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Sunday Blue Laws: A New Hypocrisy

I. Introduction

*The word Sabbath means rest: that is cessation from labor, but the stupid Blue Laws of Connecticut make a labor of rest, for they oblige a person to sit still from sunrise to sunset on a Sabbath day, which is hard work. Fanaticism made those laws, and hypocrisy pretends to reverence them for where such laws prevail, hypocrisy will prevail also.*¹

The controversy involving Sunday Blue laws² persists, and this charge of hypocrisy made by Thomas Paine in 1804 is often repeated in twentieth-century America by those who criticize these laws of religious origins that mandate a general abeyance of commercial activity on Sunday. Most of the laws, however, provide exemptions that allow certain commodities to be sold³ or certain businesses to remain open.⁴

Although Sunday Blue laws exist in over half of the states,⁵ the cloak of twentieth-century hypocrisy that enshrouds both legislative action and judicial review prevents a true assessment of them. The purpose of this Note is to lift that veil of hypocrisy and thereby to provide a foundation for an accurate assessment of these laws. This task will initially involve an examination of the varying standards of judicial review applied by the courts to determine the constitutionality of the Blue laws. Such an analysis demonstrates that the constitutional status of a particular closing statute is dependent upon the level of review utilized by the court.

Secondly, the Note explores what may be the single most significant, yet most frequently ignored, aspect of Sunday Blue laws—the influence of private economic gain. Although the religious and social objectives of the Sunday Closing statutes have often been discussed, few courts or commentators have acknowledged these economic influences. Awareness of these influences, however, is a prerequisite to intelligent discussion of Sunday Blue laws.

1 W. JOHNS, DATELINE SUNDAY, U.S.A. 31 (1967) (citing T. Paine, *In God We Trust PROSPECT PAPERS* 432 (1804)).

2 The name derives from the theocratic Puritan legislation of the 17th century printed on blue paper that regulated Sabbath conduct. Such laws are also known as Sunday Closing laws.

3 See, e.g., N.Y. GEN. BUS. LAW § 9(McKinney) (declared unconstitutional) that provided in part:

All manner of public selling or offering for sale of any property on Sunday is prohibited, except as follows. . . . 4. Prepared tobacco, bread, milk, eggs, ice, soda water, fruit, flowers, confectionary, souvenirs, items of art and antiques, newspapers, magazines, gasoline, oil, tires, cemetery monuments, drugs, medicine and surgical instruments may be sold. . . .

4 See, e.g., ME. REV. STAT. tit. 17, § 3204 that exempts "[s]tores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business; stores which have no more than 5000 square feet of interior customer selling space, excluding back room storage, office and processing space."

5 N.Y. Times, May 22, 1976, § A, at 28, col. 3.

II. Standards of Review

A. *Historical Development*

The original mandate of the Sunday Blue laws dates back to the Old Testament command that on the seventh day no work shall be done.⁶ As a result of their undisputedly religious origins, such laws frequently had been challenged on the ground that they violated the First Amendment provisions prohibiting the establishment of religion.

These constitutional attacks on Sunday Blue laws culminated in the case of *McGowan v. Maryland*⁷ in which the Supreme Court upheld a Maryland statute that provided: "No person whatsoever shall work or do any bodily labor on the Lord's Day, commonly called Sunday." However, an exception to the statute allowed certain commodities to be sold.⁸ The Court found that although the basic command of Sunday Blue laws had remained unchanged, in the evolution of those laws a secular purpose had supplanted the original religious objectives.⁹ This underlying secular purpose, as articulated by the Court, is to "[p]rovide a day of rest for all citizens."¹⁰ The distinction between religious and civil purposes has been a matter of controversy; nevertheless, the civil purpose has been universally accepted by the courts.¹¹ Thus, as a result of *McGowan*, constitutional attacks based upon religious grounds became futile.

In addition to the establishment argument asserted in *McGowan*, the Maryland Blue law was also challenged on the ground that it violated the constitutional guarantee of equal protection under the law. This challenge has retained viability and is still asserted today. Sunday Blue laws, it is contended, violate the equal protection guarantee by allowing selected commercial establishments to remain open for business on Sunday while forbidding other similarly situated businesses from doing so. For example, a Sunday Blue law might allow small stores to do business while requiring larger stores to close.¹² Further, stores selling certain commodities might be allowed to conduct business while stores selling other items are not permitted to operate.¹³ Because of these exceptions, it is argued, Sunday Blue laws discriminate in favor of some businesses as against others and thus violate the equal protection guarantee. Whether the law does violate equal protection is determined by the use of one of two standards of judicial review: "rational basis" analysis or the "substantially related" test.

6 "Remember that thou keep holy the Sabbath Day. Six days shalt thou labor, and shalt do all thy work. But on the seventh day is the Sabbath of the Lord thy God: thou shalt do no work on it. . . ." *Exodus* 20:8 (New Catholic Edition).

7 366 U.S. 420 (1961).

8 MD. ANN. CODE art. 27, § 521.

9 The extent to which a civil purpose has replaced religious objectives remains a matter of current controversy. See generally Note, *The Blue Laws Revisited—1972*, 36 ALB. L. R. 782 (1972); Note, *A Wanton Gospeller Cries Out for Repeal of the Sunday Closing Law*, 58 Ky. L.J. 275 (1970); Note, *Sunday Closing Laws in the United States: An Unconstitutional Anachronism*, 11 SUFFOLK U.L. R. 1089 (1977).

10 366 U.S. at 445.

11 E.g., *Zayre Corp. v. Attorney Gen.*, 362 N.E.2d 878 (Mass. 1977); *Rutledge v. Gaylord's, Inc.*, 233 Ga. 694, 213 S.E.2d 626 (1975); *Bertera's Hopewell Foodland, Inc. v. Masters*, 428 Pa. 20, 236 A.2d 197 (1967); *State v. S.S. Kresge, Inc.*, 364 A.2d 868 (Maine 1976).

12 See note 4 *supra*.

13 See note 3 *supra*.

B. *The Rational Basis Standard*

The standard established by the Supreme Court in *McGowan* to determine whether the legislation violated the equal protection provision turned on the "rationality" of the challenged enactment. Accordingly, to pass constitutional muster the classification must have a rational basis: "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective."¹⁴ This rational basis test requires that the Sunday Closing law be rationally related to the statute's lawful purpose—a common day of rest. If this nexus between classification (here, the provision that a few commodities could be sold) and purpose is extant, the statute will withstand attacks based on the denial of equal protection. Not only does a presumption of validity attach to the legislation,¹⁵ but, under this approach, the courts will uphold a classification "if any state of facts reasonably may be conceived to justify it."¹⁶ Thus, if any *conceivable* set of facts justifies the distinctions drawn by a Sunday Blue law, a court utilizing the rational basis test will uphold the statute. Moreover, the judiciary itself is permitted to supply the reason why the legislature rationally might have enacted specific exceptions to the Sunday Closing law. For example, one law¹⁷ permitted flowers, plants, shrubs and trees to be sold. The court found the sale of such items to have a rational basis to the legislative purpose because "greenery, which is designed to be beautiful" would not increase "crass commercialism to be eschewed on Sunday."¹⁸

This explanation exemplifies the reasoning process of many courts, a process which has been described in a dissenting opinion as "an idyllic scenario wistfully conjured to provide the 'rational basis' to justify classification."¹⁹ Not surprisingly, then, the rational basis test has been criticized in Sunday Blue law litigation as "toothless"²⁰ because the standard is so easily satisfied that it serves no worthwhile function for review. A few courts, therefore, although verbally adhering to the rational basis test, actually apply a methodologically stricter standard of review: one that requires the legislation to "bear a real and substantial relation to the governmental interest it is alleged to serve."²¹

C. *The Substantially Related Test*

The "substantially related" test imposes a more rigorous standard of review than does the rational basis test.²² However, only a few courts apply the substantially related test and, further, some of these courts appear unwilling to con-

14 366 U.S. at 425.

15 *Id.*

16 *Id.* at 426.

17 R.I. GEN. LAWS § 5-23-2.

18 *Woonsocket Prescription Center, Inc. v. Michaelson*, 417 F. Supp. 1250, 1260 (D.R.I. 1976).

19 *Vorando, Inc. v. Hyland*, 77 N.J. 347, 390 A.2d 606, 616 (1977) (Pashman, J., dissenting), *appeal dismissed sub nom. Vorando, Inc. v. Degnan*, 47 U.S.L.W. 3380 (1979).

20 417 F. Supp. at 1257. For a general discussion of the perceived weaknesses of the rational basis test, see L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1082-89 (1978) [hereinafter cited as TRIBE].

21 390 A.2d at 619 (Pashman, J., dissenting).

22 TRIBE, *supra* note 20, 1088.

fess that they utilize a standard of review that is different from the one enunciated in *McGowan*. Thus, these courts continue to pay lip service to the rational basis test.

A primary example is *People v. Abrahams*²³ in which the New York Blue law²⁴ was declared unconstitutional. The law permitted only certain commodities to be sold on Sunday. The defendant, however, had sold a ceramic bank in violation of the statute.²⁵ An analysis of the court's reasoning supports the conclusion that the New York Court of Appeals did not apply the rational basis standard as it specifically purported to do;²⁶ rather, it employed the substantially related test. Despite a finding of irrationality, the court, in essence, examined the degree to which the statutory scheme fulfilled the legislative "day of rest" rationale. The court found that the statute was "utterly lacking in cohesive scheme"²⁷ because it was comprised of a "haphazard and anachronistic amalgamation of exceptions."²⁸ As a result of this lack of cohesiveness, the law was both unenforceable and popularly flouted.²⁹ In short, the statute was not substantially related to the achievement of the "day of rest" rationale because it was not fulfilling that legislative objective.

Other courts also have applied a standard stricter than rational basis. In *Rutledge v. Gaylord's Inc.*,³⁰ the Supreme Court of Georgia declared unconstitutional a Sunday Blue law³¹ that prohibited certain businesses from engaging in sales on both Saturday and Sunday of any one weekend. Any business operating on the two consecutive days was to be declared a public nuisance. Despite relying on an earlier decision that employed a "reasonable relation" standard,³² the court struck down this provision of the Act because it determined that the Act "nowhere limits the operation of any business other than sales."³³ Since all other types of activities could take place on Sunday, the law was not achieving the day of rest.

Recently the substantially related standard was employed by a lower Connecticut court³⁴ in striking down the Connecticut Blue law.³⁵ The court clearly and openly applied the more rigorous test and found that the "law as enacted does not bear a reasonable and substantial relation to the object sought to be accomplished. . . ."³⁶ The decision was based upon the fact that out of a total labor force of 1,450,000 in Connecticut, 420,000 were prohibited from working on Sunday. Over 900,000 workers, therefore, were exempt from the law. Thus, the court concluded that "this statute does not in fact provide a common day of rest."³⁷

23 40 N.Y.2d 277, 353 N.E.2d 574, 386 N.Y.S.2d 661 (1976).

24 N.Y. GEN. BUS. LAW § 9 (McKinney) (declared unconstitutional).

25 40 N.Y.2d at 280, 353 N.E.2d at 575, 368 N.Y.S.2d at 662.

26 *Id.* at 284, 353 N.E.2d at 578, 368 N.Y.S.2d at 665.

27 *Id.* at 285, 353 N.E.2d at 578, 368 N.Y.S.2d at 665.

28 *Id.*

29 *Id.*

30 233 Ga. 694, 213 S.E.2d 626 (1975).

31 Ga. Code §§ 96-1201 to 96-1208 (declared unconstitutional).

32 233 Ga. at 698, 213 S.E.2d at 629 (citing *Hughes v. Reynolds*, 223 Ga. 727, 131, 157 S.E.2d 746, 749 (1967)).

33 233 Ga. at 697, 213 S.E.2d at 629.

34 N.Y. Times, Nov. 15, 1978, § B, at 1, col. 6.

35 CONN. GEN. STAT. ANN. § 53-302a (West), as amended by 1978 Conn. Pub. Acts. No. 78-329.

36 N.Y. Times, *supra* note 34.

37 *Id.*

These courts have invalidated Sunday Blue laws because they were not substantially related to the state's objective of a day of rest. Application of the rational basis test, however, would have rendered a different result. An examination of various rational basis decisions shows the standards of review to be result determinative—the rational basis test dictates constitutional validity while the substantially related test is fatal.

D. Standards of Review as Outcome-Determinative Tests

The difference in results obtained by the use of the two tests can be demonstrated by comparing *Abrahams* with *Zayre v. Attorney General*.³⁸ In *Zayre*, the Massachusetts Supreme Judicial Court ruled that the numerous exceptions to the Sunday Closing law³⁹—similar in substance to those of the New York Statute struck down in *Abrahams*—did not result in an unconstitutional law. The court, relying on *McGowan*, clearly applied the rational basis test when it said that as long “as the particular exemptions have a rational basis consistent with the statutory purposes they will pass constitutional muster.”⁴⁰ Unlike the New York court, the Massachusetts court refused to examine the legislative scheme as a whole; rather, it focused on each individual exemption and found each to have a rational basis.⁴¹

The court justified its decision by relying on Justice Frankfurter's concurring opinion in *McGowan*⁴² regarding the necessity of exceptions:

Not all activity can halt on Sunday. Some of the very operations whose doing must contribute to the rush and clamor of the week must go on throughout that day as well, whether because the cost of stopping and re-starting them is simply too great, or because to be without their services would be more disruptive of peace than to have them continue.⁴³

The Massachusetts court then utilized the prerogative granted it by the rational basis test to provide reasons to justify the legislative action. For example, the court determined that “*the legislature may have reasoned* that people needed access to such suppliers and that stores primarily engaged in selling such supplies would not present a great threat to the public order of the day.”⁴⁴ Under the substantially related test, on the other hand, such hypothesizing cannot occur. The court simply must make a substantive evaluation of the relationship between the statute itself and the legislative goal it purports to advance.

In *Vorando, Inc. v. Hyland*, the New Jersey Supreme Court reversed a lower Superior Court decision⁴⁵ and upheld a general closing law⁴⁷ proscribing

38 362 N.E.2d 878 (Mass. 1977).

39 MASS. ANN. LAWS ch. 136, § 5 (Michie/Law. Co-op).

40 362 N.E.2d at 887.

41 *Id.*

42 *Id.* at 885.

43 366 U.S. at 524 (Frankfurter, J., concurring).

44 362 N.E.2d at 888 (emphasis added).

45 390 A.2d at 606.

46 148 N.J. Super. 343, 372 A.2d 667 (1977).

47 N.J. STAT. ANN. § 2A: 171-5.8 to 5.18 (West).

the sale of five categories of items. The lower court had found that the Sunday Blue law "fails to advance the opportunity of the general public for recreation, diversion and leisure on Sunday, and, moreover, affirmatively impedes and interferes with that opportunity."⁴⁸ Thus the lower court, in effect, had applied a substantially related test. The Supreme Court of New Jersey reversed on the ground that the classifications "bore some relation"⁴⁹ to the legislative objective, and, therefore, the rational basis test was satisfied even though the "legislative objective might be more fully achieved by another, more expansive classification."⁵⁰

Use of this same "some relation" standard of rationality explains why the Supreme Court of Texas in *Gibson Products Inc. v. State*⁵¹ upheld a law⁵² that was even less restrictive (that is, allowed more commercial activity) than the Georgia law declared unconstitutional in *Rutledge*.⁵³ The Georgia law prohibited certain businesses from operating on consecutive Saturdays and Sundays while the Texas law prohibited only the sale of certain items on those days. The Texas court, applying the rational basis test, found that the prohibition was rationally related to the day of rest, and, therefore, constitutional.⁵⁴

E. Considerations Influencing Judicial Review

Although the levels of review establish principled standards by which the courts may test legislation, these standards are flexible and thus enable judges to inculcate the jurisprudential function with their own personal values regarding the desirability of the Sunday Blue law under review. An assessment of the standards of review utilized to test Sunday Blue laws would not be complete without a cursory glance at these extra-judicial considerations, which some courts openly admit influence their decisions.

The Massachusetts court in *Zayre* said: "It seems clear to us that the substantial differences in history, experience and statutory structure, as well as the record before a court makes each decision one which is the peculiar responsibility of the state court before which such an issue is raised."⁵⁵ This approach allows the courts to examine a wide variety of concerns: enforceability of the statute;⁵⁶ respect for the law;⁵⁷ voluntary compliance with the law;⁵⁸ prosecutorial indifference;⁵⁹ popular disdain for the prohibitions of the state;⁶⁰ community inappetence for the statute's enforcement;⁶¹ increase in litigation;⁶² increase in con-

48 148 N.J. Super. at 353, 372 A.2d at 671-72.

49 390 A.2d at 612.

50 *Id.* at 606.

51 545 S.W.2d 128 (Texas 1976), *cert. denied*, 431 U.S. 955 (1977).

52 TEX. REV. CIV. STAT. ANN. art. 9001 (Vernon).

53 See text accompanying notes 30 to 32 *supra*.

54 545 S.W.2d at 129-30.

55 362 N.E.2d at 886.

56 40 N.Y.2d at 285, 353 N.E.2d at 578, 386 N.Y.S.2d at 666.

57 *Id.*

58 *Id.* at 285, 353 N.E.2d at 578, 386 N.Y.S.2d at 666.

59 *Id.* at 285, 353 N.E.2d at 579, 386 N.Y.S.2d at 666.

60 *Id.* at 285-86, 353 N.E.2d at 579, 386 N.Y.S.2d at 666.

61 *Id.* at 286, 353 N.E.2d at 579, 386 N.Y.S.2d at 666.

62 *Id.* at 284, 353 N.E.2d at 577, 386 N.Y.S.2d at 665.

sumer prices;⁶³ forcing employees to work on Sunday;⁶⁴ and the economic realities of forcing reluctant businessmen to open on Sunday.⁶⁵

Whether a law is rationally related or substantially related to the legislative purpose is a matter of degree, and, therefore, the tests are susceptible to extrajudicial considerations. A judge's perception of a statute, as influenced by these external considerations, can greatly influence his ultimate decision regarding the constitutionality of the law. One extrajudicial concern, however, has been virtually ignored by the courts—the private economic influences that pervade the entire spectrum of Sunday Blue laws.

III. Economic Influences

The historical development of Sunday Blue law legislation presents an intriguing amalgamation of religious, social and economic interests. Although "it is difficult to unravel the weave of interests caught by this legislation,"⁶⁶ this amalgamation must, nevertheless, be recognized in order to more fully understand the controversy surrounding Sunday Blue laws. Unfortunately, courts and commentators have largely ignored the cognizable economic interests that permeate these laws.

Economic interests have stealthily supplanted the social objectives of a day of rest. These interests permeate not only the initial enactment stage of the closing legislation but also both the passage of specific exemptions thereto and the subsequent enforcement of the law. Hypocrisy prevails, however, and courts adamantly refuse to evaluate these interests. Murmurs of discontent found both in lower court decisions and in concurring and dissenting opinions indicate the extent to which economic interests have impinged upon the day of rest rationally adhered to by the courts. Slowly the veil of hypocrisy is being raised.

The pervasiveness of economic influences is exemplified by the Connecticut statute recently declared unconstitutional.⁶⁷ The statute was amended in 1978⁶⁸ to permit stores to operate on those Sundays that fall between Thanksgiving and Christmas. Because the social objectives of a day of rest are no less important on those few Sundays, the law obviously compromises social values for the sake of economic interests.

It is for the sake of economic interests that, when a closing law is declared unconstitutional, a new one is enacted. Political columnists note that such laws are legislated at the behest of businesses that operate unprofitably on Sunday but are compelled by economic realities to do so because their competitors are doing business.⁶⁹ This fact was recognized as early as 1964 in a sharply worded

63 33 Conn. Supp. 141, 366 A.2d 200, 203 (1976).

64 390 A.2d at 611.

65 *Id.*

66 *Id.* at 624 (Handler, J., dissenting).

67 CONN. GEN. STAT. ANN. § 53-302a (West), *as amended by* 1978 Conn. Pub. Acts. No. 78-329.

68 1978 Conn. Pub. Acts. No. 78-329.

69 Very often the decision to have a Sunday Closing is the result of lobbying by economic concerns. "[O]wners of smaller stores, who wanted to stay closed on Sunday but were opening to meet the competition from the large chain stores, began a vigorous lobbying campaign to bring back the Sunday ban." N.Y. Times, July 7, 1977, § B, at 6, col. 4.

concurring opinion stating that the real purpose of the Nebraska Blue law was "to protect narrow commercial interests, influenced by the fierce competition between the discount store and the downtown merchant."⁷⁰

Courts, however, refuse to evaluate these considerations even when presented in the litigation. The 1978 case of *Gibson Distrib. Co., v. Downtown Dev. Assoc. of El Paso, Inc.*⁷¹ serves as an example. The Sunday Closing law in question prohibited the sale of certain items on consecutive Saturdays and Sundays.⁷² It was argued that the state's right to regulate sales had been preempted by the Sherman Antitrust Act.⁷³ Although the court found the state action to be exempt from the federal antitrust laws, it acknowledged that "The argument that the 'Sunday Closing statute' was intended to benefit certain merchants over other merchants . . . is not new . . ."⁷⁴ The court, however, refused to discuss this contention.

The day of rest rationale is also compromised by the numerous exceptions enacted in response to the lobbying of private economic interest groups. This legislation by private groups was noted in the concurring opinion in *People v. Abrahams*: "It is apparent that [the classifications] are, rather, a hodgepodge of unrelated exceptions legislated at the instance of whichever interest groups were best able to bring their views to the legislature's attention. . . ."⁷⁵ The majority, however, specifically refused to address the issue.⁷⁶

Economic motivations are also a prominent influence on enforcement proceedings and litigation. Indeed, the New York Court of Appeals said in *Abrahams* that the "spasmodic promulgation of exceptions" has served as a catalyst to generate a corresponding increase in constitutional litigation.⁷⁷ Further, in 1971 a lower New York court articulated the link between economic motivation and enforcement when it found that "the only motivation for this prosecution was the effort of the Syracuse Chamber of Commerce to lessen the defendant's competitive advantage in the business community derived from its suburban location."⁷⁸

Finally, the degree to which economic interests have replaced the day of rest rationale is demonstrated by examining a decision of the New York Court of Appeals. In *People v. Acme Markets, Inc.*,⁷⁹ decided before *Abrahams*, the court found discriminatory enforcement of the closing law and ordered the dismissal of several informations filed against supermarkets for violations of that statute. The court concluded: "Indeed, it is not an exaggeration to say that enforcement

"Fundamentally it is an argument between some big merchants who find Sunday profitable and want the right to remain open and some big merchants who don't and resent the competitive pressure to open anyway." N.Y. Times, July 6, 1977, § A, at 18, col. 1.

70 *Terry Carpenter, Inc. v. Wood*, 177 Neb. 515, 129 N.W.2d 475, 482-83 (1964) (Carter, J., concurring).

71 572 S.W.2d 334 (1978), *appeal dismissed*, 47 U.S.L.W. 3380 (1978.)

72 TEX. REV. CIV. STAT. ANN. art. 9001 (Vernon).

73 572 S.W.2d at 335.

74 *Id.*

75 40 N.Y.2d at 292, 353 N.E.2d at 583, 386 N.Y.S.2d at 670 (Fuchsberg, J., dissenting).

76 40 N.Y.2d at 283 n. 4, 353 N.E.2d at 577 n. 4, 386 N.Y.S.2d at 664 n.4.

77 *Id.* at 284, 353 N.E.2d at 577, 386 N.Y.S.2d at 665.

78 *People v. Fay's Drug Co. of Fairmont*, 68 Misc.2d 143, 326 N.Y.S.2d 311 (1971).

79 37 N.Y.2d 326, 334 N.E.2d 555, 372 N.Y.S.2d 590 (1975).

has been totally surrendered to private parties and interest groups who without constraint may manipulate the law for purely private purposes."⁸⁰

This manipulation of the law for purely private purposes is found throughout the entire legislative process of the Sunday Blue laws. Such private manipulation motivates the initial passage of the statutes and then surfaces again when specific exceptions to the general closing mandate are enacted. Furthermore, *Acme Markets* and *Abrahams* illustrate the private manipulation of even the enforcement of these laws. Courts should throw off the veil of hypocrisy under which such private economic concerns have remained and examine the full extent of these influences. Only then can Sunday Blue laws be evaluated realistically.

IV. Conclusion

The hypocrisy surrounding Sunday Blue laws has inhibited intelligent discussion while producing only confusion. Two observations are helpful in understanding controversies involving Sunday Blue laws. First, the standard of judicial review may vary from court to court despite repeated assurances that the rational basis test is being applied.

Second, controversy over Sunday Blue laws arises because conflicting interests are affected by the legislation. Private economic interests are most prominent and exert tremendous influence over the enactment and enforcement aspects of the closing statutes. These private economic purposes must be closely scrutinized in each state and the pervasiveness of these economic motivations must be fully examined. Legislators, courts and commentators must question whether the social "day of rest" objective of the Sunday Blue laws retains any viability today, or whether private economic concerns have replaced the social objectives, just as the social objectives earlier replaced the religious ones. If it is found that private economic interests do indeed predominate, then to allow these laws to exist under the guise of promoting a common day of rest demonstrates that the hypocrisy which Thomas Paine so vehemently argued against is still present today.

Daniel Otto Flanagan

80 *Id.* at 331, 334 N.E.2d at 558, 372 N.Y.S.2d at 594.