

Christian Herald

July, 1963

The Growing Threat to Sunday

The Bible says: "Remember the Sabbath —to keep it holy."

But where do we draw the line? Here is a study-in-depth of this knotty problem, its implications for Christians, others

By FRED R. ZEPP

THE words of the Fourth Commandment as given in Exodus 20:8-11 would appear to be clear enough:

"Remember the sabbath day, to keep it holy. Six days shalt thou labor and do all thy work: But the seventh day is the sabbath of the Lord thy God: in it thou shalt not do any work. . . ."

Today, there is increasingly heated controversy when these words are enjoined on American communities through attempted new legislation, or when such existing legislation is challenged.

The arguments run deep. Powerful organizations are fighting on each side. Hundreds of thousands of dollars have been spent on legal cases. Some have been fought through municipal, state and Federal courts straight up to the U. S. Supreme Court.

Even on basic terms there are clashes:

What is the Sabbath Day? Saturday or Sunday?

What constitutes work?

Is it practical to try to apply this Commandment, even loosely, to a twentieth-century, industrialized society?

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OPEN SUNDAY

In a society that encompasses not only Christian and Jewish tradition, but the freedoms of those of other or of no beliefs, what rights have the minorities—and the majority?

Are laws restricting Sunday business religious laws at all, or are they by now an inseparable part of the civic and commercial life of America?

If it is simply a matter of letting every man choose which day in seven he chooses to call a holy day or a holiday, isn't the one-in-seven cycle itself inescapably religious?

THIS is no localized problem. It extends around the world.

In Europe, the "continental Sunday" is the rule in many large cities. This sets aside the morning as a time for worship, the remainder of the day for pleasure. In those non-morning hours, almost every type of business and amusement is available. This is true in such Protestant cities as London, Oslo, Copenhagen, Amsterdam, Geneva, Bergen and West Berlin. It's true, too, in Catholic centers: Rome, Dublin, Paris, Lisbon, Madrid, Vienna.

In the Orient, the usual Sunday is wide open. Tokyo, the world's largest city, closes its larger commercial firms on Sunday—but not for Christian worship in a Buddhist-Shintoist land. They close to let workers enjoy themselves, often at baseball games, imported originally from this country.

In Hong Kong, Sunday is the biggest business day of the week. This is largely true also in Taiwan, Thailand and India.

In fact, during World War I an Indian maharajah told a Christian missionary that although he had built two churches for Britons and ordered offices in his domain closed on Sundays, the Christians spent the day boating, hunting, racing and playing cards.

He continued, "If you ask me why God is punishing the Christians with this war, I say there is your answer."

IN the U.S., the Supreme Court has ruled that Sunday closing laws—variously known as Blue Laws, Lord's Day Laws, Sabbath Shutdowns and a host of other names—are constitutional. Not, however, because of any religious significance; rather, the reasoning goes, in spite of it. The highest court in the

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land has decided that the U.S. Constitution forbids the Government to support anything even hinting of establishing a religion or religious practice. But it has ruled that Sunday laws fall within a state's power to protect the health and welfare of its citizens by insisting that they receive at least one day's rest a week.

To put all this in perspective, let's look back to see how it came about.

There are those who say the first Sunday closing law was issued in A.D. 321 by the Roman Emperor Constantine when he decreed compulsory rest for “all judges and city people and the craftsmen . . . upon the venerable day of the Sun.”

THIS, it was noticed almost at once, was a shrewd political move. The day was hallowed by both the Mithraists or sun worshipers and the early Christians, who marked it in honor of the day on which Jesus Christ rose from the dead.

Others deny that Constantine had anything to do with Sunday Laws. Three hundred years earlier, they say, Sunday had been set aside by the Apostolic Church as a day of Christian worship.

Either way, history shows that William the Conqueror and Henry II proclaimed Sunday laws in early England. By the time of the Puritans and others destined to become the pioneering settlers of this country, such laws were widely accepted — and were readily transplanted here in earliest Colonial days. Most of them, modeled on a decree promulgated by Charles II, called for “observation of the duties of piety and true religion (Works of Necessity and Charity only excepted).” And some eliminated even those two exceptions.

For most, the object was simple: to enforce church attendance.

And the laws were strict.

In 1610, Virginia enacted the first known such law on these shores. It compelled attendance at morning and



afternoon Church of England services. Penalties ranged from loss of rations to loss of life.

Other laws touched on all phases of Sunday life.

In 1670 in Massachusetts, two young people were tried for "sitting together under an apple tree."

A sea captain, returning in 1656 from a three-year voyage, was set out in the Boston stocks for "lewd and unseemly behavior": he kissed his wife in public.

A soldier was fined 40 shillings for "doing heavy work": he "wet a piece of old hat to put in his shoe" to ease his aching feet.

A CENTURY or so later, when the 13 original states won their freedom, among the first statutes many of them enacted were Blue Laws — so called, authorities now feel, because of the color of the bindings on old Connecticut's official statutebooks.

By the mid-1800's, state courts were upholding closing laws; as one Pennsylvania decision put it in 1848, such acts "are not invalidated by being of religious origin."

A short time later a shift set in.

Decisions began to strike down Sabbath laws as unconstitutional if based on Christian tradition, on the principle that the U.S. is a Christian nation or that the law was passed to encourage piety.

It was at this point that the idea of basing such laws on the power of a state to enact legislation to protect citizens' health and welfare began to take shape in some legal minds. Long before this theory could be tested, however, many bitter skirmishes were fought out. The battlegrounds were newspapers, magazines, city halls, state legislatures, courtrooms.

From time to time, there were minor shifts in the makeup of the embattled forces. But in general the lineup showed Roman Catholics, many Protestants and labor unions leading the fight for Sunday-closing laws. Jews, Seventh-Day Adventists, Seventh-Day Baptists, civil-liberties groups, some mercantile interests—in the latter days

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primarily discount-house operators — and those with no particular interest in religion on the other side.

For the last 75 years, among those in the forefront of the Sunday-law proponents has been the Lord’s Day Alliance, a non-denominational organization headquartered in New York. On the fundamental question of why Sunday, the first day of the week, is to be observed as the Sabbath rather than Saturday, “the seventh day,” the LDA says:

“The Lord observed both the Passover and the seventh day as the Sabbath during His ministry on earth. The night before He was betrayed, He abrogated the Passover by instituting the Lord’s Supper. After observing the seventh day all His life, he abrogated it by rising from the dead on the first day of the week. Therefore, Jesus abrogated both the Passover and the seventh day for worship by an act and not by a command.”

The LDA then lists ten “important happenings on the Lord’s day,” prime among them Christ’s Resurrection, His appearance before ten of His disciples, a week later His appearance before eleven of them, and “the promised coming of the Holy Spirit . . . on the first day of the week.”

Sunday-law proponents make these, among other, points:

- “God . . . has instructed us to ‘keep the sabbath day holy.’ ”
- A Christian using Sunday for ordinary pursuits “fails to give a good testimony” to Christ’s Resurrection.
- If business-as-usual takes over on Sunday, churches will lose their influence, for this is the day when most of their activities are held and when they receive the bulk of their financial support.
- A person who shops on Sunday deprives the sales clerk and other workers of the chance to attend church.
- Such action penalizes merchants who close on Sunday.
- It places “your own future Sundays in jeopardy,” since shopping on Sunday encourages other stores to open—and this, if carried to the extreme, means that everyone eventually would have to work on Sunday.

In short, say these people, “What we fear Communism will do by force we are doing by our own negligence.”

Even now, they charge, the church’s working time has been whittled down from one full day a week to, in thousands of instances, a brief morning service. The rest of the day, once marked by afternoon and evening services, now is devoted to afternoon drives, lawn-mowing, TV-watching, ball-game and movie-going, or worse.

These arguments raise the hackles

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of those who oppose Sunday laws.

Each group of closing-law foes has its own spokesmen and its own reasons. Perhaps the most typical, most outspoken and most active are the Seventh-Day Adventists, whose 330,000 adult members comprise what they call “the largest Christian denomination in the nation observant of the Saturday Sabbath.”

Right at the base, on the question of which day is the Sabbath, they disagree with the Lord’s Day Alliance and those who feel as it does.

The Adventists say that God decreed the Sabbath to be Saturday; that the Roman Catholic Church “by its vested authority” changed it to Sunday, and that “a great majority of Protestants” have mistakenly followed this path.

They continue:

● Sunday closing laws force those who observe Saturday as their Sabbath either to give up their religion or suffer heavy economic blows by closing shop two days a week against their competitors’ one. They cite the case of a bicycle store owner in Reading, Pa., who, forced by a 1959 Blue Law to close on Sundays as well as closing on his own Saturday Sabbath, lost \$10,000 a year in sales, and of a Southern electric-appliance dealer forced to sell his store because of similar losses.

(Contrarily, Sunday-law proponents cite instances of businessmen who, formerly open seven days a week, tried closing on Sunday and found their sales increasing. These sources also say there is just so much money to be spent each week, regardless of whether it is spread over seven days or concentrated in six — or five.)

● Blue Laws penalize Saturday-Sabbath evangelists. A potential convert, they argue, is discouraged because he knows “he runs the risk, not only of possible discharge from his particular employment but, in some states, of disqualification for unemployment compensation because he refuses to take employment that interferes with observance of the Saturday Sabbath. . . . The result is severe and continuous discrimination in missionary work against all religions that observe Saturday or Friday as the day of worship.”

(The other side’s reply is that “in our American way of life the majority rules.” And the majority of Americans observe Sundays as the Sabbath.)

● In many states, those who worship on Saturdays find public recreation facilities, open to all on Saturday, closed on Sunday. This, they say, is discriminatory.

Additional arguments against Sunday closing-laws have come from Americans in governmental positions.

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U.S. Ambassador to the United Nations Adlai E. Stevenson, as Governor of Illinois in 1956, vetoed a Sunday-closing law. In his accompanying message he said: “Surely our public officials charged with law enforcement have more important tasks than to seek out and prosecute persons engaging in such transactions. . . . Surely such restrictive legislation as this is not compatible with our earnest convictions and constant proclamations about the merits of free enterprise.”

As mayor of Minneapolis, Arthur Naftalin vetoed a similar ordinance, calling it “an unwarranted interference with the personal freedom of our citizens.” Naftalin, whose views have been echoed in veto messages in other communities, found further that the proposed law “has the effect of discrimination against individuals who observe a day other than Sunday as their Sabbath” and that “it seeks to impose by law a pattern of social and economic behavior that should be shaped, not by government, but by the free choice and the voluntary association of the people themselves.”

In the course of his veto message, Naftalin made points which other Sunday-closing foes also have emphasized. Emphasizing that the measure was based on the public health powers, Naftalin wrote: “It is manifestly clear that prohibiting such sales on Sunday has nothing to do with the ordinance’s declared objective [of preserving the community’s health]. It obviously cannot be harmful to the public health if items which are perfectly legal for sale on six days are sold on the seventh.”

Turning then to what he described as “probably the most widely held view concerning the purpose of the ordinance—that it will enhance Sunday as a day of rest and worship,” Naftalin stressed that sponsors denied any such aim. “It is extremely important,” he said, “that everyone understand that this ordinance is not intended to accomplish this purpose. . . . There is nothing in [it] to prohibit manufacturing . . . or, for that matter, the engaging by retail stores themselves in activities other than selling, such as receiving and making deliveries. . . . There is nothing in the ordinance to prevent a person from working seven days a week. The prohibition is not on an individual’s work; it is on the selling of certain items of merchandise.”

As governor of Utah, George Dewey Clyde has vetoed a similar law. His reasons were that it discriminated against those who worship on Saturdays, that it was brought by one group of merchants to penalize another (in most cases, downtown merchants fa-

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vor Sunday closings; suburban shopping centers and discount houses want the day free for business), and that it would not accomplish at least some of its aims.

He cited arguments that by closing businesses on Sundays young people would be encouraged to attend church.

Clyde argued, contrarily, that they might “spend their time loitering in beer halls or other places which are exempted” from the closing law. He also ruled that if a cannery—of which Utah has many—were forced to close on Sundays “at a critical time in the operational season,” the fruit loss might wipe out an entire year’s profits.

The Governor cited, too, a familiar problem of enforcement: what about the drugstore which is allowed to remain open for the sale of essential items and is asked by a customer to sell prohibited goods? The decision for the druggist, Clyde concluded, would be difficult. All in all, he summarized, such a statute would tend to breed general disrespect for all our laws.

A stand in opposition to Sunday laws has been taken, too, by some churchmen. The Rev. Allan C. Parker, Jr., Presbyterian pastor of South Park Church in Seattle, Wash., for instance, calls such laws “a clear violation of religious freedom when put into effect and justified on religious grounds.” However, he says, if many nominal Christians had the right to work on Sundays, it might spark the churches into more meaningful action to win their attendance — including worship services of some sort Sunday morning, afternoon and evening and on seven days a week.

The Rev. William Vaughn Ischie, Jr., rector of Christ’s Church, Episcopal, in Philadelphia, says: “As an orthodox Christian, I believe it is contrary to Christ’s teaching to force my views on others by secular laws. . . . When religion has to be supplemented by civil legislation, it is its weakness that is being demonstrated.”

Proponents, however, are quick to point out that Sunday laws do not require anyone to attend church. Rather, they prohibit certain types of businesses. The usual approach is for a state legislature or city council to forbid certain activities or to pass a blanket closing law and then provide for specific exemptions.

Many Christians have been seeking compromise solutions. Prime among these are laws which grant exceptions to Saturday sabbatarians. Under these exemptions, Jewish businessmen, Seventh-Day Adventists, Seventh-Day Baptists, Moslems and all who worship on days other than Sunday are permitted to remain open on Sundays and close on their Sabbaths.

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In one form or another, 22 states have some type of exemption clause: Connecticut, Indiana, Kentucky, Maine, Michigan, Minnesota, Ohio, Virginia, West Virginia, Illinois, Kansas, Massachusetts, Missouri, Nebraska, New Jersey, New York, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Washington.

In all, 37 states now have restrictions on Sunday activities. Punishments range from a \$1 fine in Nebraska to Texas' fine of \$500 and/or six months in jail for the second, or further, offense. Many states count each individual item sold on Sunday as a separate offense; selling six ten-cent items to a plainclothesman can result in six convictions and six penalties.

At last count, 13 had no statewide restrictions: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho, Montana, Nevada, Oregon, Wisconsin and Wyoming. However, many have Sunday laws at the local level. This, too, has resulted in arguments: if one county has a Sunday law and its neighbor has not, restricted merchants are likely to complain that their customers drive over the line to make Sunday purchases.

Down the middle of Kansas City, for instance, runs State Line, a street which divides Missouri residents on the east from Kansans on the west. Both states long had Sunday laws on their books; in fact, Kansas' was copied almost word for word from Missouri's, which dated back to territorial days. Yet, in two recent decisions, the Kansas Supreme Court has ruled its state's law unconstitutional; Missouri's Supreme Court has held its law constitutional.

In North Dakota, residents may not buy shoe polish on Sunday. But shoe-shine boys may work.

In New York, residents may legally buy bread and cake but not meat; milk and fruit but not vegetables; tobacco but not pipes; newspapers but not magazines. Here, it is not uncommon to see policemen ignoring sidewalk vendors of thousands of banned items on Sunday afternoons along the teeming sidewalks of the Lower East Side.

Massachusetts permits dredging for oysters but not digging for clams.

South Carolina allows swimming pools to remain open. But lifeguards who work are subject to \$1 fines.

Michigan's new “best-in-the-nation” law permits the sale of a gun on Sunday but not ammunition; of a lawn chair but not a kitchen chair; of a raincoat but not a topcoat—and of a hammer, wrench or screwdriver only for “emergency purposes . . . due to acts of God, war or public enemy.”

In Pennsylvania, which has a com-



Judge Alexander

plex law permitting and prohibiting an assortment of items, Judge Raymond Pace Alexander once remarked: “The law forbids a clerk to sell . . . a Dylan Thomas recording, but does not prohibit the same clerk from selling me a book containing exactly the same poems from the next counter. Side by side in Bargain City [a discount house] and many other stores are tricycles, which cannot be sold to me for my two-year-old granddaughter because they are toys, and adult bicycles which I can buy for myself or for my daughter just out of her teens.”

The Kansas-Missouri split illustrates some of the different reasonings and positions taken in these controversies.

There, the courts divided over an identical five-word phrase in both laws. Each statute called for closing on Sunday but permitted sale of medicine, provisions and “other articles of immediate necessity.”

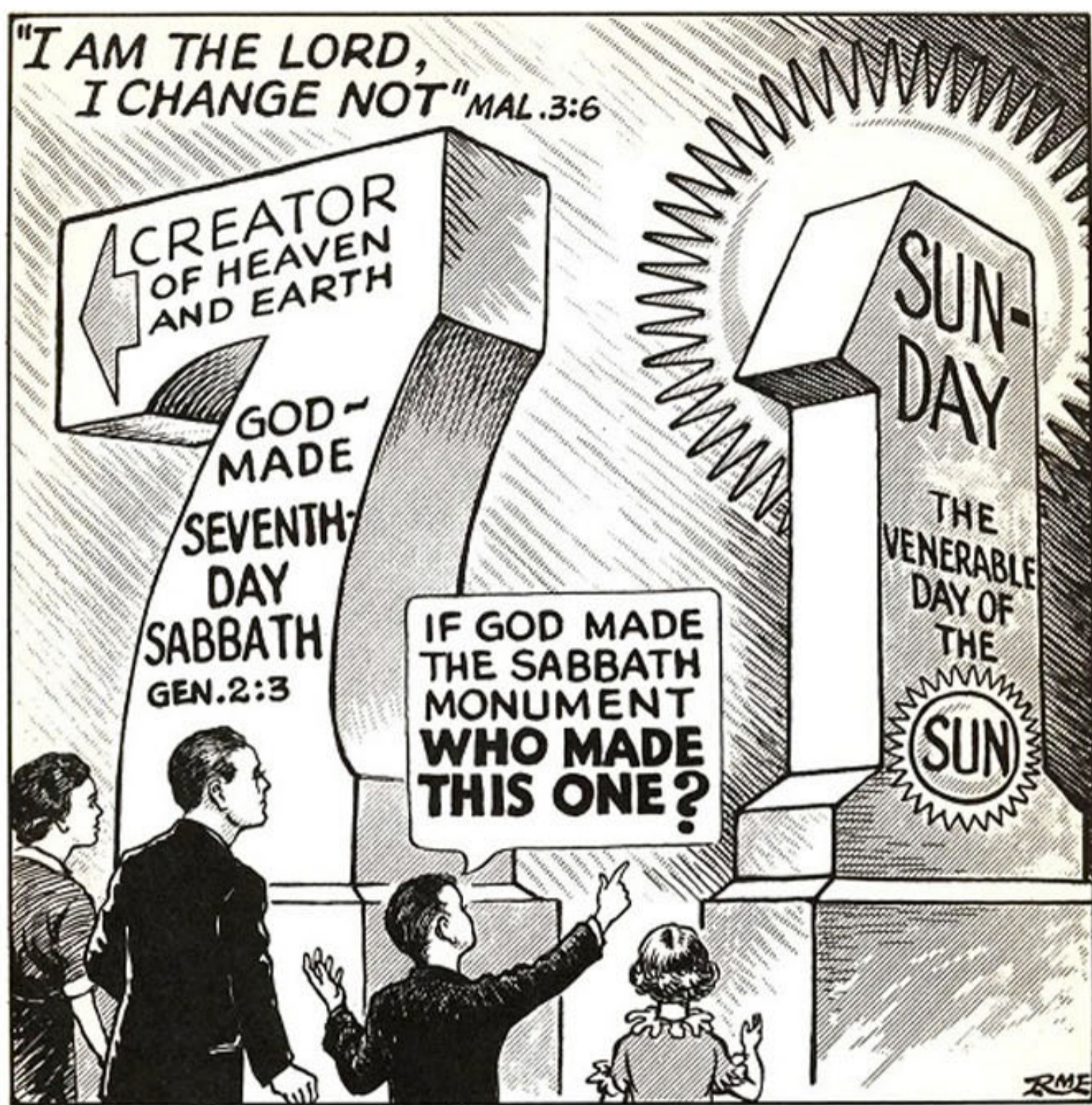
The Kansas court ruled that those last five words were “so vague, indefinite and uncertain” that they provided “no reasonable, definite standard of guilt.” Thus, it found, the law violated both the Kansas constitution and the Fourteenth Amendment to the U.S. Constitution “which provides that no state shall deprive any person of life, liberty or property without due process of law.”

The Missouri court felt differently.

It ruled that the exemption clause had stood there for 135 years and “because of the long history of these provisions, the general understanding of their purposes and the principles established by the cases for construing them, we cannot say that they are void for vagueness as failing to afford due process of law.” In March, 1963, 15 months later, the same court ruled Missouri Sunday laws unconstitutional.

The skirmishing which went on in both states pointed up still another aspect of the Sunday-law controversy: the role of the churches.

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Basically, major denominations have not acted. The stands which have been taken have been at the lower levels—state and local councils of churches, ministerial associations, individual churches.

Fletcher Coates, director of the Office of Information, National Council of the Churches of Christ in the U.S.A., says: "State and local councils of churches and ministerial groups are virtually the only religious groups I know of that speak out either pro or con. . . . The National Council of Churches has not done so, nor is it to my knowledge planning any comment."

The American Baptist Convention: "We have checked the resolutions for the past ten years and find no directive concerning the Sunday laws."

Protestant Episcopal Church: "The Episcopal Church has never taken a formal stand."

Evangelical and United Brethren Church Discipline: "... in view of the disregard for God's command to 'remember the Sabbath day and keep it holy,' the apathy toward attendance at the worship services of the Church, and the profanation of the Lord's Day, the Church earnestly counsels that on the Lord's Day all its members refrain from unnecessary labor, buying and selling, and worldly pleasures, and give themselves to the doing of good, and to those things which contribute to spiritual growth."

The Methodist Church Discipline: "We are concerned with the growing tendency toward the commercialization of Sunday. Some places of business need to be open on Sunday to serve the general welfare. But this is not true of many others. Sunday is a hallowed day commemorating our

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Lord's Resurrection. . . . We urge the voluntary closing of all non-essential commercial enterprises on Sunday. We encourage all Methodists to observe Sunday as a day of worship in our churches, rest and family fellowship.”

In 1960, the United Presbyterian Church in the U.S.A. named a special committee to delve into problems of church and state, with Sunday laws one of the top topics.

Two years later, a report was issued, stressing that the findings were designed only “as guidelines for specific application in the local sense.” It recommended:

1. That members not try to pass such laws or tighten them where they now exist.

2. That they investigate the effect of such laws on those who observe another Sabbath and seek exemptions, where needed, to mitigate these effects.

3. Where exemptions appear arbitrary, members seek amendments to make them more sensible.

Neither the National Lutheran Council nor the United Lutheran Church in America has voiced an official position.

Protestants and Other Americans United for Separation of Church and State says, “There is force in both arguments,” and goes on: “People who don't have sense enough to quit business one day in the week ought to be made to by law. But why prescribe the day this has to be? Only at that point, it would seem, are religious implications involved. Let there be no Sunday laws, but ‘one in seven’ laws. This leaves the choice of the day for rest and worship up to the individual where it properly belongs.”

But is not the “one in seven” principle itself religious?

At the state level, the Missouri Council of Churches during arguments over that state's statute, called on all Christians to refrain from making non-essential purchases on Sundays.

In Massachusetts, the state Council of Churches approved a committee statement opposing exemptions for non-Sunday Sabbatarians on the grounds that handling such exceptions “inevitably puts the Commonwealth in the position of granting or withholding economic benefits on the classification of religious belief and practice.”

In recent years, the states' tendency has been toward a tightening of Sunday laws.

Pennsylvania, Maine, New Jersey, North Carolina, Virginia and Texas all broadened their regulations. In the process, Pennsylvania updated a law dating back to 1794—and unwittingly helped set the stage for two of the

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landmark cases which finally reached the Supreme Court.

For many years that bench had refused to hear such cases. However, in December, 1960, it heard arguments on four: one each from Maryland and Massachusetts and two from Pennsylvania.

In a sense, the court's hand was forced. Two lower Federal courts recently had handed down diametrically opposed rulings.

In Massachusetts, where a group of Orthodox Jews challenged the state law, the U.S. District Court held the act, dating back to 1653, unconstitutional.

In Pennsylvania, the Sunday-closing statute was upheld by a Federal district court in two cases. One involved a discount house and the other, five Orthodox Jewish merchants.

The Maryland case involved a discount house—the same chain as was concerned in one Pennsylvania case—whose employees allegedly sold Sunday items banned under an amendment to a state law originally passed in 1649. The amended law permitted retail stores not employing more than one person besides the owner to remain open on Sunday; the chain claimed discrimination.

Both sides petitioned the Supreme Court to resolve the issues. Major Jewish organizations, the American Civil Liberties Union and the Seventh Day Adventists filed friend-of-the-court briefs.

In essence, these briefs recited arguments already touched upon: primarily, that Sunday closing laws are religious and hence violate the First and Fourteenth Amendments; that one-day-rest-in-seven laws are more equitable than a flat Sunday-closing regulation; and that Sunday laws discriminate against Saturday Sabbatarians, denying them equal protection of the laws.

By eight to one, the court held that the Pennsylvania and Maryland laws challenged by the discount house were constitutional. By six to three, it upheld the constitutionality of the Pennsylvania and Massachusetts laws involving the Jewish merchants. Chief Justice Earl Warren delivered the majority opinions. He stressed the court's feeling on many of the questions that had long been in dispute. He denied that Sunday laws are primarily religious: “In light of the evolution of our Sunday laws through the centuries, and of their more or less recent emphasis upon secular considerations . . . as presently written and administered, most of them, at least, are of a secular rather than a religious character.”

The purpose of the states in passing them, he went on, was “to provide a

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uniform day of rest for all citizens.” That this day is Sunday, “a day of particular significance for the dominant Christian sects, does not bar the state from achieving its secular goals. To say that the states cannot prescribe Sunday as a day of rest for these purposes solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and state.

“We cannot find a state without power to provide a weekly respite from labor and, at the same time, to set aside one day of the week apart from the others as a day of rest, repose, recreation and tranquility—a day when the hectic tempo of everyday existence ceases and a more pleasant atmosphere is created, a day which all members of the family and community have the opportunity to spend and enjoy together, a day in which people may visit friends and relatives who are not available during working days, a day when the weekly laborer may best regenerate himself. This is particularly true in this day and age of increasing state concern with public welfare legislation.”

The court rejected arguments that letting an employer decide which day a worker should have off—any one of the seven days in a week—would serve the state’s purpose as well as a Sunday-off law.

Chief Justice Warren took note of the argument by the Orthodox Jews that the law hit them in the pocketbook by forcing them to close two days a week while their competitors closed only one.

“Concededly,” he held, “appellants and all other persons who wish to work on Sunday will be burdened economically by the state’s day-of-rest mandate. . . . The freedom to hold religious beliefs and opinions is absolute. . . . [But] 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. . . . We are a cosmopolitan nation made up of a people of almost every conceivable religious preference. Consequently, it cannot be expected, much less required, that legislators enact no law regulating conduct that may in some way result in an economic disadvantage to some religious sects.”

The Chief Justice, before ruling against the discount houses and the Jewish merchants, mentioned that the exemption system for Friday and Saturday sabbatarians “may well be the wiser solution to the problem.” Against this, however, he pointed to further problems it might cause: The temptation for chiselers to claim false religious

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beliefs to allow them to open on Sundays, at which time competition is normally less than on Saturdays; the necessity in some cases for legitimate Saturday-Sabbath employers to seek out employees of that same faith—which can run afoul of state laws forbidding religious discrimination in hiring.

Dissenting justices struck different notes.

Wrote Justice Potter Stewart: “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. For me, this is not something that can be swept under the rug and forgotten in the interest of enforced Sunday togetherness. I think the impact of this law upon these appellants grossly violates their constitutional right to the free exercise of their religion.”

Wrote Justice William J. Brennan, Jr.: “The issue . . . is whether a state may put an individual to a choice between his business and his religion. The court today holds that it may. But I dissent, believing that such a law prohibits the free exercise of religion. . . . This clog upon the exercise of religion, this state-imposed burden on Orthodox Judaism, has exactly the same economic effect as a tax levied upon the sale of religious literature [held unconstitutional in an earlier case]. . . . The court forgets, I think, a warning uttered during the Congressional discussion of the First Amendment itself: ‘The rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand.’ ”

And Justice William O. Douglas wrote: “The question is whether a state can impose criminal sanctions on those who, unlike the Christian majority that make up our society, worship on a different day or do not share the religious scruples of the majority. . . . I do not see how a state can make protesting citizens refrain from doing innocent acts on Sunday because the doing of these acts offends the sentiments of their Christian neighbors. Could 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 violate Moslem scruples?”

Although they lost, foes of Sunday laws did not give up the fight. Their current strategy is to shift it to the local level. Even so, they still feel the high court may, in time, hear another case—and reverse itself.

They base their optimism largely

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on one paragraph of Justice Warren's majority opinion: “We do not hold that Sunday legislation may not be a violation of the ‘establishment’ clause [forbidding the passage of laws respecting an establishment of religion] if it can be demonstrated that its purpose—evident 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.”

Meanwhile, both sides are girding for new tests.

The Lord's Day Alliance and many others are preparing to fight the exemption clauses which the high court appeared to favor. They say that such clauses give non-Sunday Sabbatarians, by law, a religious day. Yet, they argue, the Supreme Court refused to set aside Sunday as a religious day for Christians. This, they say, is discriminatory and unconstitutional.

Those in favor of exemptions say sentiment for such exemptions is growing. They cite the New York State Council of Churches as typical. In 1962 it voiced support for such a measure.

They quote, too, such men as Truman B. Douglass, the executive vice president of the Board of Home Missions, United Church of Christ:

“The church needs to ask whether it is not too rigid and legalistic in implying that the act of corporate worship can be performed only at 11 o'clock in the morning [on Sunday]. To make this assumption is, in effect, to exclude from the community of faithful Christians those who believe they are compelled by economic necessity to labor on Sunday.”

MEANWHILE, there are the troublesome kinks.

The policemen who enforce Sunday laws, it is emphasized, are working.

So are employees in the substations who supply power to Americans' electric lights, the radios with which shut-ins listen to Sunday sermons, the ranges on which dinners are prepared.

So, too, are newspapermen, doctors, nurses, gas-station attendants, train crews, airline pilots.

And, in some towns, barbers, beauty shop attendants, hardware clerks, candy store owners.

Which are acceptable? Where do you draw the line? †

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