

Glimpses Into American Jewish History (Part)

Jews and the Sunday Laws

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*Note: Unless otherwise indicated all quotes are from **The Jews and the Sunday Laws**, by Albert M. Friedenberg, Publications of the American Jewish Historical Society, 11, 1903. (Available at <http://www.ajhs.org/reference/adaje.cfm>)*

We are all aware that the Sabbath is observed on Saturday, the seventh day of the week. Indeed, the early Christians also observed the Sabbath on this day. However, “the *Church Council of Laodicea* circa 364 CE ordered that religious observances were to be conducted on Sunday, not Saturday. Sunday became the new Sabbath. They ruled: ‘*Christians shall not Judaize and be idle on Saturday, but shall work on that day.*’”¹

There were three reasons for this change. (1) The Pagan Roman religion observed Sunday as a day of rest. (2) Many of those in the Roman civil service and the military followed Mithraism. Members of this religion worshiped the Persian god Mithra and also observed Sunday as a day of rest. (3) Finally, Christians were motivated to change the Sabbath day to Sunday in order to distance themselves from the Jews.

Sabbath observing Jews who came to America found themselves at odds with the general society within which they resided. For example,

The pressure of conformity to the customs of the majority affected the Sabbath observance by Richmond Jews. The pressure of business and the attendance of Jews at private schools on Saturday were formidable obstacles to religious orthodoxy. Joseph Marx complained: “Nothing has so seriously caused us to reject our religion as the Christian policy of adopting a different Sabbath, the force of example at least, would carry Jews to the Synagogue, when Christians mass to the Churches, nay there would not be the same clashing of interests, nor a day of labour lost.”²

The observance of Shabbos meant that Jews could not, of course, do business on Saturdays. The institution in many localities of so-called Sabbath Laws (laws forbidding certain activities on Sundays) meant that they were also forced to refrain from doing business on Sunday.

From the earliest times, American legislation has favored regulations of Sabbath observance. The courts have invariably traced the origin of Sunday laws to the

Jews' legislation for the Sabbath, but have calmly transferred the "holy time" from the seventh day of the week to the first.

The first Sabbath Laws were instituted in 1650 in Connecticut. Other colonies followed suit. The goal was to preserve the "sanctity" of the day of rest. The Blue Laws (as these sorts of laws were referred to) in Connecticut included the following: "No one shall run on the Sabbath day, or walk in his garden or elsewhere, except reverently to and from meeting; No one shall travel, cook victuals, make beds, sweep house, cut hair, or shave on the Sabbath day; No woman shall kiss her child on the Sabbath; The Sabbath shall begin at sunset on Saturday."³

Some Jews felt that there was no need to observe the Christian day of rest, and they opened their businesses on Sundays. The result was that they often found themselves in court, because they had violated a Sunday law.

The earliest cases arising under Sunday laws, where Jews were litigants, date from 1816. In Pennsylvania the defendant's contention that, as a Jew who scrupulously observed his own Sabbath, he was excepted from the operation of a statute which prohibited worldly employment on Sunday, was not approved.

In 1833 Alexander Marks and another [man] were prosecuted by the Town Council of Columbia, S. C., for having kept their shop doors open on Sunday, thus violating a local statute which regulated Sunday observance. Marks contended that this statute conflicted with the United States Constitution, which guaranteed the free exercise of conscience to all, and that, being a Jew, this local ordinance was unconstitutional. The court, however, did not adopt this view of the situation and upheld Marks' conviction on the ground that the ordinance in question was proper, for the good of society and in aid of law and order, not of religion.

This court justified its decision on the following grounds:

If society, by (one) consent, or by law, designate any day of the week as one of leisure and rest and on which all the ordinary and laborious occupations and pursuits of life are suspended, . . . And if it be called a restraint on individual or personal liberty in not allowing everyone to pursue his own interest, as it may be presented, the answer is, it is a restraint which the benefit of society imposes, and the right to impose it has been yielded by the individual himself—or, in other words, it is one which those "in whom all power is originally vested" (among whom he [Marks] is himself numbered) have prescribed for the common benefit.

Over the years many Jews ran afoul of Sunday Laws; some for relatively minor "offenses." In 1846 S. A. Benjamin made the mistake of selling a pair of gloves on Sunday in Charleston, S. C. "A city ordinance of 1801 made it a penal offense for any person publicly to expose for sale or sell in any shop, goods, etc., on the Lord's Day, commonly called Sunday. Benjamin was found guilty and fined. He admitted that he had

sold the gloves, but declared that the law could not compel him to observe the Christian Sabbath as he was a conscientious Israelite who observed the seventh day of the week as his Sabbath. It was held, however, by the appellate court that the ordinance was constitutional, being a police regulation, and that it did not operate in such a way as to cause Benjamin to desecrate his own Sabbath.”

The problem of keeping Shabbos and working on Sunday continued well into the twentieth century. In 1943 Rabbi Dr. Bernard Drachman (See http://www.jewishpress.com/page.do/19202/A_Forgotten_Champion_of_American_Orthodoxy.html) wrote:

Of the forty-eight states of the Union twenty-four, or exactly half, prohibit all work or business on Sunday. Of the remaining twenty-four, the majority grant partial exemption from Sunday laws to the observer of the seventh-day Sabbath. Three of the far Western states, California, Oregon, and Washington, and the District of Columbia, it may be incidentally remarked, have no Sunday laws. The State of New York, in which the bulk of the Jewish population of this country dwells, has a partial and very limited exemption law. It recognizes habitual observance of another day of the week as “holy time” as a valid *defense against prosecution* for work or labor done on Sunday. It does not protect against arrest for such labor nor does it permit traffic or business on Sunday at all.⁴

The fact of the matter is that the courts have upheld the legality of Sunday Laws.

Sunday closing laws: Laws requiring merchants to be closed on Sunday do *not* violate the Establishment Clause [of the First Amendment, namely, “Congress shall make no law respecting an establishment of religion.”] *McGowan v. Maryland*, 366 U.S. 420 (1961).

Rationale: The Court reasoned in *McGowan* that, as these statutes are administered today, they have a secular purpose and effect: providing a uniform day of rest for all citizens. (The Court believed it irrelevant that the laws were originally enacted for purely religious reasons.)⁵

On the other hand, in recent years some state legislatures have passed legislation guaranteeing a person the right not to have to work on his or her Sabbath. For example, Connecticut, the state that instituted the first Sunday Laws, has the following statute on its book: “No person who states that a particular day of the week is observed as his Sabbath may be required by his employer to work on such day. An employee's refusal to work on his Sabbath shall not constitute grounds for his dismissal.”⁶

Even today some observant Jews encounter difficulties in the workplace because of their observance of Shabbos. Nonetheless, the obstacles faced today, particularly in metropolitan areas with large Jewish populations, are no where near as formidable as those that presented themselves in the eighteenth, nineteenth and first half of the twentieth centuries. This is indeed fortunate.

¹ <http://www.religioustolerance.org/sabbath.htm>

² **Richmond's Jewry, 1769-1976: Shabbat in Shockoe**, by Myron Berman, University of Virginia Press, 1979, pages 101 – 102.

³ http://en.wikipedia.org/wiki/Blue_Laws

⁴ **The Unfailing Light**, by Bernard Drachman, The Rabbinical Council of America, New York, 1948, page 231.

⁵ **Emanuel Law Outlines for Constitutional Law**, by Steven Emanuel Esq., Emanuel Publishing Corp., 1997, page 694.

⁶ Connecticut General Statute § 53-303e (b) (1985).