

Appendix 4

Sunday Laws in America

The Virginia Sunday law of 1610 prohibited Sunday "gaming" and required attendance at "divine service" in the morning and "in the afternoon to divine service, and Catechising, vpon paine for the first fault to lose their prouision, and allowance for the whole weeke following, for the second to lose the said allowance, and also to be whipt, and for the third to suffer death."¹

America has had a long history of Sunday legislation, some of it quite harsh.² A law demanding capital punishment for inattention to correct Sunday observance was enacted in Massachusetts also. "Fortunately for the 'worldly-minded' among the colonists, most colonial Sunday blue laws did not carry the death penalty."³ But corporal punishment was common.

Historically Sunday laws have gone hand in hand with other similar forms of religious legislation. There were church taxes, for example, with payment in kind. In colonial Virginia a minister of the Church of England received 16,000 pounds of tobacco each year as his stipend, which he could then sell for whatever price it would bring. Any additional fees over and above his stipend were carefully regulated.

The Fee by Law for a Funeral Sermon, is forty Shillings, or four hundred pounds of Tobacco; for a Marriage by licence, twenty Shillings, or two hundred pounds of Tobacco, and where the Banes are proclaim'd, only 5 s. or 50 l. of Tobacco.⁴

In short, whatever had to do with the church was controlled with exact attention to detail by the state. Notice that where the state supports one religion, those who worship in a different way are rejecting what the state has established, with whatever implications that might have.

Anno 1663, diuers Sectaries in Religion beginning to spread themselves there; by a mistaken Zeal great Restraints were laid upon them under severe Penalties, to prevent their Encrease.

This made many of them flie to other Colonies, and prevented abundance of others from going over to seat themselves among 'em. And as the former ill Treatment of my Lord *Baltimore* kept many People away, and drove others to *Maryland*; so the present Severities towards the Non-conformists, robb'd them of many more, who went to the Neighbouring Colonies; and might otherwise have contributed vastly to the Improvement of that.⁵

Civil funding for established churches in America disappeared by gradual stages. The first step in this direction was to fund multiple churches. Then, based on concepts deriving largely from the Enlightenment,⁶ there was a collapse of state support for churches altogether and with it a general decline of civil interference in religion.⁷ It is noteworthy that the main impetus for the above changes came from Virginia, where Sunday laws had at one time been most stringent.⁸ The results were unanticipated. Some had thought that without state support religious interests would suffer. But instead, "Out of this shift came an extraordinary expansion of denominational institutions, . . ."⁹

The Virginia debate which led to the local adoption of Thomas Jefferson's Act for Establishing Religious Freedom (1786) played a significant role in shaping the religion clause of the Bill of Rights (proposed September 25, 1789; adopted June 15, 1790). It is therefore surprising that some who look back on these events do not view all of them as progress. Harold Lindsell writes nostalgically of the days when respect for Sunday sacredness took the form of strict legal enactments.

In the West, and for us in America more specifically, the New Paganism now may be seen in the laws and the life-style of its people. In some instances the laws have been altered specifically; in others they are left in the dustbin of history as their enforcement ceases. There are numerous examples of this process. For instance, America in past days had strict Sunday closing laws. In most states these prohibitions have been removed from the books or, if they still exist, they are unenforced. One of the victims of the New Paganism, then, is the Sabbath legislation of bygone years. Sunday has been thoroughly secularized—something quite understandable in the light of the controlling pagan world and life view.¹⁰

In saying this Lindsell has surely lost sight of the excessive harshness with which at least some of our early Sunday laws were enforced.¹¹ It is one thing to have laws, but they mean nothing if violators go unpunished. So the effect must be traced to its cause. Punishment breeds harshness. Bear in mind also that a government which punishes one form of religious dissent will punish others. When a bull is turned loose it cannot be depended on to run in one direction only.

The central concept undergirding the Constitution of the United States is that diversity is something to cherish rather than suppress. Perhaps the best illustration of this fact is that the new nation was designed as a federation, made of many states rather than one. The motto, *e pluribus unum* ("from many one"), captures this same thought. One reason for having a bicameral Congress—with representation proportional to the number of states on the one hand and proportional to the number of people living in those states on the other hand—is to ensure that the interests of all might be truly and fairly balanced against each other. The varied nature of those interests was considered an essential safeguard of public freedom. James Madison makes this point explicitly.

It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. . . . In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects.¹²

Sunday laws in the American colonies did not flourish in a vacuum. They were part of a larger framework of church-state relationships in which the two became mingled as one. Allowing such laws to lapse was not the only change brought about by the American Revolution and the adoption of the Bill of Rights. And I submit that if one could successfully reverse bits and pieces of this process, no part of it would remain wholly untouched. While tightening the

enforcement of local Sunday laws might be one thing, any thought of initiating a national Sunday law in the United States must be seen as having very broad implications. The change will come, but it will not be an isolated phenomenon such that there is freedom in every other respect and coercion only in the matter of which day we must choose for worship. Having given up this particular freedom, "our country shall repudiate every principle of its Constitution . . ."¹³

¹Warren L. Johns, *Dateline Sunday, U.S.A.: The Story of Three and a Half Centuries of Sunday-law Battles in America* (Mountain View: Pacific Press, 1967), p. 4.

²Sunday laws have been with us in America for the past two centuries but their enforcement has been local and sporadic. Ironically the secularization of Sunday, though lamented and seen as a problem by Evangelicals, might be the very thing that makes a tightening of Sunday legislation more widely acceptable. Johns cites "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'" (ibid., p. 161). Because they are secular they are innocent. Because they are innocent they may be freely enacted.

³Ibid., p. 5.

⁴Robert Beverley, *The History and Present State of Virginia*, ed. Louis B. Wright, Dominion Books (Charlottesville: University Press of Virginia, 1947), p. 262.

⁵Ibid., p. 68.

⁶"It is significant that what was finally agreed on for the religious portion of the First Amendment, contained in its first sixteen words, revealed Enlightenment influence as fully as did the Virginia act of 1786" (Jon Butler, *Awash in a Sea of Faith: Christianizing the American People* [Cambridge: Harvard University Press, 1990], p. 265).

⁷"Only Connecticut and Massachusetts sustained multiple establishments after independence, . . ." (ibid., p. 267).

⁸The turning point came not because of a change in public attitudes toward Sunday observance but toward state support for established churches. "Like other states with exclusive religious establishments, Virginia initially moved toward multiple establishment after the revolutionary war" (ibid., p. 262). In the ensuing debate Patrick Henry argued for multiple establishment and continued state support. "In contrast Thomas Jefferson offered his bill 'for Establishing Religious Freedom,' which, among other things, forbade tax levies for 'any religious worship, place, or ministry whatsoever.' . . . The Virginia debate of 1784-85 attracted enormous public interest and transformed the American dialogue on religious establishment" (ibid.). In the end no form of establishment survived.

⁹Ibid., p. 268.

¹⁰*The New Paganism* (San Francisco: Harper & Row, 1987), p. 143.

¹¹"In the reign of Charles II, Parliament, for the purpose of compelling all persons to attend the established Church, passed (1665) the Conventicle Act making every one over sixteen years of age who attended a conventicle (any meeting for religious worship at which five persons were present besides the household) subject to imprisonment, with transportation beyond seas for the third offence. During the same reign it passed the Test Act requiring oaths in support of the established religion. Under those acts, which were not repealed until recent times, all nonconformists of whatever religious belief were very severely dealt with" (Thomas James Norton, *The Constitution of the United States: Its Sources and Its Applications* [New York: Committee for Constitutional Government, 1960], p. 197).

¹²Clinton Rossiter, *The Federalist Papers: Alexander Hamilton, James Madison, John Jay* (New York: Mentor, 1961), pp. 323-24 (No. 51: Madison).

¹³Ellen G. White, *Testimonies for the Church*, 9 vols. (Mountain View: Pacific Press, 1948), 9:451.