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BLUE-LAW GREEN LIGHT

“Seldom has an issue of liberty been argued on flabbier grounds,”¹ declared *Time* magazine of the 1961 blue-law decisions. The magazine took issue with Chief Justice Warren's conclusion that “most [Sunday laws] at least, are of a secular rather than a religious character” and reviewed his feeling that coerced observance had evolved into an innocent and innocuous “time for family activity, for late sleeping, for passive and active entertainments, for dining out and the like.”

The *Time* criticism pointed out:

U.S. blue laws are riddled with erratic contradictions. In Pennsylvania it is legal to sell a bicycle on Sunday, but not a tricycle; in Massachusetts it is against the law to dredge for oysters, but not to dig for clams; in Connecticut genuine antiques may lawfully be sold, but not reproductions. The New York blue law code is particularly messy. Bars may open at 1 p.m., but baseball games may not begin until 2 p.m. It is legal to sell fruits but not vegetables, an automobile tire but not a tire jack, tobacco but not a pipe. It is unlawful to sell butter or cooked meat after 10 a.m., except that delicatessens may sell these foods between 4 p.m. and 7:30 p.m.²

[162] Less than a month after the landmark decisions of May 29, 1961, the court compounded the confusion about the meaning of “atmosphere of recreation” by refusing to hear a South Carolina case which challenged the statutory prohibition of Sunday movies.

Years before commercial motion pictures flashed on theater screens in Hometown, America, the state of South Carolina had acted to block all commercial amusements on Sunday. Now there were those who felt that Sunday movies could fit the “atmosphere of recreation” definition advanced by the Supreme Court. Seven court members, however, rejected a petition for hearing in an unsigned *per curiam* order, while Justice Brennan and Justice Douglas argued that the issue should be heard.³

Right or wrong, the Sunday-law pronouncements of the Supreme Court in 1961 proved controversial. In the storm of action and reaction which followed, the editorial comment in the nation's press was mixed, while religious interests showed their hand with renewed confidence and vigor.

The Detroit *Free Press* took a dim view of the decision, noting, “The machinations of great minds are frequently fascinating, and not easily understood by those who rely on common sense instead of technicalities.” The editor expressed amazement at the court's finding that “the laws against doing business on Sunday have nothing to do with religion,” and he observed that “even the justices must have known this is ridiculous.” Then he added:

How, when the words are written into the law, the justices can pretend they aren't is beyond our comprehension. . . . The clear wording and all past practices indicate that blue laws are intended to enforce religious concepts. Even when providing exceptions such as Michigan's, they can interfere with the right of a minority to a different belief. As of this week, they may be considered constitutional, but that does not mean they are reasonable. The court has ruled for the majority and totally ignored the religious rights of minorities.⁴

[163] The Washington *Post* also criticized the decision and predicted new constitutional tests. “If, as we fear, the decision spawns a spate of such blue laws, the religious motivation will become so clear that the court will no longer be able to ignore it.”⁵

The Washington *Evening Star* expressed approval of the decision, and urged state legislatures to revise blue laws and to “begin cleaning them up to rid them of the inconsistencies and contradictions.”⁶ The *Star* reminded the states that “secular, rather than religious considerations, have now become controlling and will continue to shape their future.”

Editors of *Christian Century* recognized that certain religious considerations lurked on the scene and predicted that the opinion “does not speak the last word on the constitutionality of Sunday laws.” The necessity for a review would result from “the excesses of overly zealous Christians who mistakenly see in the Supreme Court decisions sanction for the extension of old Sunday laws and the establishment of new ones.” It noted that “already a flurry of activity for the passage of additional legislation prohibiting business on Sunday” was obvious, and warned that such programs, vigorously promoted by Christians, will refute the court's definition of Sunday as primarily a secular holiday in our time and culture and will clearly establish the relationship between Sunday as a legal day of rest and the religious practice of the Christian community.”⁷

This predicted reaction of overly zealous Christians was already making news. In Detroit, Michigan, the Thursday following the release of the court opinion, the Detroit Council of Churches declared war on Sunday commerce. It went on record “supporting legislation, if necessary, to force the closing of department stores on Sunday.” However, a Roman Catholic

spokesman expressed hope “that individual conscience, more than legislation, will return Sunday as a day of prayerful observance and well-ordered rest and relaxation.”

[164] Vetoing a legislative decision to permit Sunday liquor sales in Maine, Governor Read explained that he objected to a law which would militate against “Lord's Day” observance. Possibly he had not read the text surrounding the Supreme Court's opinion. “Christian principles are strongly ingrained in the character of Maine people,” he said. “Respect for the Lord's Day is one of the basic attitudes. The change contemplated by this bill could be, unwittingly, the first step in the erosion of our heritage.”

Massachusetts also seemed unaware of the secular nature of Sunday. Earlier in the year, while the Supreme Court still deliberated, the Lord's Day League of New England hosted a meeting of labor and merchant leaders calculated “to see that the present Sunday laws are enforced in Massachusetts and that the 1961 state legislature passes no measures to allow any more secular activities on the Sabbath.”¹⁰

Less than five months after the most active blue-law proponents in Massachusetts went on record opposing “secular activities on the Sabbath,” the Supreme Court found a secular purpose in the Massachusetts blue law!

When the May 29 decision hit the headlines, G. Vaughn Shedd, spokesman for the Lord's Day League of New England, exuberantly declared:

After many months of cooperative effort between the office of the Massachusetts attorney general and other concerned groups, the Sunday laws have been held constitutional. . . .

This decision announced by the U.S. Supreme Court on May 29 culminated much dedicated work of numerous legislators, church groups of many beliefs, and the Lord's Day League. The preservation of Sunday as a day of rest and relaxation from secular business is a welcome assurance to the entire community.”¹¹

With the “secular” pronouncement locked firmly in the lawbooks, Mr. Shedd felt secure in exposing the leadership role church groups had played in the controversy. [165] He might have been a bit less secure in his assumption that the decision was welcomed by the entire community if he could have known the results of a grass-roots poll the following summer. Massachusetts citizens were asked, “Do you favor repealing or retaining Sunday laws?” Pollsters were startled to receive 25,799 answers for repeal and 2,036 for retention.

The ink had barely dried on the May 29 decision before Massachusetts Attorney General Edward J. McCormack, Jr., “issued an order instructing all police officials to begin rigid enforcement of blue laws in their localities.”¹²

Hours later the crackdown began. Police started out by canceling a Memorial Day dance in Dedham sponsored by the Columban Fathers to benefit a Korean missionary. A crowd of 1,000 was turned away.¹³ The Memorial Day enforcement was a foretaste of what was to follow.

The Boston *American* reported that the Massachusetts Police Chiefs Association planned to map out a definite blueprint for police action in the crisis.

The sky was blue, some of the blood and a few noses, but mostly the air was blue – the last because of the Sunday Blue Laws.

The U.S. Supreme Court's decision upholding their constitutionality meant a lot of plans went bluey, especially when bluecoats in Dedham and Danvers moved to enforce them.

But the Memorial Day enforcement was only partial; the big test comes Sunday. Memorial Day is one of several holidays blanketed by the Blue Laws which apply every Sunday of the year.¹⁴

The following week, confusion reigned. With tongue in cheek, the Boston *Traveler* viewed the blue-law haze as a dilemma “to start us grabbing at our thumbs.” Then the writer queried: “What's right and what isn't? Is the sale of gasoline OK, but not the sale of spark plugs? Is it all right to buy a magazine in a drugstore, but not in a book shop? Who's on first? [166] Until the muddle clears, we nominate Sundays and holidays for sleeping.”¹⁵

While summer simmered long and hot that year in Massachusetts, a commission directed by Professor Arthur Sutherland of Harvard University was selected to study the conflicting Sunday laws and make recommendations for a solution to the problem. Commission members included G. Vaughn Shedd of the Lord's Day League, a voice which had been heard before; and Msgr. Francis J. Lally, editor of the Roman Catholic newsweekly, *The Pilot*, a voice which was about to be heard. Both men, with a majority of the commission members, saw wisdom in scratching the “Lord's Day” title in favor of “Common Day of Rest Law,” but otherwise they favored stricter enforcement. A minority, including Sutherland and Rabbi Moses Shienkopf, pushed for “greater liberalization of the law and extensive local option.”¹⁶

By the spring of 1962, the legislature was considering a formula which would allow about forty activities formerly banned on Sunday. Real-estate dealers could show property but not sell it. Bathhouses at beaches would stay open, along with libraries, art galleries, drugstores, bakeries, and auto supply stores selling tires and parts. Cultivating land was permitted, also harvesting crops and running pet shops and certain other businesses.¹⁷ And, since hundreds of merchants had remained open during the enforcement in the

summer of 1961, “taking the attitude that it is cheaper to keep paying fines than lose all Sunday trade,” the new proposal called for enforcement by injunction if necessary.

Despite careful efforts to rewrite the law to specify a secular purpose, a sensational religious issue erupted in June, 1962. Senator Frank Foster of Boston proposed an exemption clause for minorities who observe a day of worship other than Sunday. This was adopted by the state senate, twenty-one votes to fourteen. It would have granted “Sabbatarians complete exemption from the provisions of the state's Sunday laws.”¹⁸

[167] Then the ceiling caved in. In its June 9 issue, *The Pilot*, a Roman Catholic newsweekly, lashed out in an editorial attack against the amendment as “both unjust and offensive.” The statement from the office of Msgr. Lally branded Foster's proposal as “bad legislation, passed under pressure.” It said that if enacted into law the amendment would give “commercial advantage to one minority in the community while it penalizes others, and it strikes at the heart of the day of rest which Sunday has been in our society for centuries.” The editorial noted that the Massachusetts house had on May 22 killed the amendment passed by the senate. House rejection of the plan was a “wise” decision, *The Pilot* stated, and it called on senators to reconsider their action. “There is no need of destroying Sunday for the rest of the community to relieve the religious necessities of Sabbatarians.”¹⁹

The editorial listed the names of the senators who had backed the amendment, and copies of the document were distributed to parishioners at services the following day, Sunday, June 10, Church leaders urged members to contact their senators and representatives to register opposition to the amendment.

On Monday, June 11, the senate agreed to reopen the issue with some reference being made to statements in *The Pilot* the previous Saturday.

The exemption amendment was subjected to a new vote in the senate. Sharply reversing the previous tally, the amendment was defeated by a margin of thirty-one votes to eight.

This was more than merely coincidental. The character of Massachusetts Sunday law had been shaped with the help of religious influence, more than a year *after* the Supreme Court had whitewashed the previous blue law as “secular.”

Orthodox Jews and Seventh-day Adventists, as well as the general public which had disapproved of enforced Sunday observance, could find little comfort in the modernized statute. [168] But at least it was then legal to engage in some form of “do-it-yourself” home construction on Sunday, which is more than Roger Williams could have done safely.

“Democracy and freedom of conscience took a stinging blow on Beacon Hill this week,”²⁰ announced *The Jewish Advocate* following the

senate action. The *Advocate* charged *The Pilot* with exerting a “naked display of pressure on civil law.” As to the senate, the Jewish editorial expressed a fear that it had “surrendered its objectivity and autonomy with overtones frightening to contemplate.”

A disappointed Rabbi Samuel J. Fox of the Massachusetts Council of Rabbis observed, “There is no question but that religious prejudice is evident and the rights of minorities are denied.”²¹

Red-faced legislators later discovered that a loophole in the much-revised law opened the door to possible Sunday dancing after 1 p.m., subject to certain conditions. When the Boston city council voted to exercise its local option and allow Sunday dancing, religious leaders stormed city hall in a demonstration of opposition. In the procession was Dr. G. Vaughn Shedd, who appeared on behalf of the Massachusetts Council of Churches, along with Dr. Alfred B. Minyard of the Lord's Day League and Msgr. Joseph P. Donlan for the Catholic Council of Men and Women. But the Boston Musician's Union managed to win council approval by arguing that “dancing was basically a religious act and was started as a form of prayer. If it's a sin to dance on Sunday, it's a sin to allow dancing any day.”²²

As clamor for further loosening of Sunday restrictions continued, the Massachusetts house approved further revision in the spring of 1963. But again *The Pilot* raised its voice in protest as it warned, “Those who persist in raising these questions must be aware that their assaults on the day of rest merely create community division and bitterness.”²³ *The Pilot* called for defeat of the measure in the Massachusetts senate, and, reminiscent of the result the previous year, the proposal passed into oblivion.²⁴

[169] The religion-inspired backwash of the 1961 decision was not confined to Massachusetts, Pennsylvania, and Maryland, states with laws which had been subjected to court scrutiny. The green light flashed “go” for blue-law crusaders from coast to coast.

For example, early in 1961, “Minnesota churches and clergymen were urged at the annual meeting of the Minnesota Council of Churches to help defeat a bill to permit sale of liquor on Sundays in Minneapolis and Saint Paul.”²⁵ By March, a Pastor's Action committee had sent letters to 500 pastors in the Minneapolis area urging them to advise their parishioners to “do your shopping on weekdays and give your patronage to stores that remain closed on Sunday.”²⁶ Backing the “Let's Save Sunday” campaign were representatives of the Methodist, Presbyterian, Lutheran, Evangelical and Reformed, and Evangelical United Brethren churches. The group received the approval of Archbishop William O. Brady, Roman Catholic leader in Saint Paul, the following month: “We need a fully united Christian front to defend our Christian Sunday.”²⁷

Early in 1962 the Minneapolis city council went on record in favor of deleting a Saturday exemption clause in a local city ordinance over the vigorous protests of three local Seventh-day Adventist pastors.²⁸ The “Save Our Sunday” campaign had produced legislative dividends in the Twin Cities and many suburbs. Pressure mounted for statewide tightening of control on Sunday activity.

The Minneapolis *Tribune* put the question to the public. Did they want to decide for themselves without legislative mandate, on the issue of Sunday closing? Sixty-five percent answered Yes, while “three out of every ten persons think laws are needed to keep Sunday business in bounds.”²⁹ Despite this clear lack of public support, proponents pushed for tighter statewide restrictions and managed to obtain legislative approval in 1963, only to see their efforts vetoed by Governor Karl F. Rolvaag. [170] Although the governor did not think the bill was designed “to encourage religious observance,” he vetoed it because he believed it sought “to enlist the power of the state to protect narrow commercial interests.” To this he added, “Even if this bill did forbid all secular activity on Sunday, I would still oppose it because I believe the state should never interfere in matters of private conscience.”³⁰

Church groups were among the supporters of a revised South Carolina Sunday-closing law in 1962.³¹ The North Little Rock Ministerial Alliance in Arkansas appeared before the city council of North Little Rock to support a proposed Sunday-closing ordinance.³² The Ohio Catholic Welfare Conference spoke out against a proposed amendment that would weaken the Ohio Sunday law: “Americans who are a 'religious people' with a traditional Sunday observance would deplore any change in the present laws which would be conducive to the secularization of Sunday and making it a day of business as usual.”³³

The Allentown Area Council of Churches in Pennsylvania urged churchgoers to “boycott those stores that defy the Sunday laws barring retail sales.”³⁴ A Maine priest, C. Martin O'Toole, advised his parishioners to boycott Portland area merchants who engaged in Sunday business.³⁵

The Kansas City Council of Churches energetically opposed a Missouri house proposal that would allow Sunday liquor sales. The churchmen described the proposal as “incompatible with a Christian observance of that day.”³⁶

Colorado formed its own “Save Our Sunday” committee, headed by a former president of the Pueblo Council of Churches. In an open effort to “promote a more spiritual observance of the Sabbath,” the Colorado Sunday-closing advocates drew support from Roman Catholic leadership as well as local merchant and labor organizations.³⁷



Evangelical Protestantism, traditional champion of blue laws, had succeeded by this time in garnering support from other segments of Protestantism as well as more than occasional support of Roman Catholics. [171] An esteemed American cardinal had given his personal blessing to the Sunday-observance cause in 1888. His approving hand had been grasped eagerly. But not until later did Roman Catholics display the zeal for legislative action that Evangelicals had inherited from the Puritans.

The most impressive Roman Catholic comment came from Pope John XXIII in September, 1961, three months after the United States Supreme Court had spoken. Appearing before convention delegates of the International Union of Master Bakers, the

pontiff pleaded “for the proper observance everywhere of Sunday as a day of rest. He said this ‘presupposes a change of mind in society and intervention of the powers of the state.’ ‘Sunday,’ he added, ‘will really be the day of God when this comes about. It will be recognized as a social right to be enjoyed by all classes of society for the exercise of their religious duties and the practicing of works of charity. The Church will be happy when this takes place, and all society will reap the benefits.’”³⁸

Not only had interchurch cooperation strengthened support for Sunday legislation; labor organizations and commercial enterprises joined with them. Church leaders remained at the vanguard, while business was welcomed to the ranks for united action. Downtown merchants, feeling the competitive pinch of the suburban discount stores which could attract the patrons' dollars seven days a week, joined the churches in their crusade. This move attracted the attention of the *Wall Street Journal*:

Pressed by competition from discount houses that open on Sunday, retailers pick up the Sabbath-closing cry of religious groups. Texas, Michigan, South Carolina, Massachusetts, and Louisiana

recently passed laws restricting selling on Sunday. California department stores push for a similar crackdown, although a trade group there found that 90 percent of persons polled in a survey favored stores being open on Sunday.

[172] Blue laws continue under heavy legal bombardment from Sunday-opening adherents. North Carolina's supreme court killed that state's Sunday-closing law because it was "vague and indefinite." Some states adopt compromise laws. In Texas and Michigan, stores may open Sunday if they close on Saturday. However, Sunday-closing laws go unenforced in many cities as state and local officers wrangle over who's responsible for their enforcement.

A few big department and variety chains muffle their attacks on Sunday selling because they contemplate opening discount stores which, to compete with other discounters, may have to open Sundays.³⁹

The contest had its humorous side. Oklahoma lawmakers laughed to death a "principal holiday" proposal which would have banned ordinary labor on Sunday. Waggish amendments proposed ranged from exemptions for "chicken picking, neck wringing, and bathing in public with or without bathing suits"⁴⁰ to bans on "cotton chopping, fish bait digging, cow milking, and bowling." One proposal would have wiped out Sunday activities on golf courses, in pool halls, at swimming pools, in domino parlors, and in beer taverns as well as television broadcasting.

"Since this is a moral issue we should go all the way," said one senator. "We'll have the people at home on Sunday with their families reading the Scripture."⁴¹

Elsewhere the clamor for tighter enforcement and expanded legislation crescendoed in 1963, reaching from the decorous East across the plains and deserts to the Wild West.

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