

# Religion and State: Implications of Sunday Closing Law Cases

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## I . INTRODUCTION

Sunday law has a long history.<sup>(1)</sup> The first one was issued in the year 321 by the Emperor Constantine of the Roman Empire. In England, especially during and after the Reformation period, attendance to Sunday worship was emphasized and often enforced. In America, the first Sunday legislation was issued by the Colony of Virginia in 1610.<sup>(2)</sup>

The United States Supreme Court dealt with Sunday laws for the first time in 1885 and upheld their constitutionality:

Laws setting aside Sunday as a day of rest, are upheld not from any right of government to legislate for the promotion of religious observance, but from its moral debasement, which comes from uninterrupted labor.<sup>(3)</sup>

It is interesting that the same reasoning was adopted in the cases of 1961 which we are now about to discuss.<sup>(4)</sup>

The Sunday Law Cases of 1961 are well-known as the ones that “the Court ruled decisively on the issue, across the spectrum of appeals.”<sup>(5)</sup> It was more than forty years ago. However, these Sunday Law Cases have a very important, fundamental meaning related to the problem of religion and state; and so they are still quite relevant today, I believe.

## II . THE SUNDAY CLOSING LAW CASES

### A. Cases: Issues, Reasonings, Decisions

*McGowan v. Maryland*<sup>(6)</sup>

*Two Guys from Harrison-Allentown, Inc. v. McGinley*<sup>(7)</sup>

*Braunfeld v. Brown*<sup>(8)</sup>

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*Gallagher v. Crown Kosher Super Market of Massachusetts* <sup>(9)</sup>

These are the cases. The first two involved owners of highway discount department stores. The last two involved Orthodox Jewish merchants. The decisions include nine opinions in all, totalling up to 220 pages. Here I would like to give an outline, excerpting important passages from the opinions, and paying attention especially to the reasonings, the grounds of the decisions. <sup>(10)</sup>

*McGowan v. Maryland*

The opinions on the *McGowan* case amount to 162 pages, and this case can be said to represent the essence of all four cases.

In this case, employees of a large department store on a highway (MD) were convicted and fined in a Maryland State Court for selling on Sunday a loose-leaf binder and so on, in violation of Maryland Sunday Laws. <sup>(11)</sup>

Chief Justice Earl Warren—in all four cases he wrote the majority opinions—delivers:

The issues in this case concern the constitutional validity of Maryland criminal statutes, commonly known as Sunday Closing Laws or Sunday Blue Laws. These statutes, with exceptions to be noted hereafter, generally proscribe all labor, business and other commercial activities on Sunday. The questions presented are whether the classifications within the statutes bring about a denial of equal protection of the law, whether the laws are so vague as to fail to give reasonable notice of the forbidden conduct and therefore violate due process, and whether the statutes are laws respecting an establishment of religion or prohibiting the free exercise thereof. <sup>(12)</sup>

In this way, he points out the issues. First: whether Sunday laws violate the Equal Protection Clause of the Fourteenth Amendment (“...nor shall any State... deny to any person within its jurisdiction the equal protection of the laws.”). Second: whether they are so vague that they violate the “Due Process” Clause of the same Article (...nor shall any State deprive any person of life, liberty or property, without due process of law;”). Third: whether they violate the “Establishment” Clause or “Free Exercise” Clause of the First Amendment (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”).

Concerning the first, the Chief Justice states that the statute does not violate the Equal Protection Clause:

It would seem that a legislature could reasonably find that the Sunday sale of the exempted commodities was necessary either for the health of the populace or for the enhancement of the recreational atmosphere of the day—that a family which takes a Sunday

ride into the country will need gasoline for the automobile and may find pleasant a soft drink or fresh fruit; that those who go to the beach may wish ice cream or some other item normally sold there. <sup>(13)</sup>

Concerning the second, he says the laws are not so vague as to violate the Due Process Clause:

We believe that business people of ordinary intelligence in the position of appellant's employer would be able to know what exceptions are encompassed by the statute either as a matter of ordinary commercial knowledge or by simply making a reasonable investigation. <sup>(14)</sup>

Concerning the third, the Chief Justice remarks, since "appellants allege only economic injury to themselves", they have no standing to raise the question whether Sunday Laws violate the Free Exercise Clause. <sup>(15)</sup> Thus, the actual problem is about the Establishment Clause.

The essence of appellants' "establishment" argument is that Sunday is the Sabbath day of the predominant Christian sects; that the purpose of the enforced stoppage of labor on that day is to facilitate and encourage church attendance; that the purpose of setting Sunday as a day of universal rest is to induce people with no religion or people with marginal religious beliefs to join the predominant Christian sects; that the purpose of the atmosphere of tranquility created by Sunday closing is to aid the conduct of church services and religious observance of the sacred day. <sup>(16)</sup>

The Chief Justice reviews the history of Sunday laws and maintains that though religious in origin they have been transformed into the laws of secular character:

There is no dispute that the original laws which dealt with Sunday labor were motivated by religious forces. But what we must decide is whether present Sunday legislation, having undergone extensive changes from the earliest forms, still retains its religious character. <sup>(17)</sup>

...despite the strongly religious origin of these laws, beginning before the eighteenth century, nonreligious arguments for Sunday closing began to be heard more distinctly and the statutes began to lose some of their totally religious flavor. <sup>(18)</sup>

In light of the evolution of our Sunday Closing Laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is not difficult to discern that as presently written and administered, most of them, at least, are of a secular rather than a religious character, and that presently they bear no relationship to establishment of religion

as those words are used in the Constitution of the United States.

Throughout this century and longer, both the federal and state governments have oriented their activities very largely toward improvement of the health, safety, recreation and general well-being of our citizens. <sup>(19)</sup>

In this way he concludes that:

Sunday Closing Laws, like those before us, have become part and parcel of this great governmental concern wholly apart from their original purpose or connotations. The present purpose and effect of most of them is to provide a uniform day of rest for all citizens; the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals. <sup>(20)</sup>

“The present purpose and effect of them is to provide a uniform day of rest for all citizens”—this is the point of the reasoning. Since both purpose and effect of the laws are secular, they do not violate the Establishment Clause, thus the Court emphasizes.

From this point of view, the Chief Justice deals with the present case. “The predecessors of the existing Maryland Sunday laws are undeniably religious in origin.” <sup>(21)</sup> But “The existing Maryland Sunday Laws are not simply verbatim re-enactments of their religiously oriented antecedents.” <sup>(22)</sup> The permissions to sell on Sunday various items irrelevant to charity or necessity, “along with those which permit various sports and entertainments on Sunday, seem clearly to be fashioned for the purpose of providing a Sunday atmosphere of recreation, cheerfulness, repose and enjoyment.” <sup>(23)</sup> On the basis of these facts, the Chief Justice accepts the validity of State Sunday Laws:

...we accept the State Supreme Court’s determination that the statutes’ present purpose and effect is not to aid religion but to set aside a day of rest and recreation. <sup>(24)</sup>

However, the State’s purpose is not merely to provide a one-day-in-seven work stoppage. In addition to this, the State seeks to set one day apart from all others as a day of rest, recreation and tranquility—a day which all members of the family and community have the opportunity to spend and enjoy together, a day on which there exists relative quiet and disassociation from the everyday intensity of commercial activities, a day on which people may visit friends and relatives who are not available during work days. <sup>(25)</sup>

Sunday laws are for this purpose: “For these reasons, we hold that the Maryland statutes are not laws respecting an establishing of religion.” <sup>(26)</sup> This is the conclusion, though he adds just a word before he closes:

We do not hold that Sunday legislation may not be a violation of the “Establishment” Clause if it can be demonstrated that its purpose—evidenced either on the face of the legislation, in conjunction with its legislative history, or in its operative effect—is to use the State’s coercive power to aid religion. <sup>(27)</sup>

The Separate opinion <sup>(28)</sup> of Justice Frankfurter, whom Justice Harlan joins, follows the above opinion of the Court. This Separate opinion is very long (102 pages!) and is applicable to the other three cases as well. <sup>(29)</sup> This opinion, however, merely attempts to reinforce the opinion of the Chief Justice. For example:

...the English experience demonstrates the intimate relationship between civil Sunday regulation and the interest of a state in preserving to its people a recurrent time of mental and physical recuperation from the strains and pressures of ordinary labors. <sup>(30)</sup>

The history of Sunday legislation convincingly demonstrates that Sunday statutes may serve other purposes than the provision merely of one day of physical stoppage in seven. These purposes fully justify common-day-of-rest statutes which choose Sunday as the day. <sup>(31)</sup>

Since the dissenting opinion of Justice Douglas—the only dissenter in *McGowan* and *Two Guys* cases—is applicable to all four cases, <sup>(32)</sup> and since I believe his opinion to be very important, I would like to consider it later in detail. <sup>(33)</sup>

*Two Guys from Harrison-Allentown, Inc. v. McGinley*

This *Two Guys* case concerns a corporation operating a large discount store located on a highway (PA). <sup>(34)</sup> As Chief Justice Warren states in the opinion of the Court, “This case is essentially the same as *McGowan*...decided today.” <sup>(35)</sup> Therefore, on the same grounds, the decision is that “we hold that neither the statute’s purpose nor its effect is religious.” <sup>(36)</sup>

*Braunfeld v. Brown*

In this case, appellants were Orthodox Jewish merchants in Philadelphia who engaged in the retail sale of clothing and home furnishings. <sup>(37)</sup> Chief Justice Warren begins his opinion thus:

This case concerns the constitutional validity of the application to appellants of the Pennsylvania criminal statute, enacted in 1959, which proscribes the Sunday retail sale of certain enumerated commodities. Among the questions presented are whether the statute is a law respecting an establishment of religion and whether the statute violates equal

protection. Since both of these questions, in reference to this very statute, have already been answered in the negative, ...they need not be considered here. Thus, the only question for consideration is whether the statute interferes with the free exercise of appellants' religion. <sup>(38)</sup>

In this way, the main issue in this case was whether the Sunday laws violated the Free Exercise Clause of the First Amendment. The Chief Justice explains the situations:

Their complaint...alleged that appellants had previously kept their places of business open on Sunday; that each of the appellants had done a substantial amount of business on Sunday, compensating somewhat for their closing on Saturday; that Sunday closing will result in impairing the ability of all appellants to earn a livelihood and will render appellant Braunfeld unable to continue in his business, thereby losing his capital investment; that the statute is unconstitutional for the reasons stated above. <sup>(39)</sup>

Sunday closing laws were driving these merchants—faithful Orthodox Jewish people—into a business predicament. Was not this interference with the free exercise of religion? The Chief Justice denies:

The freedom to hold religious beliefs and opinions is absolute...

However, the freedom to act, even when the action is in accord with one's religious convictions, is not totally free from legislative restrictions. <sup>(40)</sup>

And, moreover,

...the Sunday law simply regulates a secular activity and, as applied to appellants, operates so as to make the practice of their religious beliefs more expensive. Furthermore, the law's effect does not inconvenience all members of the Orthodox Jewish faith but only those who believe it necessary to work on Sunday. <sup>(41)</sup>

Sunday laws are not the kind of legislation which "attempts to make a religious practice itself unlawful," <sup>(42)</sup> he states.

To strike down, without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, i.e., legislation which does not make unlawful the religious belief itself, would radically restrict the operating latitude of the legislature. <sup>(43)</sup>

Thus he draws a conclusion:

If the purpose or effect of a law is to impede the observance of one or all religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect. But if the State regulates conduct by enacting a general law within its power, the purpose and effect of which is to advance the State's goals, the statute is valid despite its indirect burden on religious observance unless the State may accomplish its purpose by means which do not impose such a burden. <sup>(44)</sup>

In other words, emphasizing the indirectness of the laws' influence upon their religious practice and the secular nature of the purpose and effect of them, he maintains the constitutionality of Sunday closing laws.

Finally, the Chief Justice discusses the exemption for persons observing another day of worship. He answers, however, in the negative:

...reason and experience teach that to permit the exemption might well undermine the State's goal of providing a day that, as best possible, eliminates the atmosphere of commercial noise and activity. <sup>(45)</sup>

And he gives further reasons:

To allow only people who rest on a day other than Sunday to keep their businesses open on that day might well provide the people with an economic advantage over their competitors who must remain closed on that day; this might cause the Sunday-observers to complain that their religions are being discriminated against. <sup>(46)</sup>

In order to allow exemption, "a state-conducted inquiry into the sincerity of the individual's religious beliefs" might be necessary, but this is "a practice which... would itself run afoul of the spirit of constitutionally protected religious guarantees." <sup>(47)</sup> Besides these:

...exempted employers would probably have to hire employees who themselves qualified for the exemption because of their religious beliefs, a practice which a State might feel to be opposed to its general policy prohibiting religious discrimination in hiring. <sup>(48)</sup>

In this *Braunfeld* case, besides Justice Douglas, three Justices dissented. Justice Frankfurter says that appellants' amended complaint was dismissed improperly without trial in the District Court and that they must be given an opportunity. <sup>(49)</sup>

Justice Brennan dissents "as to the claim that Pennsylvania has prohibited the free exercise of appellants' religion:"

That is, the laws do not say that appellants must work on Saturday. But their effect is

that appellants may not simultaneously practice their religion and their trade, without being hampered by a substantial competitive disadvantage. Their effect is that no one may at one and the same time be an Orthodox Jew and compete effectively with his Sunday-observing fellow tradesmen. <sup>(50)</sup>

It is true, I suppose, that the granting of such an exemption would make Sundays a little noisier, and the task of police and prosecutor a little more difficult. It is also true that a majority--21--of the 34 States which have general Sunday regulations have exemptions of this kind. We are not told that those States are significantly noisier, or that their police are significantly more burdened, than Pennsylvania. <sup>(51)</sup>

In fine, the Court, in my view, has exalted administrative convenience to a constitutional level high enough to justify making one religion economically disadvantageous. <sup>(52)</sup>

Justice Stewart, agreeing with this dissenting opinion of Justice Brennan, adds:

Pennsylvania has passed a law which compels an Orthodox Jew to choose between his religious faith and his economic survival. That is a cruel choice. It is a choice which I think no State can constitutionally demand. <sup>(53)</sup>

Such was the *Braunfeld* case. In short, as Justice Brennan points out, the Court upheld the constitutionality of Pennsylvania Sunday laws "on the ground that the effect on religion, though substantial, is indirect." <sup>(54)</sup>

*Gallagher v. Crown Kosher Super Market of Massachusetts, Inc.*

In this case the plaintiff was a corporation operating a kosher market and owned by Orthodox Jews. Chief Justice Warren again writes the opinion:

The principal issues presented in this case are whether the Massachusetts Sunday Closing Laws violate equal protection, are statutes respecting the establishment of religion or prohibit the free exercise thereof. <sup>(55)</sup>

The equal protection arguments advanced by appellees are much the same as those made by appellants in *McGowan*... <sup>(56)</sup>

Many of the exceptions in the Massachusetts Sunday Laws are reasonably explainable on their face...[They are] useful in adding to Sunday's enjoyment [or]...required to be sold fresh daily. <sup>(57)</sup>

Now, as to the "establishment" problem, he states:



We agree...that, like the Sunday laws of other States, the Massachusetts statutes have an unmistakably religious origin. <sup>(58)</sup>

However,

An examination of recent Massachusetts legislative history bolsters the State's position that these statutes are not religious. <sup>(59)</sup>

It would seem that the objectionable language [e.g., "the Lord's Day"] is merely a relic. The fact that certain Sunday activities are permitted only if they are "in keeping with the character of the day and not inconsistent with its due observance," does not necessarily mean that the day is intended to be religious; the "character" of the day would appear more likely to be intended to be one of repose and recreation. <sup>(60)</sup>

So he concludes: "we do not find that the present statute's purpose or effect is religious." <sup>(61)</sup>

As to the "free exercise" problem, he maintains that "allegations are similar, although not as grave, as those made by appellants in *Braunfeld*. Since the decision in that case rejects the contentions presented by these appellees on the merits, we need not decide whether appellees have standing to raise these questions." <sup>(62)</sup>

Thus the Court upheld the constitutionality of the Massachusetts Sunday Laws. Besides Justice Douglas, Justice Brennan and Justice Stewart dissent on the same reasons as expressed in the *Braunfeld* case. <sup>(63)</sup>

#### B. Summary of the Court Opinions and the Dissenting Opinion of Justice Douglas

In these four cases, the essential point was, after all, whether Sunday laws violate the Establishment Clause or Free Exercise Clause of the First Amendment. Chief Justice Warren maintained that if the purpose or effect of Sunday laws was religious, in other words, the State's coercive power was used to aid religion, it would be unconstitutional. The present purpose or effect of Sunday laws, however, is not religious, but secular; they are for "public welfare," <sup>(64)</sup> he emphasized. Since their "purpose and effect" are secular, Sunday laws are not unconstitutional, he reasoned.

Against these reasonings and decisions, Justice Douglas dissented in each of the four cases on the ground that the State Sunday laws violated the Establishment Clause and the Free Exercise Clause:

The question is not whether one day out of seven can be imposed by a State as a day of rest. The question is not whether Sunday can by force of custom and habit be retained as a day of rest. The question is whether a State can impose criminal sanctions on those who, unlike the Christian majority that makes up our society, worship on a different day

or do not share the religious scruples of the majority. <sup>(65)</sup>

The Court picks and chooses language from various decisions to bolster its conclusion that these Sunday laws in the modern setting are “civil regulations.” No matter how much is written, no matter what is said, the parentage of these laws is the Fourth Commandment; and they serve and satisfy the religious predispositions of our Christian communities. <sup>(66)</sup>

This is the crucial point. He believes Sunday laws to be essentially religious. <sup>(67)</sup> Here he differs fundamentally with the other Justices. He continues:

It seems to me plain that by these laws the States compel one, under sanction of law, to refrain from work or recreation on Sunday *because of the majority's religious views about that day*. The state by law makes Sunday a symbol of respect or adherence. Refraining from work or recreation in deference to the majority's religious feelings about Sunday is within every person's choice. By what authority can government compel it? <sup>(68)</sup>

...it is a strange Bill of Rights that makes it possible for the dominant religious group to bring the minority to heel because the minority, in the doing of acts which intrinsically are wholesome and not antisocial, does not defer to the majority's religious beliefs. <sup>(69)</sup>

The Court balances the need of the people for rest, recreation, late sleeping, family visiting and the like against the command of the First Amendment that no one need bow to the religious beliefs of another. *There is in this realm no room for balancing.* <sup>(70)</sup>

They [Sunday laws] force minorities to obey the majority's religious feelings of what is due and proper for a Christian community; they provide a coercive spur to the “weaker brethren,” to those who are indifferent to the claims of a Sabbath through apathy or scruple. Can there be any doubt that Christians, now aligned vigorously in favor of these laws, would be as strongly opposed if they were prosecuted under a *Moslem* law that forbade them from engaging in secular activities on days that violated *Moslem* scruples?

There is an “establishment” of religion in the constitutional sense if any practice of any religious group has the *sanction of law* behind it. There is an interference with the “free exercise” of religion if what in conscience one can do or omit doing is required because of the religious scruples of the community. Hence I would declare each of those laws unconstitutional. <sup>(71)</sup>

He recognizes the inseparable nature of Establishment and Free Exercise. When the majority's religion has coercive power, the religious minority suffers:

The reverse side of an “establishment” is a burden on the “free exercise” of religion....Certainly the present Sunday laws place Orthodox Jews and Sabbatarians under extra burdens because of their religious opinions or beliefs. <sup>(72)</sup>

Thus arises the *Braunfeld* or the *Gallagher* cases.

The dissenting opinion of Justice Douglas seems to me quite reasonable and convincing. In the following chapter, I would like to state my own opinion.

### III. SOME OBSERVATIONS

#### A. Scholars' Opinions

Leonard Levy raises the question of religious character of Sunday Laws:

In fact, Sunday remains for many Americans the church-going day and continues to have a religious character unlike other days of the week. Warren's four opinions for the Court appear difficult to reconcile with the effects test for determining whether a statute violates the establishment clause. The Court should have ruled that forced Sunday laws have the effect of advancing religion. <sup>(73)</sup>

I agree, and, as far as I surveyed, the article of Kenneth Sommer was the most comprehensive and clear.

Sommer <sup>(74)</sup> sharply points out the unconstitutionality of Sunday laws:

Sunday closing laws are religious in nature and origin; they protect and favor certain religious sects above all others....Because, they promote religious observance by members of the dominant Christian sects to the detriment of religious minorities, Sunday blue laws violate the command of the establishment clause that there be a wall of separation between church and state. <sup>(75)</sup>

Sunday closing laws frequently present members of religious minorities with the unique dilemma of deciding whether to forsake their religious beliefs or to accept a harsh economic penalty....[They] violate the absolute freedom of religious belief guaranteed by the free exercise clause of the first amendment. <sup>(76)</sup>

The multitude of exemptions from Sunday closing laws, enacted primarily in response to pressures exerted by special interest groups, has resulted in discriminatory classifications violative of the equal protection clause of the fourteenth amendment.... <sup>(77)</sup>

## B. My Opinion and Conclusion

As to these Sunday Law Cases, I cannot support the Court opinion. I basically agree with the dissenting opinion of Justice Douglas. My main points are as follows:

(1) Sunday has, in origin, in historical development and in practice, a religious connotation.<sup>(78)</sup> Sunday laws, originally the product<sup>(79)</sup> of the union of church and state, also have religious connotations.<sup>(80)</sup> Religious connotation cannot be erased easily. Therefore, the States should not make such a questionable day the rest day by enforcement. Religion is a private matter. Government should not meddle in religious things.

(2) The Christian Church should not depend upon such a forced Sunday observance. As James Madison stressed, "the establishment... is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself, for every page of it disavows a dependence on the powers of this world."<sup>(81)</sup> Religion is a voluntary thing; enforcement is a self-contradiction to it. In this sense, "Sunday laws are bad for the church [itself] because they advertise to the non-Christian the church's weakness, its dependence on the arm of flesh."<sup>(82)</sup> The church needs to make efforts so that people come to church "not because they fear(ed) the law but because they love(d) their God."<sup>(83)</sup>

(3) In these cases, it looks likely that "the collective good takes precedence over an individual's practices and beliefs."<sup>(84)</sup> This is a serious matter, I suppose. The personal liberty of the individual should be the core of society. As Justice Brennan emphasized in his dissenting opinion in the *Braunfeld* case: "For the values of the First Amendment, as embodied in the Fourteenth, look primarily towards the preservation of personal liberty, rather than towards the fulfillment of collective goals."<sup>(85)</sup> But in the Court opinion, the community day of rest was given priority over the appellants' personal liberty. The society that ignores one will come to ignore all, I suspect.

(4) The essence of religion is, after all, consideration for others, I believe.<sup>(86)</sup> The very spirit of the religion is shown to what extent it can consider other people, especially those of other religions. In this respect, I do support Justice Douglas when he says:

The issue of these cases would therefore be in better focus if we imagine that a state legislature, controlled by Orthodox Jews and Seventh-Day Adventists, passed a law making it a crime to keep a shop on Saturdays. Would a Baptist, Catholic, Methodist, or Presbyterian be compelled to obey that law or go to jail or pay a fine? Or suppose *Moslems* grew in political strength here and got a law through a state legislature making it a crime to keep a shop on Fridays. Would the rest of us have to submit under the fear of criminal sanctions?<sup>(87)</sup>

When the majority pay their attentions enough to the minority, their religion proves its real worth. What kind of religion was, is, and will be the Christianity in America?

NOTES

- (1) In this paper I omit the historical development of Sunday law. For this area, see, for example, Kenneth A. Strand, ed., *The Sabbath in Scripture and History* (Washington, D.C.: Review & Herald Pub. Assn., 1982); D. A. Carson, ed., *From Sabbath to Lord's Day: A Biblical, Historical and Theological Investigation* (Grand Rapids: Zondervan Pub. House, 1982); James T. Dennison, Jr., *The Market Day of the Soul: The Puritan Doctrine of the Sabbath in England, 1532-1700* (Lanham: University press of America, 1983); David N. Laband and Deborah H. Heinbuch, *Blue Laws: The History, Economics and Politics of Sunday-Closing Laws* (Lexington: D. C. Heath & Co., 1987); Kenneth L. Parker, *The English Sabbath: A Study of Doctrine and Discipline From the Reformation to the Civil War* (Cambridge: Cambridge University Press, 1988); Winton U. Solberg, *Redeem the Time: The Puritan Sabbath in Early America* (Cambridge: Harvard University Press, 1977); Roy Z. Chamlee, Jr., *The Sabbath Crusade: 1810-1920* (Ann Arbor: UMI, 1968); Tamara C. Eskenazi, Daniel J. Harrington, and William H. Shea, eds., *The Sabbath in Jewish and Christian Traditions* (New York: Crossroad, 1991). Incidentally, Charlie Bevis, *Sunday Baseball: The Major League's Struggle to Play Baseball on the Lord's Day, 1876-1934* (Jefferson, NC: McFarland & Co., 2003) is an interesting survey of this Sunday legislation problem.
- (2) William A. Blakely, comp., *American State Papers Bearing on Sunday Legislation* (New York: Da Capo Press, 1970), 33; Laband & Heinbuch, *Blue Laws*, 30.
- (3) *Soon Hing v. Crowley*, 113 U.S. 703(1885), 710.
- (4) A. P. Stokes and Leo Pfeffer, *Church and State in the United States*, rev. ed. (New York: Harper & Row, 1964), 501. See also J. E. Wood, E. B. Thompson and R. T. Miller, *Church and State in Scripture, History, Constitutional Law* (Waco: Baylor University Press, 1958), 112.
- (5) Laband & Heinbuch, *Blue Laws*, 39.
- (6) 366 U.S. 420 (1961).
- (7) 366 U.S. 582 (1961).
- (8) 366 U.S. 599 (1961).
- (9) 366 U.S. 617 (1961).
- (10) I referred mainly to "The Supreme Court, 1960 Term," *Harvard Law Review* 75 (1961): 147-152; Donald F. Paine, "Sunday, the Sabbath, and the Blue Laws," *Tennessee Law Review* 30 (1963): 249-271; Philip B. Kurland, *Religion and the Law of Church and State and the Supreme Court* (Chicago: Aldine Pub. Co., 1962), 97-106; *New York Times*, 9 December 1960; *New York Times* 30 May 1961; Jerome A. Baron, "Sunday in North America," *Harvard Law Review* 79 (1965): 42-54. See also Mitchell A. Tyner, "The Sabbath and the State: Legal Implications of Sabbatarianism," T. C. Eskenazi, et al., eds., *The Sabbath in Jewish and Christian Traditions*, 245-258, esp. 250-253; John F. Wilson & Donald L. Drakeman, eds., *Church and State in American History: Key Documents, Decisions, and Commentary From the Past Three Centuries* (Boulder, CO: Westview Press, 2003), 281-285.
- (11) 366 U.S. 420.
- (12) *Ibid.*, 422.
- (13) *Ibid.*, 426.
- (14) *Ibid.*, 428.
- (15) *Ibid.*, 429.
- (16) *Ibid.*, 431.
- (17) *Ibid.*
- (18) *Ibid.*, 433, 434.
- (19) *Ibid.*, 444.
- (20) *Ibid.*, 445.
- (21) *Ibid.*, 446.
- (22) *Ibid.*, 448.
- (23) *Ibid.*, 448.
- (24) *Ibid.*, 449.
- (25) *Ibid.*, 450.
- (26) *Ibid.*
- (27) *Ibid.*, 453.
- (28) *Ibid.*, 459.
- (29) *Ibid.*, 598, 610, 631.
- (30) *Ibid.*, 482.
- (31) *Ibid.*, 414.
- (32) *Ibid.*, 561, 598, 610, 631.

- (33) See p. 107f.
- (34) *Ibid.*, 582.
- (35) *Ibid.*, 584.
- (36) *Ibid.*, 598.
- (37) *Ibid.*, 601.
- (38) *Ibid.*, 600-601.
- (39) *Ibid.*, 601.
- (40) *Ibid.*, 603.
- (41) *Ibid.*, 605.
- (42) *Ibid.*, 606.
- (43) *Ibid.*
- (44) *Ibid.*, 607.
- (45) *Ibid.*, 608.
- (46) *Ibid.*, 608-609.
- (47) *Ibid.*, 609.
- (48) *Ibid.* But “The reasoning of the Court is not entirely persuasive,” Leo Pfeffer, *God, Caesar, and the Constitution: The Court as Referee of Church-State Confrontation* (Boston: Beacon Press, 1975), 329.
- (49) *Ibid.*, 542-543.
- (50) *Ibid.*, 613.
- (51) *Ibid.*, 614-615.
- (52) *Ibid.*, 615-616.
- (53) *Ibid.*, 616.
- (54) *Ibid.*, 615-616.
- (55) *Ibid.*, 618.
- (56) *Ibid.*, 622.
- (57) *Ibid.*, 622-623.
- (58) *Ibid.*, 624.
- (59) *Ibid.*, 627.
- (60) *Ibid.*
- (61) *Ibid.*, 630.
- (62) *Ibid.*, 631.
- (63) *Ibid.*, 642, 610-616.
- (64) *Ibid.*, 607.
- (65) *Ibid.*, 561.
- (66) *Ibid.*, 572.
- (67) Kurland, p. 105.
- (68) 66 U.S. 573. Emphasis supplied.
- (69) *Ibid.*, 575.
- (70) *Ibid.* Emphasis supplied.
- (71) *Ibid.*, 576-577. Emphases supplied.
- (72) *Ibid.*, 578.
- (73) Leonard W. Levy, *The Establishment Clause: Religion and the First Amendment* (New York: Macmillan Pub. Co., 1986), 159.
- (74) *Suffolk University Law Review* 11 (1977): 1089-1115.
- (75) *Ibid.*, 1103.
- (76) *Ibid.*, 1106.
- (77) *Ibid.*, 1113-1114. “Some state courts also held that because of the multitude of exceptions to modern Sunday statutes, blue laws are unconstitutionally vague in violation of the due process clause of the fourteenth amendment.” (*Ibid.*, 1109, n. 112).
- (78) See, for example, Alvin W. Johnson and Frank H. Yost, *Separation of Church and State in the United States* (New York: Greenwood Press, 1969), 219-231.
- (79) *Ibid.*, 219.
- (80) Sunday laws have disappeared in many parts of the United States. But “many religious leaders, including some Catholic bishops, have openly resisted that development, not primarily out of concern for the physical and mental health of working people, but out of concern for the sacredness of the day.” Richard P. McBrien, *Caesar’s Coin: Religion and Politics in America* (New York: Macmillan Pub. Co., 1987), 183.
- (81) James Madison, *A Memorial and Remonstrance*, 6, in William L. Miller, *The First Liberty: Religion and the*

- American Republic* (New York: Paragon House Publishers, 1985), 361.
- (82) Roland R. Hegstad, "Why I Oppose Sunday Laws," *Liberty*, January/February, 1975, 22.
- (83) Justice Black in his dissenting opinion in the *Zorach* case. *Zorach v. Clauston*, 343 U.S. 306 (1952), 319.
- (84) Harry W. Campbell, "The Civil Sunday," *Liberty*, January/February, 1963, 22.
- (85) 366 U.S. 599, 610. See also Mark Mikula & L. Mpbo Mabunda, eds., *Great American Court Cases, vol. 1: Individual Liberties* (Farmington Hills, MI: The Gale Group, 1999), 84-85.
- (86) "In everything do to others as you would have them do to you; for this is the law and the prophets." (Mt 7:12. NRSV). "Righteousness does not consist in whether you face towards the East or the West. The righteous man is he who believes in God and the Last Day, in the angels and the Book and the prophets; who, though he loves it dearly, gives away his wealth to kinsfolk, to orphans, to the destitute, to the traveller in need and to beggars, and for the redemption of captives; who attends to his prayers and renders the alms levy; who is true to his promises and steadfast in trial and adversity and in times of war. Such are the true believers; such are the God-fearing." (*The Koran* 2:177 [tr. by N.J. Dawood. Penguin Books. 1990 ed.]).
- (87) *McGowan v. Maryland*, 366 U.S. 420, 565. Emphasis supplied.