lawrance moved that the following proviso be added to the end of the said clause, viz. "provided that nothing in this clause contained, shall prevent or interfere with the free exercise and enjoyment of the religious profession and worship of any person or persons within the State; also provided that the enjoyment of the same shall not be construed to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State." Debates

88. THE DAILY ADVERTISER (N.Y., N.Y.), Feb. 23, 1788.

89. ASSEMBLY JOURNAL, *supra* note 79, at 69.

90. JOURNAL OF THE SENATE OF THE STATE OF NEW-YORK, AT THEIR ELEVENTH SESSION, BEGUN AND HOLDEN AT POUGHKEEPSIE IN DUTCHESS COUNTY, THE ELEVENTH DAY OF JANUARY, 1788, at 33 (Poughkeepsie 1788) (entry of Feb. 15, 1788) [hereinafter SENATE JOURNAL].

91. *Id.* at 34 (entry of Feb. 16, 1788).

arose, and the question being put thereon, it carried in the negative, in the manner following, viz.

FOR THE NEGATIVE.

Mr. Vanderbilt, Mr. Hopkins, Mr. Floyd, Mr. L'Hommedieu, Mr. Humfrey, Mr. Swartwout, Mr. Williams,

FOR THE AFFIRMATIVE.

Mr. Morris, Mr. Townsend, Mr. Lawrance, Mr. Yates, Mr. Hoffman,

That in proceeding to the third clause of the bill, which imposes a fine upon any person who shall *profanely* swear or curse, and be thereof convicted, Mr. Lawrance moved that the word *profanely* be expunged; debates arose, and the question being put thereon, it was carried in the negative by all the members present, excepting Mr. Lawrance and Mr. Morris.

Mr. Hathorn further reported, that they had gone through the bill, made amendments thereto, and agreed to the same, which report he read in his place, and delivered the bill, with the amendments, in at the table, where they were again read, and agreed to by the Senate. Thereupon,

Resolved, That the bill with the amendments do pass.

Ordered, That Mr. Lawrance and Mr. Hathorn, deliver the bill with the amendments, to the Honorable the Assembly, and inform them that the Senate have passed the bill, with the amendments therewith delivered.[92]

Item XI. Proceedings in the House of Assembly, February 18, 1788

A message from the Honorable the Senate, delivered by Mr. Lawrence and Mr. Hathorn, with the bill therein mentioned, was read, that the Senate have passed the bill entitled, *An act for suppressing immorality*, with the amendments therewith delivered.

The bill and amendments were read; and the amendments being severally read a second time, were concurred in by the House, and the bill amended accordingly.

Ordered, That Mr. Lockwood and Mr. J. Smith, deliver the bill to the Honorable the Senate, and inform them that this House have concurred in the amendments, and have amended the bill accordingly.[93]

Item XII. Proceedings in the New York Senate, February 18, 1788

A message from the Honorable the Assembly, by Mr. Lockwood and Mr. John Smith, was received, with the bill, entitled, *An act for suppressing Immorality*,

92. *Id.* at 35–36 (entry of Feb. 18, 1788).

93. ASSEMBLY JOURNAL, *supra* note 79, at 80 (entry of Feb. 18, 1788).

informing that they had concurred with the Senate in their amendments to the bill, and that the bill was amended accordingly.

The said bill having been examined,

Ordered, That Mr. Hathorn and Mr. Townsend, return the bill to the Honorable the Assembly.[94]

Item XIII. Proceedings in the House of Assembly, February 19-21, 1788

1. Proceedings of February 19

The Honorable the Senate, returned by Mr. Hathorn and Mr. Townsend, the bill entitled, *An act for suppressing Immorality*.[95]

2. Proceedings of February 21

Ordered, That Mr. D'Witt and Mr. Gansevoort, deliver the bill entitled, *An act for suppressing vice and Immorality* . . . to the Honorable the Council of Revision.[96]

Item XIV. Notice of Approval by the Council of Revision, February 26, 1788

A message from the Honorable the Council of Revision, delivered by the Honorable Mr. Chief Justice Morris, was read, "that it does not appear improper to the Council, that the following bills, viz., the bill entitled, *An act for suppressing Immorality*, . . . should respectively become laws of this State.[97]

Item XV. An Act for Suppressing Immorality (passed February 23, 1788)

Be it enacted *by the People of the State of New-York, represented in Senate and Assembly, and it is hereby enacted by the authority of the same*, That there shall be no travelling, servile labouring or working, (works of necessity and charity excepted) shooting, fishing, sporting, playing, horse-racing, hunting or frequenting of tipling-houses or any unlawful exercises or pastimes, by any person or persons within this State, on the first day of the week, commonly called *Sunday*. And that every person being of the age of fourteen years or upwards, offending in the premisses, shall for every such offence forfeit and pay to the use of the poor of the city or town where such offence shall be committed, the sum of *six shillings*: And that no person shall cry, shew forth or expose to sale, any wares, merchandize, fruit, herbs, goods or chattels upon the first day of the week, commonly called *Sunday*, except small meat and milk and fish, before nine of the clock in the morning, upon pain that every person so offending shall forfeit the same goods so cried, shewed forth or exposed to sale, to the use of the

94. SENATE JOURNAL, *supra* note 90, at 36–37 (entry of Feb. 18, 1788).
95. ASSEMBLY JOURNAL, *supra* note 79, at 81 (entry of Feb. 19, 1788).
96. *Id.* at 86 (entry of Feb. 21, 1788).
97. *Id.* at 92 (entry of Feb. 26, 1788).

poor of the city or town where such offence shall be committed, and if any person offending in any of the premises shall be thereof convicted, before any Justice of the Peace for the county, or any Mayor, Recorder or Alderman of the city, where the offence shall be committed; upon the view of the said Justice, Mayor, Recorder or Alderman, or confession of the party offending, or proof of any witness or witnesses upon oath, then the said Justice, Mayor, Recorder or Alderman, before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the city or county where the offence shall have been committed, commanding him to seize and take the goods, so cried, shewed forth or exposed to sale as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties, by distress and sale of the goods and chattels of such offenders, and to pay the money arising by the sale of such goods so seized, and the said other forfeitures or penalties, to the overseers of the poor of the city or town, where the said offence or offences shall have been committed, for the use of the poor thereof. And in case no such distress can be had, then every such offender shall, by a warrant under the hand and seal of the said Justice, Mayor, Recorder or Alderman be set publicly in the stocks by the space of two hours. *And further*, That if any person shall be found fishing, sporting, horse-racing, hunting, gunning or going to or returning from any market or landing with carts, waggons or sleds, on the first day of the week called *Sunday*, it shall be lawful for any constable or other citizen to stop every person so offending, and to detain him or her until the next day, and then to carry or convey him or her to some Justice of the Peace, to be dealt with according to law. *Provided always*, That no person going to or returning from any church or place of worship, within the distance of twenty miles, or going to call a physician, surgeon, or midwife, or carrying a mail to or from any post-office, or going express by order of any public officer, shall be considered as travelling within the meaning of this act.

II. *And be it further enacted by the authority aforesaid*, That if any person charged with having laboured or worked on the said first day of the week called *Sunday*, and shall be brought before a Justice of the Peace to answer to such charge, and shall then and there prove to the satisfaction of the said Justice, that he or she uniformley keeps the last day of the week as holy time, and does not labour or work on that day, then such defendant shall be discharged. *Provided always*, That the work or labour with which he or she is charged, has not disturbed other persons in the observance of the first day of the week, as holy time.

III. *And be it further enacted by the authority aforesaid*, That no person or persons upon the first day of the week commonly called *Sunday*, shall serve or execute, or cause to be served or executed any writ, process, warrant, order, judgment or decree (except in cases of treason, felony, or breach of the peace) but that the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever, and the person or persons so serving or executing the same, shall be as liable to the suit of the party

grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree at all.

IV. *And be it further enacted by the authority aforesaid*, That if any person or persons shall at any time or times hereafter, profanely swear or curse, and be thereof convicted by the confession of the party offending, or on the oath of any one or more witness or witnesses, or in the manner herein after mentioned, before any Justice of the Peace for any county, or any Mayor, Recorder, or Alderman of any city in this State, every person so offending, shall for every such offence forfeit and pay to the use of the poor of the city or town where such offence or offences shall be committed, the sum of *three shillings*.

V. *And be it further enacted by the authority aforesaid*, That in case any person shall profanely swear or curse in the presence and hearing of any Justice of the Peace for any county, or in the presence and hearing of any Mayor, Recorder, or Aldermen of any city, while in the execution of his office, every such Justice of the Peace, Mayor, Recorder or Alderman, shall and is hereby authorised and required to convict every such offender, of such offence, without any other proof whatsoever.

VI. *And be it further enacted by the authority aforesaid*, That in case any person who shall be convicted of profanely swearing or cursing, shall not immediately pay down the respective sums so forfeited, with the charges of such conviction, or give security to the satisfaction of the Justice, Mayor, Recorder, or Alderman, before whom such conviction is had, for the payment thereof within six days, then every such offender, being above the age of sixteen years, shall, by warrant under the hand and seal of such Justice, Mayor, Recorder or Aldermen, be set publicly in the stocks, by the space of one hour, for every single offence, and for any number of offences, whereof any such offender shall be convicted, at one and the same time, two hours; but if the offender shall not be above the age of sixteen years, and shall not forthwith pay the said forfeitures, or give security for the payment thereof the parent or master shall pay the same, to be recovered as aforesaid.

VII. *And be it further enacted by the authority aforesaid*, That if any person shall be drunk, and of the same offence of drunkeness shall be lawfully convicted, before any Justice of the Peace for the county, or before the Mayor, Recorder or any Alderman of the city wherein such offence shall be committed, either upon the view of such Justice, Mayor, Recorder or Alderman, or upon the confession of the party offending, or proof of any one or more witness or witnesses, on oath, every person so offending shall forfeit and pay for every such offence, *three shillings*, to the use of the poor of the city or town wherein such offence shall be committed. And in case any person who shall be convicted of drunkeness as aforesaid, shall not immediately pay down the sum so forfeited, with the charges of such conviction, or give security to the satisfaction of the Justice, Mayor, Recorder or Alderman, before whom such conviction is had, for the payment thereof within six days, every such offender shall, by warrant under

the hand and seal of such Justice, Mayor, Recorder or Alderman be set publicly in the stocks, by the space of two hours.

VIII. *And be it further enacted by the authority aforesaid*, That every Justice of the Peace, Mayor, Recorder or Alderman, shall immediately upon information given, upon oath, of any constable or other peace officer, or of any other person whatsoever, cause the offender and offenders against this act, to appear before him, and upon such information being proved as aforesaid, shall convict such offender and offenders in such manner as in and by this act is prescribed.

IX. *And be it further enacted by the authority aforesaid*, That every Justice of the Peace, Mayor, Recorder and Alderman, before whom any person or persons shall be, by virtue of this act, convicted of any of the offences aforesaid, shall cause such conviction to be drawn up in the form following: "City of New-York, (or Westchester county, or other city or county, as the case may require) to wit: Be it remembered that on the———day of——, in the year of our Lord one thousand——— A. B. was convicted before me, C. D. (Mayor or Recorder, or one of the Aldermen) of the said city (or one of the Justices of the Peace of the said county) of crying, (or shewing forth, or exposing to sale) one (or two or more, specifying the number, quantity and kind of goods) on a Sunday, in the said city (or the town of ——in the said county) or (of travelling, or doing servile work, or labour or of shooting, fishing, sporting, playing, horse-racing, hunting or frequenting tipling-houses, or using some unlawful exercise or pastime) on Sunday (or) of swearing one (or two or more) profane oath (or oaths) (or) of cursing one (or two or more) profane curse (or curses) (or) of having been drunk in the said city (or at the town of——— in the said county) as the case may require. Given under my hand and seal the day and year abovesaid." And such conviction shall not be liable to be removed by *certiorari* into the Supreme Court, but shall be deemed and taken to be final to all intents and purposes whatsoever.

X. *And be it further enacted by the authority aforesaid*, That all charges of the information and conviction of any such offender, shall be borne and paid by the party offending, if able, over and above the penalties inflicted by this act, which charges shall be settled and ascertained by the Justice, Mayor, Recorder or Alderman, before whom such conviction shall be had, but shall in no case exceed in the whole, *three shillings*. And the Justice, Mayor, Recorder or Alderman, before whom any proceedings shall be had upon this act, or his Clerk may take for the information, summons, conviction and warrant thereupon, *one shilling* and no more; and if the offender shall be set in the stocks for the same offence, no charges whatsoever shall be paid by any person whomsoever.

XI. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful for every such offender to pay the said forfeitures and charges to the Justice, Mayor, Recorder or Alderman, before whom such conviction is had; and such Justice, Mayor, Recorder or Alderman, shall receive the same, and as soon as conveniently may be, pay the same forfeitures to the overseers of the poor of

the city or town where such offence was committed, for the use of the poor thereof.

XII. *And be it further enacted by the authority aforesaid*, That all and every Justice of the Peace for the county, and every Mayor, Recorder or Alderman of the city, wherein any such offence shall be committed, may, and they are hereby respectively authorised and required to put this act in execution, against any person or persons within their respective jurisdictions, although such Justice, Mayor, Recorder or Alderman, shall be rated and pay to the relief of the poor of the city or town where any offence contrary to the true intent and meaning of this act shall be committed; any law or statute to the contrary notwithstanding.

XIII. *And be it further enacted by the authority aforesaid*, That no person shall be prosecuted or troubled for any offence against this act, unless the same be proved or prosecuted within twenty days, next after the offence committed.

XIV. *And be it further enacted by the authority aforesaid*, That if any suit or action shall be commenced or brought against any Justice of the Peace, Mayor, Recorder Alderman, constable or other officer or person whatsoever, for doing or causing to be done any thing in pursuance of this act, concerning any of the said offences: The defendant in such action or suit may plead the general issue, and give the special matter in evidence: And if in any such action or suit a verdict shall be given for the defendant, or the plaintiff become non-suit, or discontinue his action, then the defendant shall have treble costs.[98]

APPENDIX II.

Item I. Proceedings in the House of Assembly, January 30-March 13, 1798

1. Proceedings of January 30

Mr. Coxe presented a Bill, entitled, "An Act for the Prevention of Vice and Immorality," which was read, and referred to a Committee of the Whole, the Committee to set on Thursday next.[99]

2. Proceedings of February 6

Legislature of New-Jersey

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98. LAWS OF THE STATE OF NEW-YORK, PASSED BY THE LEGISLATURE OF SAID STATE, AT THEIR ELEVENTH SESSION 79-81 (N.Y. 1788).

99. VOTES AND PROCEEDINGS OF THE TWENTY-SECOND GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY, AT A SESSION BEGUN AT TRENTON, ON THE 24TH DAY OF OCTOBER, 1797, AND CONTINUED BY ADJOURNMENTS. BEING THE SECOND SITTING 16 (Trenton 1798) (entry of Jan. 30, 1798) [hereinafter NEW JERSEY ASSEMBLY JOURNAL].

HOUSE OF ASSEMBLY

. . . .

Tuesday, February 6.

. . . .

The house then went into committee on the bill for the suppression of vice and immorality, Mr. Coxe, in the chair. Section the first enacts a fine of one dollar against persons working, sporting, or using diversions or travelling; selling fruits or merchandize, &c. to be forfeited, or where no seizure can be made the person to be set in the stocks 4 hours—agreed to. Section 2, a fine of 13 dollars on catching fish on a Sunday—agreed. Section 3, exempts consciencious observers of that day from attending to martial duty, &c. except in emergency—postponed.—Section 4, respects driving stages on a Sunday—postponed. Section 5, on driving waggons, carts, or cattle, fine two dollars. Section 6, excuses serving a warrant, &c. &c. except in criminal cases on that day, or it will be void. Section 7, swearing an oath 50 cents fine. Section 8, the same, and extends to permitting a justice of the peace to the fine immediately for it if used before him while in his office on duty.

Mr. Wade spoke against the efficacy of a fine on oaths, he said it could not restrain the human mind: He thought the disgrace such a practice would leave a man in was sufficient punishment, but he would not be thought to advocate it. He thought, however, that there was no need of the 8th section, and moved to strike it out, thinking it improper that the justice should be judge and accuser.

Mr. Kitchel and the Speaker spoke in favour of the section; they urged that nothing could exceed the contempt, and it merited a greater degree of punishment. The Speaker moved to extend it to all situations. Messrs. Campbell and Pennington thought it extended the magistrate's power too far, and leaving him in so aukward a situation, that let him be wheresoever, he was bound to take notice of oaths, and punish, under his official character. The motion was lost and the section carried.

Section 9 enacts that in case such offenders cannot pay the fine immediately, they shall give security to pay it in 6 days, or be put in the stocks 2 hours, and if for more than one offence at a time, 4 hours, or be imprisoned to hard labour, for any time not exceeding two weeks. But if under 10 years old the parent or master to pay.

Mr. Pennington opposed the principle of this section, as it allowed a man who could pay half a dollar to swear, while a poor man would be put in the stocks, or imprisoned for it. This, he said, was departing from equal rights; he rather thought the rich deserved the greatest punishment, who held up to the poor a bad example; he thought it both unequal and impolitic; he should not object if the punishment was make alike to both.

Mr. Kitchel said, if a rich man swore, he would pay, and if a poor man did, he deserved to suffer. He thought a severe check ought to be open against it.

Mr. Campbell said, if the punishment were to be excused by a man's pleading poor, he would be excused for his crime; he thought it ought to be equal. The justice ought to have a power to punish beyond what he chose at all times to inflict, that should be proportioned to his judgment of the crime.

Mr. Southard thought if a man was put in prison for this crime, there ought to be some mode adopted for him to exist. Mr. Wade and Mr. Seagrave thought a man ought not to be punished more than in proportion to his fine, which being but half a dollar, 24 hours was full punishment sufficient. If the punishment was to be continued two weeks, the fine should be 10 dollars at least. Mr. S. said that the house ought to deal equal justice; he thought fine nor threats would never stop this vice; he thought one day sufficient punishment to the fine, and if a man was put in for one week, how could he exist? that was the full time which a man could live without food. He hoped the house would consider.

Mr. Vancleve and Mr. Kitchel spoke on the distance many justices live from the prison, as a reason against making it too short a time, as frequently the constable would rather pay a man's fine than be at the trouble to take him to prison. A motion to make the term one week was carried. Motion was then made by Mr. Pennington, on the plea of equality, to strike out the section, which was lost.

Section 10 fines a person, being drunk, one dollar, or, on not immediately paying or giving security to pay in three days, to be put in the stocks, not exceeding 4 hours, or imprisonment 9 days; which was carried.[100]

3. Proceedings of February 12-13

Monday, February 12.[101]

. . . .

. . . . The house then went into a committee on the bill for the prevention of vice and immorality.

Section 11 lays a fine of 16 dollars on persons exhibiting plays, farces, interludes, juggling, slight of hand, feats of activity, or agility of body, bull, and bear bating, &c. in the state. Sect. 12 fines a person for interrupting any public worship, one dollar, or to be put in the stocks 4 hours. Sect. 14 relates to the form of conviction, and provides that no decision of a justice, on any of the fines, &c. in this act should be removed by writ of certiorari into any other court but should be final. Sect. 15 enacts that no charge on the parties offending should exceed 1 dollar, and that justices fees should not exceed 40 cents; but if the offender is set in the stocks no charge shall be made. Sect. 18 enacts, that no application against persons for offences committed 30 days before should not be allowed. Sect. 19 that if any suit is instituted against a justice, constable, &c. and the plaintiff is cast, the defendant should have triple costs. The committee of the

100. THE CENTINEL OF FREEDOM (Newark, N.J.), Feb. 13, 1798.

101. Despite the heading, this report includes discussions that occurred on February 12 and 13.

whole having taken up the postponed sections, and introduced a new one,[102] it rose and the house took up the bill. Section 1 & 2 were agreed to. Sec. 3, which excuses persons from religiously observing the 7th day, or Saturday, as a Sabbath; from military duty; serving on jury; being served with a process; and working on the highways, except in cases of urgent necessity, passed.

Mr. Dunn wished to introduce a section between the third and fourth, allowing persons, who observed the seventh day, to work at their businesses on the first day, or Sunday, which he moved.

Mr. Kitchel thought if this liberty was allowed, it would much interrupt persons who went to church, and particularly if in businesses where forges, &c. are used near a place of worship. — Mr. Dunn did not object to the introduction of any thing of this kind, his main object was, that those people may not be prohibited working.

Mr. Campbell was opposed to the motion: The bill, he said, was introduced, and which its title expressed, to suppress vice, and it ought to be suppressed altogether, or the title must be changed, and be called an act to encourage vice. Why one set of men should be allowed by law to follow business, and another fined for it, he could not see: to be sure, he said, those people would labour under hardships; if so it was their misfortune, but he hoped the house would never suffer particular persons to work on a day which was declared in the same bill a sacred day. It gave them a manifest advantage over every class of citizens; they had the privilege to observe their own day by the previous section, where they were excused many duties, and those duties two days in the week, while others but one; the act, he thought, went as far as it could, and if it was too hard for these people they must remove from society. He hoped none would have the privilege of working on the Lord's day. If the section was introduced, he must vote against the bill. It was in vain to attempt at the suppression of vice on one part, and encourage it in another; do we not, said he, undertake to order the religious observance of the first day as the Christian Sabbath? the object of which is to prevent any kind of labour, pastimes or business, yet we say a certain class should have permission to do those things—if they are vicious they ought to be suppressed, if not why not open the door to every man alike?

Mr. Dunn said he thought the gentleman had more generosity of sentiment; he was surprised he should say that a religious observance of the 7th day would make a man more vicious or less moral; he was sure he would not argue so. Liberty of conscience, he said, was really necessary in a free country, and the

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102. The provisions referred to in the report of the Committee of the Whole's deliberations of Feb. 6 as Sections 1–10 of the original bill, *see* Item I.2 of this Appendix, address the same topics as Sections 1–3 and 5–11 of the law that was ultimately enacted, which is set forth in Item V of this Appendix. The account of the proceedings set forth in the text accompanying this footnote refers to Sections 11–19 of the bill, which cover the same ground as Sections 12–20 of that law. Plainly, the new section introduced after the Committee's review of the original bill was the one originally proposed by Gershom Dunn, which ultimately led to Section 4 of the law, and exempted certain sabbatarians from some aspects of the Sunday closing provision of Section 1.

instance of dispensing with oaths from the society of Friends was a proof of it. He thought the section so modified as not to hurt the keenest conscience. The advantages the gentleman said they had over others did not exist, for a training day never was on a Saturday, nor often any of the other things specified. If the country were to agree to drive them out because they differed in opinion, it would remain in a pretty foundation! He says they are privileged to keep the Sabbath—true, but they must pay handsomely for it; one seventh of their time, in addition to that which they are bound in conscience to observe! If this liberty was not granted, and the law put in execution, it would have a very bad effect; but he did not think it would often be, and it was much better to have no law than an useless one, or one which would bring contempt with it. In the township of Piscataway, where he resided, he said, half the inhabitants was of this opinion,[103] and would submit to any safe regulations against disturbing others on their day of worship, but he was sure no one would there put the law in force against them.

Mr. Wade moved an accommodating amendment.

Mr. Armstrong would not object to it; but he thought by allowing these people to work, the vicious part of mankind would assume their privilege, and render the intent of the bill void. He would not oppose an indulgence, where it could be granted without injury; but there were many who thought there ought to be no sabbath, and perhaps they had a right to indulgence too, and may apply for it.

Mr. Edgar hoped the indulgence would be granted—he was well acquainted with the district mentioned, and knew those people were numerous there, but he never had heard a complaint of them in the least disturbing the worship of the other citizens: he knew an instance wherein they particularly avoided it, of a family in the vicinity of a Baptist meeting. But he wished also that vicious persons should not take advantage of it; and again, if this privilege was not granted, he feared those characters would inform against those people for working on a day when they thought no harm, and such was the situation of magistrates, that they were bound to prosecute. It was not right, in this free country, to dictate to the consciences of any set of men. Should we say, because they keep a particular day, that they should observe two days? many gentlemen think it hard to keep one day, and he hoped those people would not be forced to keep more.

The amendment was carried and the section being under consideration,

The Speaker said that gentleman's observations had run on the section and not on the amendment. —He approved of it, wished to avoid pinching any man's conscience, but he thought it to be more descriptive of the persons meant to be served; it only went to say "any person known to keep that day," but who were

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103. Dunn represented Middlesex County in the Assembly. *See* STATE OF N.J., MANUAL OF THE LEGISLATURE OF NEW JERSEY 181 (1921). At least some of his constituents were members of Piscataway's Seventh Day Baptist church, which was one of the earliest in America. *See* HENRY CLARKE, A HISTORY OF THE SABBATARIANS OR SEVENTH DAY BAPTISTS, IN AMERICA 31–35 (Utica 1811).

to judge or prove it? It was easy for a man to say he was an observer of the seventh day, if taken up doing business on the first. That they should be tolerated was just and reasonable, but so as to avoid giving a licence to advantages. On this ground he must vote against the section unless a criterion was introduced.

Mr. Pennington said, it was the duty of all governments to protect every class of citizens in the exercise of their religious opinions, and any law to that effect should have his hearty consent.— This was as sacred as the rights of property, or personal liberty—and to say, because this sect of men will not labor on the seventh day, that they shall not on the first, is taking away that right. The Christian religion ought to meet the hearty support of the Legislature—religion makes people virtuous, it harmonizes and civilizes them, and every man ought to enjoy this right, and none ought to disturb him. It is a duty every man owes to his family, said he, to earn a livelihood for them, and should I say to a man of those principles you shall not labor on the day that I worship. This is certainly setting my opinion in opposition to his, and in violation of his rights, to deprive him of his property. If a man's opinions were not injurious to society, he could not see why the Legislature should interfere. [Mr. P. here entered into the disadvantages some countries had sustained, who had by prosecution for religion, driven their best citizens and mechanics away.] The humane doctrines of the Christian religion, he said, would not justify any government taking one sixth part of a man's property from him, which was the fact if one sixth of his time was lost.

Mr. Coxe (after the committee had risen and the house taken up the bill) in consequence of objections in his own mind and that of others, introduced a section, which he moved instead of the other; this made it necessary that a person to be allowed this privilege, should have a certificate from the society, that he was an acknowledged member of it—Also including all the other provisions. The question to strike out the other being carried, and this moved.

Mr. Dunn said he made no objection to every possible guard. He had hitherto been arguing on the impropriety of confining this sect, he should now argue on the unconstitutionality of it. In the constitution were these words, "that no person should be denied the enjoyment of any civil right on account of his principles"—this he thought to the point; he contended that it was a civil right for a man to work 6 days, and debarring him this, was to prevent the enjoyment of a civil right.

Mr. Southard was at a loss to know how to agree to the section, when he considered there never was, or could be more than one sabbath instituted. He professed himself to have as tender a regard for the consciences of men of different sects as any man, but he must be as cautious of the divine prerogative as of the consciences of men. Either the first or the seventh day's observance must be wrong, and it was impossible to bend the laws to every man's opinions; break down this principle, and we shall experience strange effects. The christian sabbath, he said, had been established for many ages, and it was the best institution man had yet been acquainted with, in a civil and religious point of

view—and if the law was made to favor one sect it must soon extend to two, three, &c. and thus make every day alike. Thus, in proportion as you deviate, said he, from an established observance of one day, you take away all obligations to the laws. He considered the first day was founded upon the divine law, and he could not, he dare not violate it. Where there were different opinions, he said it was the duty of the minority to give way to the majority, for it was impossible to make all men think alike, else all would do right. He could not see much injury done to this sect, and though he had an high opinion of their zeal, he could not sacrifice tried laws to accommodate them, for it was best of two evils to choose the least. He never had heard of two sabbaths being established in any country. As to the section the gentleman had read from the constitution, he did not regard that in point, as the civil right therein mentioned, only related to holding offices under the government, and being representatives of the people. The old testament, he observed, said that but one day should be kept, and he thought that authority enough to go by. On the whole as he thought very little injury could acrue to these people by the preclusion, and very much to the country at large by the allowance of this privilege, he should oppose it.

Mr. Seagreave, from his high opinion of the gentleman last up, was sorry to deviate from his sentiments on this question. On Mr. Southard's saying there never was but one Sabbath, he said, there was account of a Sabbath under the Jewish dispensation, and mention of one before Jew or Christian were known, to wit, that on which the Divine Being rested from the works of creation, and this was observed after that time, as was the seventh day; and if it was allowed that one was established in the Christian Æra, it made another.—But from the variety of changes, &c. which had taken place it was difficult to discover the original one, and why it should at this day be argued in the New-Jersey Legislature was strange. But, said he, the gentleman argues that as those people are the weakest, the minority must submit to the majority.—According to this rule, if I were in Spain, Portugal, &c. I must bow down to the Host, worship the Virgin Mary, &c. and if in Turkey, deny Jesus of Nazareth, and adhere to the sacred prophet Mahomet—thus, by this principle, away with conscience and religious opinion. And shall we, said he, who fought against an usurping nation, who had imposed an established religion upon us—shall we become a legislative body, and deprive our fellow-citizens of the liberty of conscience? If God requires me by his divine law, to keep a certain day, if I act as a christian upon principle, I am not to give way to majority, but attend to him and disregard all the world. Upon this principle has Europe been deluged in blood; for this many fell martyrs to their religion, and upon this very principle he that has the longest sword will conquer. But the gentleman teaches us that there is but one sabbath, when by his arguments he would make these people keep two. Mr. S. went on to prove liberty of conscience, and observed that the great question was, whether the state would be injured if this permission was granted? No, said he, the law itself provided against that, for they were not to disturb others in any wise. But upon the rights of property he thought these people would be much injured—

fifty-two days, at even a dollar a day, was a pretty large tax for a man to pay for liberty of conscience, but there were many men who, with their cattle and servants, could earn three pounds per day. Who, in that house, he asked, would like to be laid under a tax of 50 dollars a year, because his parent taught him the religious observance of the seventh day? What had the Christian, the Patriarch, the soldier, and friend to his country been fighting for? It was his misfortune if he thought different from a majority, to be laid under the caprice of other men, and was not entitled, upon the principle, to that equality he won. But it was said they have not been persecuted, but he knew they had and prosecuted too. If a man of this principle, hears his neighbor swear, or sees him guilty of drunkenness and other flagrant hostilities against the laws, he dares not mention it, because this man might have seen him touch his own horse or cow on a sunday, and informing on him, he be fined: Thus to gratify the private resentment and animosity, a good man is exposed to the vicious. Mr. S. declared that he did not hold the sentiments in question, but upon the principle of equal rights, and liberty of conscience, he would, with every energy of his soul, vote against the least infringement thereon.

Mr. Kitchel said there was no penalty to make these people keep two days, but only the first, they might work on the seventh, and if they differed from the general bulk of society it could not be wrong for them to submit to the laws for the good of the general body. He thought the constitution pointed out an evident preference to these people, by granting them the privilege of worshipping, and enjoyment of civil rights. He could submit to the section, but did not think it sufficiently guarded against immorality, nor did he think it possibly could. He said that there was half a day difference in time between this country and Europe, and from the various changes the world had experienced, it would be impossible to point out the original seventh day—one seventh of time religiously observed would answer all the ends, one day as well as another. If men were indulged by law to keep their own day, how would the future generation set a loose on all days; it would lead children into a trifling idea of the sabbath to see men so differently keep it, some at labour and sports, some at worship, thus it would have an immoral and dangerous tendency.

Mr. Southard said when he rose he did not rise to bind the consciences of any man; his only desire was to make toward the good harmony of society. If the law compelled men to worship on a certain day, it might be said to bind their consciences, but it only went to prohibit external acts on a certain day.—The gentleman had said the law had not often been put in execution—if so it could not be injurious. We are not taught said he, by the Christian religion, to encourage prejudice and bigotry, but respect for all professions. There seemed to him no necessity for such a liberty, and religion objected to it, he, therefore, did not wish the barrier to be broken down.

Mr. Dunn said it was taken up on a wrong principle, his only request was for permission to labour, but without injuring his neighbour. He conceived that must be a poor religion which stood in need of the legs of government for its

prop. Gentlemen pretended not to interfere with the consciences of men; to be sure they allow them a day for worship but make them pay dear for it; thus they have a partial liberty of conscience: The drift of this bill he said, was to put it out of the power of justices to help these people at all, and leave no room for their benevolence, but expose them to the vicious designs of every man.

Mr. Campbell considered it a question of considerable importance; it appeared to him a question on civil regulations. He should not follow Mr. Seagrave through his theological examination, it was sufficient for him to believe that the generally acknowledged christian sabbath was right, and this was the day the house had established a regulation on. He was of a principle that every species of labour transacted on that day was a species of vice and immorality, and ought to strike the mind of every man with a scrupulous degree of awe for the sovereign creator, but to introduce a section compelling the main body of the people to keep a certain day, and to say, another branch should work, was it not saying that the law should allow vice and immorality? Or if not vice, why pass a law against it? He here drew a simily of a number of persons left on an island, who would make certain laws. If a stranger was introduced among them, and pretended to dictate to them and oppose it, would not such an individual be deemed infringing on the laws of the community? He certainly would be turned out. He did not think it in the least bound the conscience of any set of men. If they chose to establish the seventh day, said he, let them; they have privileges for it, and it cannot be accounted an hardship upon their consciences. If I should ever be so fortunate, said he, to have any children, and I command them to keep the first day, would they not think light of it when they see my neighbor at work on that day; this instead of preventing it would encourage them to oppose its observance. Gentlemen say these people would be injured; but how, he would ask? The act put them on the same footing with others, and it is their choice to keep the seventh instead of the first day. It was a manifest infringement of common rights, because it allowed a seventh day keeper to work seven days, and others but six. He could not exercise his charity or mercy towards these people to the violation of his duty as a legislator. He saw the section so pregnant with evil, in whatever light he viewed it, that he should oppose the bill if it was introduced; as in his view it sapped the very foundation of it.[104]

Mr. Pennington said, he had been taught, and continued to believe the first day was the proper Sabbath, but that did not give him a right to say his neighbor should think so, and if he thought so as a Christian, he ought not as a legislator. When a man choose his religion he had a right to choose which he pleased, and as legislators that house had no right to lean to any one side more than another. Religion, Humanity and Morality never flourished more than at present, under the lawful enjoyment of opinion. Gentlemen had referred back to other times and nations, but Mr. P. said, none of those countries but what had established national religions; but the experience of this country had given a lie to the

104. NEWARK GAZETTE & N.J. ADVERTISER (Newark, N.J.), Feb. 20, 1798.

necessity of this doctrine. We, said he, have taught men to worship the Deity, in what way their consciences dictate. The patriots of the revolution in their principles of government, revolted from the tyrannical jurisdiction exercised by England in this point, and established no religion, but left us at liberty to choose. It was said that this prevention did not rob them of a privilege, but, he asked, was it not a privilege that every man should work for his family? Those people's conscience told them it was their duty to worship God on a certain day, and further that it was their duty to labor six days in the week, but the government would say they should not, because themselves worshipped on one of them: This would deprive a man of the means of maintaining his family, and of supporting the state. Gentlemen had said, that a majority ought to govern in all things, but he differed from them; on the consciences of men it ought not: He thought, like Mr. Seagreave, that if this were the case, it was making men bow down to stocks and stones. Mr. P. said nothing but arrogance and presumption could teach him to impose his principles upon any man: Who, said he, would presume to step between a man and his maker. He did not conceive quiet labor could interrupt any man, under the provisions proposed. After an answer from Mr. Seagreave to some of the observations of Mr. Campbell, the question was taken and agreed to. The next morning Mr. Coxe with unanimous leave of the house observed, that as some difficulties yet remained on the subject, he would move to reconsider the section, in order to adopt one which he thought would meet general concurrence, leave was given, and the proposed section passed without debate. In addition to the guards in the section before proposed, this went to prevent those people from labor,—on the seventh day, the same as the object of the bill related to persons who kept the first.

On section 11, Mr. Pennington wished a proviso to extend to schools, where it was a necessary practice for public speaking, &c. to be used, and which he feared the clause would affect.—This was carried. He then moved that the clause, where a magistrate had power to permit any of these things, should be struck out.

Mr. Kitchel was against the exhibitions, &c. but as he thought a way would be found to evade the law, and he feared a more injurious one, he should oppose the motion. Mr. Wade did not think the minds of the people would be changed by passing this law, for he thought nine tenths of the people approved such exhibitions; it was sanctioned in all the large cities of America, and might under just restrictions. Mr. Pennington said it only tended to take money out of the pockets of apprentice boys, &c. and when they had none would steal for this purpose.

Mr. Southard thought there was no need of the proviso, as, if this was done in schools it would not be for hire, when the bill said, "if for hire," &c. If it was wrong it never could be made right by the patronage of a justice.—It was not carried. Mr. Coxe moved to strike out the license for schools to exhibit, he observed on the injury it did to youth to permit them to exhibit plays, &c. in some of which there were instances of money received: The words of the section

could not prohibit young gentlemen making orations, or recitals. Mr. Campbell spoke in favour of striking out. The question was put and carried.

Section 12 was carried, before which, Mr. Pennington wished to put all men on a level, therefore moved to strike out the fine and make the punishment to all alike, viz. 4 hours in the stocks. Mr. Wade said if this were to be in the bill it would seldom be executed on men of property if they offended, and thus the poor alone would suffer. The motion was not seconded.

In the 13th Section are these words "and such conviction shall not be removed by certiorari into the supreme court, but be deemed frivial"—which words Mr. Pennington moved to strike out.

Mr. Campbell approved of the motion, but thought it did not go far enough. He said it was wrong to fine a man without permitting an appeal to a higher jurisdiction, at least to a quarter session, else a justice being guilty of an error, if ever so much to the injury of an individual, no appeal could be made or trial by jury had. It might be thought hard to charge the justices with partiality, but such things had been known, and may be again, and, therefore to prohibit too great power being vested in their hands, and to prevent these disadvantages, provision should be made.

Mr. Pennington said that by this clause a man could not have advantage of the common law, but were bound down by a jurisdiction which was to have all the power in his own hands: This extravagant power, he thought, would preclude what every man had a right to.

Mr. Southard thought it ought not to go to the Supreme Court, as no man would follow it so high, and, therefore, a poor man be cast.

Mr. Kitchel opposed it on the same ground. He said that Mr. Pennington had often expressed his desire to put the rich and poor on one footing, but this would draw a great distinction. He thought it had better remain.

The motion was lost in committee. In the house Mr. Pennington moved a provision that such persons have leave to make appeal to the next quarter session.

Mr. Coxe approved of the motion. An appeal from a justice would be a considerable expense, and this would operate as a part punishment, and must be prosecuted; he thought it would have a good effect, by making people careful in their application to justices.

Mr. Kitchel and Mr. Campbell spoke, and the question was put and carried.

The other sections passed without amendments, and the bill was ordered to be engrossed.[105]

Agreeably to order, the House resolved itself into a Committee of the Whole on the Bill, entitled, "An Act for the Prevention of Vice and Immorality," Mr. Coxe in the Chair, and, after some time spent thereon, the Speaker resumed the

105. NEWARK GAZETTE & N.J. ADVERTISER (Newark, N.J.), Feb. 27, 1798.

Chair, the Chairman reported that the Committee had made some Progress in the Business, and desired leave to sit again, which was agreed to.

The House adjourned to 3 o'Clock, P. M.

. . . .

The House again Resolved itself into a Committee of the Whole on the Bill, entitled, "An Act for the Prevention of Vice and Immorality," Mr. Coxe in the Chair, and, after some time spent thereon, the Speaker resumed the Chair, and the Chairman reported, that the Committee had gone through the Bill, and reported the same with sundry AmendmentsC The Bill was read,

Ordered, That the further Consideration thereof be postponed.[106]

The House resumed the Consideration of the Bill, entitled, "An act for the Prevention of Vice and Immorality;" and after having gone through the same,

Ordered, That it be engrossed.[107]

4. Proceedings of February 14

Wednesday, February 14.

. . . .

An engrossed bill was read for the prevention of vice and immorality, and the question taken for it to pass, when there appeared, ayes, 16—noes, 19; so that this bill, after a long debate was lost.[108]

5. Proceedings of February 20

Tuesday, February 20.

. . . .

Mr. Pennington presented a bill for the suppression of vice and immorality. [That lately negatived was for the prevention of vice, &c.] As the principles of this bill was known, having generally been under discussion, the reading was dispensed with, and it was ordered a second reading.[109]

6. Proceedings of March 12

Monday, March 12.

. . . .

106. NEW JERSEY ASSEMBLY JOURNAL, *supra* note 99, at 28–29 (entry of Feb. 12, 1798).

107. *Id.* at 29 (entry of Feb. 13, 1798).

108. *See* NEWARK GAZETTE & N.J. ADVERTISER, *supra* note 104.

109. *See* NEWARK GAZETTE & N.J. ADVERTISER, *supra* note 105.

An act for suppressing vice and immorality was read. The principles of this are nearly the same as that for the prevention, &c. lately negatived. It was ordered to be engrossed without any considerable opposition.[110]

7. Proceedings of March 13

The engrossed Bill, entitled, "An Act for suppressing Vice and Immorality," was read and compared—on the Question, Whether the same do pass? It was carried in the Affirmative, as follows:

—YEAS.—

Mr. Armstrong, Mr. Burrowes, Mr. Coxe, Mr. Dunn, Mr. Edgar, Mr. French, Mr. Gustin, Mr. Harris, Mr. Kitchel, Mr. Leeds, Mr. Lippincott, Mr. Montgomery, Mr. Moore, Mr. Morgan, Mr. Pennington, Mr. Seagrave, Mr. Sharps, Mr. Southard, Mr. Stansbury, Mr. Stewart, Mr. Stockton, Mr. Stryker, Mr. Vancleve, Mr. Wade, Mr. Wallace, Mr. Ward, Mr. Welsh.

—NAYS.—

Mr. Blanch, Mr. Campbell, Mr. Clement, Mr. Hall, Mr. Leaming, Mr. Newbold, Mr. Van Duyn, Mr. Wyckoff.[111]

Item II. Proceedings in the Legislative Council, March 13-14, 1798

1. Proceedings of March 13

A message from the House of Assembly by Mr. Ewing their clerk

Mr. Vice-President,

The House of Assembly . . . have also passed a bill, intitled, "An act for suppressing vice and immorality . . . ; to which four bills, respectively, they request the concurrence of the Council; which several bills were read and ordered a second reading.[112]

2. Proceedings of March 14

The bill, intitled, "An act for suppressing vice and immorality," was read a second time, and having amended and gone through the same,

Ordered, That the bill, with the amendments, be read a third time.

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110. NEWARK GAZETTE & N.J. ADVERTISER (Newark, N.J.), Mar. 20, 1798.

111. NEW JERSEY ASSEMBLY JOURNAL, *supra* note 99, at 67 (entry of Mar. 13, 1798).

112. JOURNAL OF THE PROCEEDINGS OF THE LEGISLATIVE-COUNCIL OF THE STATE OF NEW-JERSEY, IN GENERAL ASSEMBLY CONVENED, AT TRENTON, ON THE TWENTY FOURTH DAY OF OCTOBER, ONE THOUSAND SEVEN HUNDRED AND NINETY-SEVEN BEING THE FIRST AND SECOND SITTINGS OF THE TWENTY-SECOND SESSION 68 (Trenton 1798) [hereinafter NEW JERSEY LEGISLATIVE COUNCIL JOURNAL] (entry of Mar. 13, 1798).

The bill, intitled, "An act for suppressing vice and immorality," with the amendments made thereto, was read a third time;

On the question, Whether the said bill, as amended, do pass? It was carried in the affirmative, as follows:

—YEAS.—

Mr. Condit, Mr. Martin, Mr. Anderson, Mr. Cooper, Mr. Lambert, Mr. Kitchel, Mr. Ogden, Mr. Beardslee.

—NAYS.—

Mr. Outwater, Mr. Parret, Mr. Corson.

Ordered, That the vice-president do sign the said bill and amendments.

Ordered, That the secretary do carry the said bill and amendments to the House of Assembly, and request their concurrence in the said amendments.[113]

Item III. Proceedings in the House of Assembly, March 14-15, 1798

1. Proceedings of March 14

Wednesday, March 14.

. . . .

The bill for the suppression of vice and immorality was reported from Council with some amendments, which were agreed to.[114]

2. Proceedings of March 15

The engrossed Bill, entitled, "An Act for suppressing Vice and Immorality," was read and compared—On the Question, Whether the same do pass? It was carried in the Affirmative, as follows:

—YEAS—

Mr. Armstrong, Mr. Burrowes, Mr. Clement, Mr. Coxe, Mr. Edgar, Mr. French, Mr. Gustin, Mr. Harris, Mr. Leeds, Mr. Lippincott, Mr. Lloyd, Mr. Montgomery, Mr. Morgan, Mr. Pennington, Mr. Seagrave, Mr. Sharps, Mr. Smith, Mr. Southard, Mr. Steward, Mr. Stockton, Mr. Stryker, Mr. Van Duyn, Mr. Wade, Mr. Wallace, Mr. Wyckoff.

—NAYS—

Mr. Blanch, Mr. Campbell, Mr. Leaming, Mr. Newbold.

113. *Id.* at 70, 71 (entry of Mar. 14, 1798).

114. *See* NEWARK GAZETTE & N.J. ADVERTISER, *supra* note 110.

Ordered, That the Speaker do sign the said Bill, and that the Clerk do carry the same to the Council, and acquaint them that the said Bill is passed by this House, with their Amendments.[115]

Item IV. Proceedings in the Legislative Council, March 15, 1798

A message from the House of Assembly by Mr. Ewing their clerkC

Mr. Vice-President,

The House of Assembly have passed the bill, intitled, "An act for the suppressing vice and immorality," . . . with the amendments respectively made thereto by Council, and have caused the same to be re-engrossed;" which . . . re-engrossed bills having been read and compared;

Ordered, that the vice-president do sign the said bills.[116]

Item V. An Act for Suppressing Vice and Immorality (passed March 16, 1798)

Sect. 1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same*, That no travelling, worldly employment, or business, ordinary or servile labor or work, either upon land or water, (works of necessity and charity excepted) nor shooting, fishing, (not including fishing with a seine or net, which is hereafter provided for) sporting, hunting, gunning, racing, or frequenting of tippling houses, nor any interludes or plays, dancing, singing, fiddling, or other music for the sake of merriment, nor any playing at foot-ball, fives, nine-pins, bowls, long-bullets, or quoits, nor any other kind of playing, sports, pastimes, or diversion, shall be done, performed, used or practised by any person or persons, within this state, on the christian sabbath, or first day of the week, commonly called Sunday; and that every person, being of the age of fourteen years or upwards, offending in the premises, shall, for every such offence, forfeit and pay, to the use of the poor of the township in which such offence shall be committed, the sum of one dollar; and that no person shall cry, shew forth, or expose to sale, any wares, merchandize, fruit, herbs, meat, fish, goods or chattels, upon the first day of the week, commonly called Sunday, or sell or barter the same, upon pain, that every person, so offending, shall forfeit and pay to the use of the poor of the township, where such offence shall be committed, the sum of two dollars; and if any person, offending in any of the premises, shall be thereof convicted before any justice of the peace for the county where the offence shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice, before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offence shall have been committed, commanding him to levy the said forfeitures or penalties by distress

115. NEW JERSEY ASSEMBLY JOURNAL, *supra* note 99, at 74–75 (entry of Mar. 15, 1798).

116. NEW JERSEY LEGISLATIVE COUNCIL JOURNAL, *supra* note 112, at 75 (entry of Mar. 16, 1798).

and sale of the goods and chattels of such offenders, and to pay the money therefrom arising to the overseers of the poor of the township where the said offence or offences shall have been committed, for the use of the poor thereof; and in case no such distress can be had, then every such offender shall, by a warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time not exceeding four hours. *And further*, That if any person shall be found fishing, sporting, playing, dancing, fiddling, shooting, hunting, gunning, travelling, or going to, or returning from, any market or landing with carts, waggons or sleds, or behaving in a disorderly manner, on the first day of the week, called Sunday, it shall be lawful for any constable, or other citizen, to stop every person so offending, and to detain him or her till the next day, to be dealt with according to law. *Provided always*, That no person going to or returning from any church or place of worship, within the distance of twenty miles, or going to call a physician, surgeon, or midwife, or carrying a mail to or from any post-office, or going express by order of any public officer, shall be considered as travelling within the meaning of this act. *And provided also*, That nothing in this act contained shall be construed to prohibit the dressing of victuals in private families, or in lodging-houses, inns, and other houses of entertainment for the use of sojourners, travellers, or strangers.

2. *And be it enacted*, That no person shall, on the first day of the week, called Sunday, cast, draw or make use of any seine or net, for the purpose of catching fish in any pond, lake, stream or river within the territorial limits or jurisdiction of this state, or be aiding or assisting therein; and every person, offending in the premises, shall, on being thereof convicted before any justice of the peace for the county where the offence shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, forfeit and pay the sum of fourteen dollars for every such offence; and in case of non-payiment of the said forfeiture, then the said justice, before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county in which the offence shall have been committed, commanding him to levy the said forfeiture or penalty, by distress and sale of the goods and chattels of such offender, and to pay the money therefrom arising to the overseers of the poor of the township where the said offence shall have been committed, for the use of the poor thereof; and for want of goods and chattels whereby to make such distress, to convey the body of the said offender to the common gaol of the county, there to remain in safe custody until the said forfeiture, with the costs of prosecution, shall be fully paid, or until such offender shall be delivered by due course of law.

3. *And be it enacted*, That every inhabitant of this state, who religiously observes the seventh day of the week as the Sabbath, shall be exempt from answering to any process in law or equity, either as defendant, witness or jury, except in criminal cases; likewise from executing on the said day the duties of any post or office, to which he may be appointed or commissioned, except when the interest of the state may absolutely require it, and shall also be exempt from

working on the highways, and doing any militia duty on that day, except when in actual service.

4. *And be it enacted*, That if any person charged with having laboured or worked on the first day of the week, commonly called Sunday, and shall be brought before a justice of the peace to answer the information and charge thereof, and shall then and there prove to the satisfaction of the said justice that he or she uniformly keeps the seventh day of the week as a sabbath, and habitually abstains from following his or her usual occupation or business, and from all recreation, and devotes the day to the exercises of religious worship, then such defendant shall be discharged *Provided always*, That the work or labour for which such person is informed against was done and performed in his or her dwelling-house or work-shop, or on his or her premises or plantation, and that such work or labour has not disturbed other persons in the observance of the first day of the week as the sabbath; and provided also, that nothing in this section contained shall be construed to allow any such person to openly expose to sale any goods, wares, merchandize, or other article or thing whatsoever, in the line of his or her business or occupation.

5. *And be it enacted*, That if any stage or stages shall be driven through any part of this state on the first day of the week, called Sunday, except sufficient reason shall be offered to shew that it be done in cases of necessity or mercy, or in case of carrying the mail to or from any post-office, the driver or drivers, proprietor or proprietors of any such stage or stages, shall, on being thereof convicted before any justice of the peace for the county where the offence shall be committed, upon the view of the said justice, or confession of the party offending, or testimony of any witness or witnesses, forfeit and pay the sum of eight dollars for every such offence; and in case of non-payment of the said forfeiture or penalty, then the same shall be levied, recovered and applied in the manner and form prescribed in and by the second section of this act; and every justice of the peace in this state is hereby empowered and required, upon his personal knowledge or view, or other due information, of any stage or stages being driven or run through any part of the state as aforesaid, to stop and detain the same, or order and direct the same to be stopped and detained, at the costs and expense of the proprietor or proprietors of such stage or stages, until the following day, and then to be dealt with as herein-before is directed.

6. *And be it enacted*, That no waggoner, carter, drayman, drover, butcher, or any of his or their servants, shall ply, or travel with his or their waggons, carts or drays, or shall load or unload any goods, wares, merchandize or produce, or drive cattle, sheep or swine, in any part of this state, on the first day of the week, called Sunday, under the penalty of two dollars for every offence, to be levied, recovered and applied in the manner and form prescribed in the second section of this act.

7. *And be it enacted*, That no person or persons, upon the first day of the week, commonly called Sunday, shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in

criminal cases, or for breach of the peace) but that the service of every such writ, process, warrant, order, judgment or decree, shall be void to all intents and purposes whatsoever; and the person or persons, so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him from doing thereof as if he or they had done the same without any writ, process, warrant, order, judgment or decree.

8. *And be it enacted*, That if any person or persons shall, at any time or times hereafter, profanely swear or curse, and be thereof convicted, by the confession of the party offending, or on the testimony of any one or more witness or witnesses, or in the manner herein-after mentioned, before any justice of the peace for any county in the state, every person so offending shall, for every such offence, forfeit and pay to the use of the poor of the township where such offence or offences shall be committed, the sum of one half of a dollar.

9. *And be it enacted*, That in case any person shall profanely swear or curse, in the presence and hearing of any justice of the peace for any county, while in the execution of his office, every such justice of the peace shall, and is hereby authorized and required to convict every such offender of such offence, without any other proof whatsoever.

10. *And be it enacted*, That in case any person, who shall be convicted of profanely swearing or cursing, shall not immediately pay down the respective sums so forfeited, with the charges of such conviction, or give security, to the satisfaction of the justice before whom such conviction is had, for the payment thereof within six days, then every such offender, being above the age of fourteen years, shall, by warrant under the hand and seal of such justice, be set publicly in the stocks for any space of time not exceeding two hours for any single offence, or for any number of offences whereof any such offender shall be convicted at one and the same time, any space of time not exceeding four hours, or be sent to the common gaol of the county, there to be and stand committed for any space of time, to be certainly expressed in the said warrant, not exceeding four days; but if the offender shall not be above the age of fourteen years, and shall not forthwith pay the said forfeiture, or give security for payment thereof, the parent or master shall pay the same, to be recovered by distress and sale of the goods and chattels of such parent or master.

11. *And be it enacted*, That if any person shall become intoxicated or drunk by the excessive use of spiritous, vinous, or other strong liquor, and thereof shall be convicted before any justice of the peace for the county, wherein such offence shall be committed, either upon the view of such justice, or upon the confession of the party offending, or testimony of any one or more witness or witnesses, every person so offending shall forfeit and pay, for every such offence, one dollar, to the use of the poor of the township wherein such offence shall be committed; and in case any person who shall be convicted of drunkenness as aforesaid, shall not immediately pay down the sum so forfeited, with the charges of such conviction, or give security, to the satisfaction of the justice before whom such conviction is had, for the payment thereof within three days, every such

offender shall, by warrant under the hand and seal of such justice, be set publicly in the stocks for any space of time not exceeding four hours, or be sent to the common gaol of the county, there to be and stand committed for any space of time, to be certainly expressed in the said warrant, not exceeding four days.

12. And whereas public shews and exhibitions of divers kinds have of late become very frequent and common within this state, whereby many strangers and worthless persons have unjustly gained and taken to themselves considerable sums of money, and it being found on experience that such shews and exhibitions tend to no good or useful purpose in society, but, on the contrary, to collect together great numbers of idle and unwary spectators, as well as children and servants, to gratify vain and useless curiosity, loosen and corrupt the morals of youth, and straiten and impoverish many poor families, *Be it further enacted by the authority aforesaid*, That if any person or persons whatsoever shall, for any price, gain or reward, shew forth, exhibit, act, represent or perform, or cause to be shewn forth, exhibit, act, represent or perform, or cause to be shewn forth, exhibited, acted, represented or performed, on any public stage, or in any public house or other place whatever, any interludes, farces or plays of any kind, or any games, tricks, juggling, slight of hand, or feats of uncommon dexterity and agility of body, or any bear-baiting or bull-baiting, or any such like shews or exhibitions whatsoever, every person so offending, and being thereof convicted before any justice of the peace of the county where the offence shall be committed, upon the view or personal knowledge of the said justice, or confession of the offender, or proof of any witness or witnesses upon oath or affirmation, shall, for every such offence, forfeit and pay to the use of the poor of the township where the offence shall be committed, the sum of sixteen dollars, to be levied, recovered and applied in the manner and form prescribed in the second section of this act. *Provided always*, That nothing in this section contained shall be deemed or construed to prevent the shew or exhibition of any natural curiosity. *And provided also, and be it further enacted*, That if in the opinion of any three justices of the peace of any county, city or town-corporate, where interlude, farce or play is proposed to be performed, it shall be deemed that such interlude, farce or play is innocent, or may probably tend to answer any reasonable or useful end, it shall and may be lawful for them, at their discretion, on application for that purpose, to give license in writing for such interlude, farce or play to be performed, any thing herein-before contained to the contrary notwithstanding.

13. *And be it enacted*, That if any person or persons whatsoever, either on the first day of the week, called Sunday, or on any other day or time, shall wilfully and of purpose disquiet, interrupt or disturb any assembly of people met for religious worship, either by making a noise, or by rude or indecent behaviour, or profane discourse, whether within their place of worship or out of it, so near the same as to disturb the order and solemnity of the meeting, then every person so offending and being thereof convicted before any justice of the peace of the county where the offence shall be committed, upon the view or personal

knowledge of the said justice, or confession of the offender, or proof of any witness or witnesses, upon oath or affirmation, shall, for every such offence, forfeit and pay to the use of the poor of the township where such offence shall be committed, the sum of two dollars, to be levied, recovered and applied in the manner and form prescribed in the first section of this act; and in case no distress can be had whereby to levy the said forfeitures, as in the said section is prescribed, then every such offender shall, by a warrant under the hand and seal of the said justice, be set publicly in the stocks for any space of time, to be certainly expressed in the said warrant, not exceeding four hours.

14. *And be it enacted*, That every justice of the peace shall immediately, on information given upon oath or affirmation of any constable or peace officer, or of any other person whatsoever, cause the offender and offenders against this act to appear before him, and, upon such information being proved as aforesaid, shall convict such offender and offenders in such manner as in and by this act is prescribed.

15. *And be it enacted*, That every justice of the peace, before whom any person or persons shall be, by virtue of this act, convicted of any of the offences aforesaid, shall cause such conviction to be drawn up in the form following:

Hunterdon county, (or other county, as the case may require) to wit: Be it remembered, that on the day of in the year of our Lord one thousand

A. B. was convicted before me C. D. one of the justices of the peace of the said county, of crying (or shewing forth, or exposing to sale) one (or two, or more, specifying the number, quantity and kind of goods) on a Sunday, in the township of in the said county of (or of travelling, or doing ordinary or servile work or labor, or of shooting, fishing, sporting, playing, hunting, gunning, or frequenting tippling houses, or using some unlawful exercise or pastime) on Sunday, or of swearing one (or two, or more) profane oath (or oaths) or of cursing one (or two, or more) profane curse (or curses) or of having been drunk, at the township of hand and seal the day and year abovesaid.

And such conviction shall not be liable to be removed by certiorari into the supreme court; but if the person offending shall think himself aggrieved by any such conviction, it shall and may be lawful for such person to appeal to the next court of general quarter sessions of the peace of the county where such conviction is had; which court shall, in a summary way, hear and determine such appeal, and confirm such conviction, with costs, or reverse the same, as to them shall seem right and proper—*Provided*, That no person shall be entitled to an appeal, unless such person shall first pay down to the justice the penalty and costs of prosecution awarded against him, to be returned to such person, in case upon the appeal the conviction thereof had shall be reversed.

16. *And be it enacted*, That all charges of the information and conviction of any such offender shall be borne and paid by the party offending, if able, over and above the penalties inflicted by this act, which charges shall be settled and ascertained by the justice before whom such conviction shall be had, but shall in no case exceed in the whole one dollar; and the justice, before whom any

proceedings shall be had upon this act, or his clerk, may take for the information, summons, conviction, and warrant thereupon, forty cents, and no more; and if the offender shall be set in the stocks for the same offence, no charges whatsoever shall be paid by any person whomsoever.

17. *And be it enacted*, That it shall and may be lawful for every such offender to pay the said forfeitures and charges to the justice before whom such conviction is had; and such justice shall receive the same, and, as soon as conveniently may be, pay the same forfeitures to the overseers of the poor of the township where such offence was committed, for the use of the poor thereof.

18. *And be it enacted*, That all and every justice and justices of the peace for the county, wherein any such offence shall be committed, may, and they are hereby respectively authorized and required to put this act in execution, against any person or persons within their respective jurisdictions, although such justice shall be rated and pay to the relief of the poor of the township where any offence, contrary to the true intent and meaning of this act, shall be committed.

19. *And be it enacted*, That no person shall be prosecuted or troubled for any offence against this act, unless the same be proved or prosecuted within thirty days after the commission of such offence.

20. *And be it enacted*, That if any suit or action shall be commenced or brought against any justice of the peace, constable, or other officer or person whatsoever, for doing or causing to be done any thing in pursuance of this act, concerning any of the said offences, the defendant in such action or suit, may plead the general issue, and give the special matter in evidence; and if in any such action or suit, a verdict shall be given for the defendant, or the plaintiff become non-suit, or discontinue his action, then the defendant shall have treble costs.

21. *And be it enacted*, That the act, intitled, "An act for suppressing of immorality," passed the twelfth day of December, in the year of our Lord one thousand seven hundred and four; and the act, intitled, "An act to promote the interest of religion and morality, and for suppressing of vice among all ranks of people within this state," passed the twelfth day of June in the year of our Lord one thousand seven hundred ninety; and the act, intitled, "An act for the relief of certain religious societies in this state," passed the twentieth day of November, in the year of our Lord one thousand seven hundred and ninety, and every act and part of act coming within the purview of this act, shall be and they are hereby repealed.[117]

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117. ACTS OF THE TWENTY-SECOND GENERAL ASSEMBLY OF THE STATE OF NEW-JERSEY, AT A SESSION BEGUN AT TRENTON ON THE TWENTY-FOURTH DAY OF OCTOBER, SEVENTEEN HUNDRED AND NINETY-SEVEN, AND CONTINUED BY ADJOURNMENTS, BEING THE SECOND SITTING 399–406 (Trenton 1798). The first line of Section 20, which doesn't appear in that volume, is taken from N.J. Rev. Stat. 384 (1821).