

# Recovering the Sabbath: Sunday Observance as a Universal Human Right and Civic Cooperationism

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## Abstract

*This paper advances that the religion-state model of cooperationism would allow for civil legislation to protect the Sabbath. Unfortunately, the models of separation or accommodationism have predominated in the U.S. since the Bill of Rights. However, the cooperationist regime, such as in Germany, recognizes the universal common good present in religious legislation. The cooperationist model is present in most European countries; it readily preserves democracy. The Judeo-Christian tradition may be the source of advocacy for Sunday closing laws, yet a weekly rest from the economy serves all citizens.*

## Text

Although an ever-present religious devotion in the Judeo-Christian tradition, Sabbath observance has become endangered by the service economy and resulting civil legislation. The Universal Declaration of Human Rights (UDHR) in article eighteen stipulates that all people have the freedom to manifest their religion in observance and practice. Since the Exodus from Egypt and Mosaic Law, the Jewish people have distinguished themselves from other cultures by setting aside occupations and household work for one day each week. This nationwide day of

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rest allowed these believers the time to acknowledge God's goodness and their families. The Christian tradition adopted this observance, while allowing some household work and travel on the Sabbath. Trade and business practice, however, remained limited if not forbidden. When the Industrial Revolution brought the manufacturing economy, workplace schedules altered significantly, yet on Sundays factories generally were closed. In the United States, the civil legislation known as "Blue Laws" prohibited businesses from opening and forcing their employees to leave home on Sundays to work. The growth of Sunday recreational opportunities and service economy, however, has pressured nearly all U.S. states with Sabbath protections to repeal their legislation.

The UDHR and Catholic Social Teaching to the most recent encyclicals have called attention to the right of Sunday observance in contemporary economy. In 1961, the U.S. Supreme Court upheld the rights of states in *McGowan v. Maryland* to have legislation restricting economic activity for the common good on Sundays. It disastrously forbade any religious foundation for such laws, however. The consumerist attitude and desire for recreation by Americans have sadly surmounted the Blue Laws of most state legislatures. Those personnel who have the least workplace rank are regrettably drawn into Sunday employment. As steadily emphasized by the Judeo-Christian tradition and article eighteen of the UDHR, commercial activity on Sundays should be regulated by civil laws that protect religious observance.

### **Catholic Social Teaching on the Sabbath**

During the Industrial Revolution in the nineteenth century, Pope Leo XIII instructed the importance of Sabbath observance in *Rerum Novarum*. He reiterated an "obligation of the

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cessation of work and labor on Sundays and certain festivals.” Leo stressed that this does not imply mere idleness, excess, or spending money. Instead, a person steps back from daily work and turns his or her thoughts to divine things and worship. “It is this, above all, which is the reason and motive for the Sunday rest, a rest sanctioned by God’s great law of the ancient covenant” in the Commandment and the day of rest in Creation.<sup>1</sup> Leo thus defined Sabbath as a day to gain perspective and orient oneself to worship. Significantly, he rejected the popular contemporary practice of a day composed of recreational pursuits and spending money.

John XXIII underscored the day of relaxation aside from commerce in *Mater et Magistra*. At the beginning of this section, John observed that God has the right and the power to set aside this day each week. The human being ought to probe his/her conscience and consider heavenly things, as Pope Leo XIII suggested. Christians should be present at the Eucharist, because it “renews the memory of divine redemption and at the same time imparts its fruits to the souls of men.” Along with these themes found similarly in Deuteronomy and *Rerum Novarum*, John exhorted Christians that the Sabbath enabled family unity. Ultimately, John’s proclamation on God’s right to set aside the Sabbath is a powerful witness to civil lawmakers.<sup>2</sup>

At the crucial year in 1961, John XXIII reproved the growing numbers that have come to disregard the Sabbath. He noted that this observance is holy law. This encyclical was promulgated the same year as the landmark U.S. Supreme Court case that upheld Blue Laws, *McGowan v. Maryland*. John pointed out that harm will come if commercial activity is not restricted. The pope warned, “whence it is our very dear workingmen almost necessarily suffer

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<sup>1</sup> Pope Leo XIII, *Rerum Novarum*, (1891), 32.

<sup>2</sup> Pope John XXIII, *Mater et Magistra*, (1961), 249, 251.

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harm, both as to the salvation of their souls and the health of their bodies.”<sup>3</sup> John recognized that the least in society will be maltreated by the end of Sabbath tradition. He directly urged all business and governmental leaders to follow the words of God Himself in their responsibility to protect the Sunday rest.<sup>4</sup>

During the Second Vatican Council, the Constitution on Sacred Liturgy articulated proper Sabbath practice. *Sacrosanctum Concilium* explained that one day each week, on the day called the Lord’s Day, the Church keeps the memory of the Lord’s resurrection. The Constitution instructed, “It should be proposed to the faithful and taught to them so that it may become in fact a day of joy and freedom from work.” Sunday is considered so significant that any other celebration cannot take precedence. A Christian cannot presume that the Sunday requirement is merely attending a liturgy; the rest and freedom from work is an equal obligation.<sup>5</sup>

The U.S. Bishops repeated the priority of Sabbath observance and proper Christian leisure in *Economic Justice for All* in 1986. The bishops agreed that the trend of leisure by the 1980s had diverged from spiritual and communal renewal. Oftentimes, leisure in the United States may become avoidance of boredom, laziness, vast consumption, and waste. The bishops acknowledged that Christians need to take a counter-cultural stance to “build family and societal relationships . . . communal prayer and worship, for relaxed contemplation and enjoyment of God’s creation, and for the cultivation of the arts which help fill the human longing for

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<sup>3</sup> *Mater et Magistra*, 252.

<sup>4</sup> *Ibidem*, 253

<sup>5</sup> Second Vatican Council, *Sacrosanctum Concilium*, (1963), 102, 106.

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wholeness.”<sup>6</sup> Since this document occurred after the repeal of many Blue Laws, the U.S. bishops recognized the consequential perversion of “Sabbath rest.”

The most recent encyclical, *Laudato Si*, conceived the Sabbath as a day for healing relationships toward God, Creation, and other human beings. Not only is Sunday the day of the Resurrection, but the day remembers the transfiguration of all reality and humanity’s own rest in God. Christians should have a day of relaxation and festivity. Without this day each week, work loses meaning, gratitude, and receptivity. Human beings otherwise can be drawn into empty activism, unfettered greed, and isolation. Pope Francis suggested, “Rest opens our eyes to the larger picture and gives us renewed sensitivity to the rights of others. And so the day of rest, centered on the Eucharist, sheds its light on the whole week, and motivates us to greater concern for nature and the poor.”<sup>7</sup> Only the appropriate observance of the Sabbath allows human beings to retain the proper relationship to Creation and the human community.

### **The Historical Diminishment of Sabbath Observance by the Manufacturing, Service, and Recreation Industries**

The Industrial Revolution and rise of recreational expenditures have transformed weekly rhythms in western culture since the nineteenth century. Farm production occurred over the course of a year. However, factories created goods each week and sometimes every day. Once the majority of workers became employed in manufacturing, only the strongest legal protections could prevent Sunday employment. Many countries did maintain such legislation into the twentieth century. Nevertheless, the rise of recreational expenditures on Sundays encouraged

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<sup>6</sup> National Conference of Catholic Bishops, *Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy*, (Washington: United States Catholic Conference, 1986), 338.

<sup>7</sup> Pope Francis, *Laudato Si*, (2015), 237.

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service industry firms to bolster employment since the 1950s. The growing preference for economic liberalization, the removal of any restrictions on commerce, weakened Blue Laws up until the landmark U.S. Supreme Court case in 1961.

The turn of the nineteenth century commenced a decline in Sabbatarian fervor in favor of diverse recreational spending. Political arguments over Sunday practice continued into the 1920s, but then became more localized debates. Both individual recreation and mass entertainments gained in these decades. Seaside resorts and amusement parks now opened on Sundays. When the World's Fair arrived in New York in 1939, it discussed and then elected to open on Sunday. The Metropolitan Museum of Art had opened on Sunday since 1891; over a quarter of its visitors came on Sundays.<sup>8</sup> The U.S. economy had successfully provided extra income for workers, and they now expected a range of days and ways to spend it.

The effect on workers multiplied as the majority of Americans became white or pink-collar workers in 1956. Owners in manufacturing could at least shutter factories on the weekends without much controversy. Business-owners in the service industry and recreation felt pressured to open on the weekend, when most Americans spent their disposable income. Restaurants, sporting events, and recreational areas all opened to host these customers. Retail stores discovered that sometimes thirty to forty percent of sales occurred on Sundays; if closed, they might never recover those sales during a weekday. Harline adds that "American consumers

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<sup>8</sup> Craig Harline, *Sunday: A History of the First Day from Babylonia to the Superbowl*, (Doubleday: New York, 2007), 281-3.

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were more and more inclined to regard shopping as a leisure or recreational activity, even an ‘exciting pastime’ for which Sunday was always a favorite occasion.”<sup>9</sup>

### **U.S. Supreme Court Ruling and Christian Cultural Changes after the 1960s**

Although upholding states’ rights to legislate Sabbath protections, the secularist ruling of *McGowan v. Maryland* ironically brought about the decline of this legislation in most states. Several cases had emerged that year concerning Sunday blue laws. The Pennsylvania Supreme Court divided eight to one upholding Pennsylvania’s law. In Philadelphia, a court ruled six to three in its law’s application to the Orthodox Jewish Merchants. The Massachusetts Supreme Court also upheld their blue laws six to three against the Crown Kosher Market of Springfield. Jewish merchants sued the state of Maryland on Sunday business restrictions, and the U.S. Supreme Court chose to take up the appeal.

The U.S. Supreme Court upheld states’ rights to legislate Blue Laws, yet only if defined in secular terms as a day of rest. The justices produced more than sixty thousand words of concurrence and dissent. A report in *The Christian Century* analyzed that the “majority argued for the power of the state to establish a secular day of rest and held irrelevant the fact that the day generally appointed has a religious origin and for many people a continuing religious significance.” The human right of religious observance was ignored, as the justices redefined Blue Laws as states’ legislation for a mere day of relaxation.<sup>10</sup>

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<sup>9</sup> Harline, 284.

<sup>10</sup> “Blue Laws and the Court,” *The Christian Century* 78, no. 29 (July 19, 1961): 867-868.

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As a result, states that desired to retain Sabbath Protections had to rearticulate them with secular reasons for recreation and repose. Harline noted that “such laws had to be broadly desired, nondiscriminatory, reasonable, and most of all uncomplicated, without all the usual arbitrary exception . . . in 1961, 49 or 50 states had such laws.” Nevertheless, after *McGowan v. Maryland* these laws only had legitimacy in their promotion of recreation and relaxation. Americans in the 1960s had record wages and more automobiles to travel for recreation.<sup>11</sup> Religious associations had specious arguments against the growing number of Americans that preferred increasing economic activity and diverse recreational pursuits.

Since states could no longer defend Blue Laws for the purpose of religion, the desires for limitless Sunday shopping and sports brought about their repeal in most states. Nearly all fifty U.S. states had some form of Sabbath protections before *McGowan v. Maryland*. By 1970, only twenty-five states had Blue Laws, with varying enforcement. Fifteen years later, twelve of those states had repealed closing restrictions; others were in the process of weakening these laws.<sup>12</sup> Sabbath Protections now exist in only eight states. Sarah Eekhoff Zylstra wrote that “most states repealed the laws through the next thirty years, despite protests that the laws limited alcohol abuse and maintained the moral basis of the country. In the eight states that still have statewide blue laws, numerous exceptions greatly decrease their effect.”<sup>13</sup> Now many Blue Laws only exist as regulations on liquor sales, and cannot be articulated by states as restrictions on commerce for religious rights and observance.

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<sup>11</sup> Harline, 314.

<sup>12</sup> David N. Laband and Deborah Hendry Heinbuch, *Blue Laws: The History, Economics, and Politics of Sunday-Closing Laws*, (Lexington Books: Lexington, 1987), 162.

<sup>13</sup> Sarah Eekhoff Zylstra, "Blue law special: study: laws banning Sunday commerce encourage moral behavior," *Christianity Today* 51, no. 1 (January 2007): 21.

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## Conclusion – Sabbath Protections as a Human Right

Since UDHR article eighteen defends the freedom to manifest religious observance, the U.S. Supreme Court’s stipulation of secular reasons for Sabbath Protections violated the right of religion. Without civil legislation, commerce comes to control Sundays as any other part of the week. The papal encyclicals of the past century agreed that humans and creation have a right to rest one day each week; Catholics cannot observe the Sabbath appropriately with mass alone. John XXIII in *Mater et Magistra* proclaimed that God Himself had the right to set aside Sunday from trade. Fostering a dignified balance of labor and rest for those at the bottom tier of commerce is paramount, as reiterated by Francis.<sup>14</sup> The strict separation of church and state in the United States, resulting in *McGowan v. Maryland*, eliminated the right of Christians to protect their observance and rest from the economy.

The religion-state model of cooperationism would allow for civil legislation to protect the Sabbath, as W. Cole Durham points out. Unfortunately, the models of separation or accommodationism have predominated in the U.S. since the Bill of Rights. This resulted in the ruling of *McGowan v. Maryland* that eliminated religious convictions as a basis for Blue Laws. However, the cooperationist regime, such as in Germany, recognizes the universal common good present in religious legislation. This model respects the stance of John XXIII, that God has the right to set aside the Sabbath. The cooperationist model is present in most European countries; it readily preserves democracy.<sup>15</sup> Public school and government agencies in the United States presently accommodate various religious holidays. In a similar pattern, commercial restrictions

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<sup>14</sup> Pope Francis, *Laudato Si*, (2015), 124-5.

<sup>15</sup> W. Cole Durham, “Patterns of Religion State Relations,” *Religion and Human Rights: An Introduction*, ed. John Witte, Jr. (Oxford: Oxford University Press, 2012), 367.

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can respect non-Christian observances, while facilitating the harmonious balance of labor and respite. The Judeo-Christian tradition may be the source of advocacy for Sunday closing laws, yet a weekly rest from the economy serves all citizens.

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