# Warren: Opinion of the Court

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

The issues in this case concern the constitutional validity of Maryland criminal statutes,[[1]](#footnote-1) commonly known as Sunday Closing Laws or Sunday Blue Laws. These statutes, with exceptions to be noted hereafter, generally proscribe all labor, business and other commercial activities on Sunday. The questions presented are whether the classifications within the statutes bring about a denial of equal protection of the law, whether the laws are so vague as to fail to give reasonable notice of the forbidden conduct and therefore violate due process, and whether the statutes are laws respecting an establishment of religion or prohibiting the free exercise thereof.

Appellants are seven employees of a large discount department store located on a highway in Anne Arundel County, Maryland. They were indicted for the Sunday sale of a three-ring loose-leaf binder, a can of floor wax, a stapler and staples, and a toy submarine in violation of Md.Ann.Code, Art. 27, § 521. Generally, this section prohibited, throughout the State, the Sunday sale of all merchandise except the retail sale of tobacco products, confectioneries, milk, bread, fruits, gasoline, oils, greases, **[p. 423]** drugs and medicines, and newspapers and periodicals. Recently amended, this section also now excepts from the general prohibition the retail sale in Anne Arundel County of all foodstuffs, automobile and boating accessories, flowers, toilet goods, hospital supplies and souvenirs. It now further provides that any retail establishment in Anne Arundel County which does not employ more than one person other than the owner may operate on Sunday.

Although appellants were indicted only under § 521, in order properly to consider several of the broad constitutional contentions, we must examine the whole body of Maryland Sunday laws. Several sections of the Maryland statutes are particularly relevant to evaluation of the issues presented. Section 492 of Md.Ann.Code, Art. 27, forbids all persons from doing any work or bodily labor on Sunday and forbids permitting children or servants to work on that day or to engage in fishing, hunting and unlawful pastimes or recreations. The section excepts all works of necessity and charity. Section 522 of Md.Ann.Code, Art. 27, disallows the opening or use of any dancing saloon, opera house, bowling alley or barber shop on Sunday. However, in addition to the exceptions noted above, Md.Ann.Code, Art. 27, § 509, exempts, for Anne Arundel County, the Sunday operation of any bathing beach, bathhouse, dancing saloon and amusement park, and activities incident thereto and retail sales of merchandise customarily sold at, or incidental to, the operation of the aforesaid occupations and businesses. Section 90 of Md.Ann.Code, Art. 2B, makes generally unlawful the sale of alcoholic beverages on Sunday. However, this section, and immediately succeeding ones, provide various immunities for the Sunday sale of different kinds of alcoholic beverages, at different hours during the day, by vendors holding different types of licenses, in different political divisions of the State -- particularly **[p. 424]** in Anne Arundel County. *See* Md.Ann.Code, Art. 2B, § 28(a).

The remaining statutory sections concern a myriad of exceptions for various counties, districts of counties, cities and towns throughout the State. Among the activities allowed in certain areas on Sunday are such sports as football, baseball, golf, tennis, bowling, croquet, basketball, lacrosse, soccer, hockey, swimming, softball, boating, fishing, skating, horseback riding, stock car racing and pool or billiards. Other immunized activities permitted in some regions of the State include group singing or playing of musical instruments; the exhibition of motion pictures; dancing; the operation of recreation centers, picnic grounds, swimming pools, skating rinks and miniature golf courses. The taking of oysters and the hunting or killing of game is generally forbidden, but shooting conducted by organized rod and gun clubs is permitted in one county. In some of the subdivisions within the State, the exempted Sunday activities are sanctioned throughout the day; in others, they may not commence until early afternoon or evening; in many, the activities may only be conducted during the afternoon and late in the evening. Certain localities do not permit the allowed Sunday activity to be carried on within one hundred yards of any church where religious services are being held. Local ordinances and regulations concerning certain limited activities supplement the State's statutory scheme. In Anne Arundel County, for example, slot machines, pinball machines and bingo may be played on Sunday.

Among other things, appellants contended at the trial that the Maryland statutes under which they were charged were contrary to the Fourteenth Amendment for the reasons stated at the outset of this opinion. Appellants were convicted, and each was fined five dollars and costs. The Maryland Court of Appeals affirmed, 220 **[p. 425]** Md. 117, 151 A.2d 156; on appeal brought under 28 U.S.C. § 1257(2), we noted probable jurisdiction. 362 U.S. 959.

## I

Appellants argue that the Maryland statutes violate the "Equal Protection" Clause of the Fourteenth Amendment on several counts. First, they contend that the classifications contained in the statutes concerning which commodities may or may not be sold on Sunday are without rational and substantial relation to the object of the legislation.[[2]](#footnote-2) Specifically, appellants allege that the statutory exemptions for the Sunday sale of the merchandise mentioned above render arbitrary the statute under which they were convicted. Appellants further allege that § 521 is capricious because of the exemptions for the operation of the various amusements that have been listed and because slot machines, pin-ball machines, and bingo are legalized and are freely played on Sunday.

The standards under which this proposition is to be evaluated have been set forth many times by this Court. Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws **[p. 426]** result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. *See Koch v. Board of River Port Pilot Comm'rs,* 330 U. S. 552; *Metropolitan Casualty Ins. Co. v. Brownell,* 294 U. S. 580; *Lindsley v. Natural Carbonic Gas Co.,*220 U. S. 61; *Atchison, T. & S.F. R. Co. v. Matthews,* 174 U. S. 96.[[3]](#footnote-3)

It would seem that a legislature could reasonably find that the Sunday sale of the exempted commodities was necessary either for the health of the populace or for the enhancement of the recreational atmosphere of the day -- that a family which takes a Sunday ride into the country will need gasoline for the automobile, and may find pleasant a soft drink or fresh fruit; that those who go to the beach may wish ice cream or some other item normally sold there; that some people will prefer alcoholic beverages or games of chance to add to their relaxation; that newspapers and drug products should always be available to the public.

The record is barren of any indication that this apparently reasonable basis does not exist, that the statutory distinctions are invidious, that local tradition and custom might not rationally call for this legislative treatment. *See Salsburg v. Maryland,* 346 U. S. 545, 346 U. S. 552-553; *Kotch* **[p. 427]** *v. Board of River Port Pilot Comm'rs, supra.* Likewise, the fact that these exemptions exist and deny some vendors and operators the day of rest and recreation contemplated by the legislature does not render the statutes violative of equal protection, since there would appear to be many valid reasons for these exemptions, as stated above, and no evidence to dispel them.

Secondly, appellants contend that the statutory arrangement which permits only certain Anne Arundel County retailers to sell merchandise essential to, or customarily sold at, or incidental to, the operation of bathing beaches, amusement parks et cetera is contrary to the "Equal Protection" Clause because it discriminates unreasonably against retailers in other Maryland counties. But we have held that the Equal Protection Clause relates to equality between persons as such, rather than between areas, and that territorial uniformity is not a constitutional prerequisite. With particular reference to the State of Maryland, we have noted that the prescription of different substantive offenses in different counties is generally a matter for legislative discretion. We find no invidious discrimination here. *See Salsburg v. Maryland, supra.*

Thirdly, appellants contend that this same statutory provision, Art. 27, § 509, violates the "Equal Protection" Clause because it permits only certain merchants within Anne Arundel County (operators of bathing beaches and amusement parks et cetera) to sell merchandise customarily sold at these places while forbidding its sale by other vendors of this merchandise, such as appellants' employer.[[4]](#footnote-4) Here again, it would seem that a legislature **[p. 428]** could reasonably find that these commodities, necessary for the health and recreation of its citizens, should only be sold on Sunday by those vendors at the locations where the commodities are most likely to be immediately put to use. Such a determination would seem to serve the consuming public and, at the same time, secure Sunday rest for those employees, like appellants, of all other retail establishments. In addition, the enforcement problems which would accrue if large retail establishments, like appellants' employer, were permitted to remain open on Sunday but were restricted to the sale of the merchandise in question would be far greater than the problems accruing if only beach and amusement park vendors were exempted. Here again, there has been no indication of the unreasonableness of this differentiation. On the record before us, we cannot say that these statutes do not provide equal protection of the laws.

## II

Another question presented by appellants is whether Art. 27, § 509, which exempts the Sunday retail sale of "merchandise essential to, or customarily sold at, or incidental to, the operation of" bathing beaches, amusement parks et cetera in Anne Arundel County, is unconstitutionally vague. We believe that business people of ordinary intelligence in the position of appellants' employer would be able to know what exceptions are encompassed by the statute either as a matter of ordinary commercial knowledge or by simply making a reasonable investigation at a nearby bathing beach or amusement park within the county. *See United States v. Harriss,* 347 U. S. 612, 347 U. S. 617-618. Under these circumstances, there is no necessity to guess at the statute's meaning in order to determine what conduct it makes criminal. *Connally v. General Construction Co.,* 269 U. S. 385, 269 U. S. 391. Questions concerning proof that the items appellants sold were customarily **[p. 429]** sold at, or incidental to the operation of, a bathing beach or amusement park were not raised in the Maryland Court of Appeals, nor are they raised here. Thus, we cannot consider the matter. *Whitney v. California,* 274 U. S. 357, 274 U. S. 362-363.

## III

The final questions for decision are whether the Maryland Sunday Closing Laws conflict with the Federal Constitution's provisions for religious liberty. First, appellants contend here that the statutes applicable to Anne Arundel County violate the constitutional guarantee of freedom of religion in that the statutes' effect is to prohibit the free exercise of religion in contravention of the First Amendment, made applicable to the States by the Fourteenth Amendment.[[5]](#footnote-5) But appellants allege only economic injury to themselves; they do not allege any infringement of their own religious freedoms due to Sunday closing. In fact, the record is silent as to what appellants' religious beliefs are. Since the general rule is that "a litigant may only assert his own constitutional rights or immunities," *United States v. Raines,* 362 U. S. 17, 362 U. S. 22, we hold that appellants have no standing to raise this contention[[6]](#footnote-6)  *Tileston v. Ullman,* 318 U. S. 44, 318 U. S. 46. Furthermore, since appellants do not specifically allege that the statutes infringe upon the religious beliefs of the department store's present or prospective patrons, we **[p. 430]** have no occasion here to consider the standing question of *Pierce v. Society of Sisters,* 268 U. S. 510, 268 U. S. 535-536. Those persons whose religious rights are allegedly impaired by the statutes are not without effective ways to assert these rights. *Cf. NAACP v. Alabama,* 357 U. S. 449, 357 U. S. 459-460; *Barrows v. Jackson,* 346 U. S. 249, 346 U. S. 257. Appellants present no weighty countervailing policies here to cause an exception to our general principles. *See United States v. Raines, supra.*

Secondly, appellants contend that the statutes violate the guarantee of separation of church and state in that the statutes are laws respecting an establishment of religion contrary to the First Amendment, made applicable to the States by the Fourteenth Amendment. If the purpose of the "establishment" clause was only to insure protection for the "free exercise" of religion, then what we have said above concerning appellants' standing to raise the "free exercise" contention would appear to be true here. However, the writings of Madison, who was the First Amendment's architect, demonstrate that the establishment of a religion was equally feared because of its tendencies to political tyranny and subversion of civil authority.[[7]](#footnote-7) Thus, in *Everson v. Board of Education, supra,* the Court permitted a district taxpayer to challenge, on "establishment" grounds, a state statute which authorized district boards of education to reimburse parents for fares paid for the transportation of their children to both public and Catholic schools. Appellants here concededly have suffered direct economic injury, allegedly due to the imposition on them of the tenets of the Christian religion.[[8]](#footnote-8) We find that, in these circumstances, **[p. 431]** these appellants have standing to complain that the statutes are laws respecting an establishment of religion.

The essence of appellants' "establishment" argument is that Sunday is the Sabbath day of the predominant Christian sects; that the purpose of the enforced stoppage of labor on that day is to facilitate and encourage church attendance; that the purpose of setting Sunday as a day of universal rest is to induce people with no religion or people with marginal religious beliefs to join the predominant Christian sects; that the purpose of the atmosphere of tranquility created by Sunday closing is to aid the conduct of church services and religious observance of the sacred day. In substantiating their "establishment" argument, appellants rely on the wording of the present Maryland statutes, on earlier versions of the current Sunday laws, and on prior judicial characterizations of these laws by the Maryland Court of Appeals. Although only the constitutionality of § 521, the section under which appellants have been convicted, is immediately before us in this litigation, inquiry into the history of Sunday Closing Laws in our country, in addition to an examination of the Maryland Sunday closing statutes in their entirety and of their history, is relevant to the decision of whether the Maryland Sunday law in question is one respecting an establishment of religion. There is no dispute that the original laws which dealt with Sunday labor were motivated by religious forces. But what we must decide is whether present Sunday legislation, having undergone extensive changes from the earliest forms, still retains its religious character.

Sunday Closing Laws go far back into American history, having been brought to the colonies with a background of English legislation dating to the thirteenth century. In 1237, Henry III forbade the frequenting of markets on **[p. 432]** Sunday; the Sunday showing of wools at the staple was banned by Edward III in 1354; in 1409, Henry IV prohibited the playing of unlawful games on Sunday; Henry VI proscribed Sunday fairs in churchyards in 1444 and, four years later, made unlawful all fairs and markets and all showings of any goods or merchandise; Edward VI disallowed Sunday bodily labor by several injunctions in the mid-sixteenth century; various Sunday sports and amusements were restricted in 1625 by Charles I. Lewis, A Critical History of Sunday Legislation, 82-108; Johnson and Yost, Separation of Church and State, 221. The law of the colonies to the time of the Revolution and the basis of the Sunday laws in the States was 29 Charles II, c. 7 (1677). It provided, in part:

"For the better observation and keeping holy the Lord's day, commonly called Sunday: be it enacted . . . that all the laws enacted and in force concerning the observation of the day, *and repairing to the church thereon,* be carefully put in execution, and that all and every person and persons whatsoever shall upon every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately, and that no tradesman, artificer, workman, laborer, or other person whatsoever, *shall do or exercise any worldly labor or business or work* of their ordinary callings upon the Lord's day, or any part thereof (works of necessity and charity only excepted); . . . and that no person or persons whatsoever shall publicly cry, show forth, or expose for sale any wares, merchandise, fruit, herbs, goods, or chattels, whatsoever, upon the Lord's day, or any part thereof. . . ."

(Emphasis added.)[[9]](#footnote-9) **[p. 433]** Observation of the above language, and of that of the prior mandates, reveals clearly that the English Sunday legislation was in aid of the established church.

The American colonial Sunday restrictions arose soon after settlement. Starting in 1650, the Plymouth Colony proscribed servile work, unnecessary traveling, sports, and the sale of alcoholic beverages on the Lord's day, and enacted laws concerning church attendance. The Massachusetts Bay Colony and the Connecticut and New Haven Colonies enacted similar prohibitions, some even earlier in the seventeenth century. The religious orientation of the colonial statutes was equally apparent. For example, a 1629 Massachusetts Bay instruction began, "And to the end the Sabbath may be celebrated in a religious manner. . . ." A 1653 enactment spoke of Sunday activities

"which things tend much to the dishonor of God, the reproach of religion, and the profanation of his holy Sabbath, the sanctification whereof is sometimes put for all duties immediately respecting the service of God. . . ."

Lewis, *op. cit. supra,* at pp. 160-195, particularly at 167, 169.[[10]](#footnote-10) These laws persevered after the Revolution and, at about the time of the First Amendment's adoption, each of the colonies had laws of some sort restricting Sunday labor. *See* note, 73 Harv.L.Rev. 729-730, 739-740; Johnson and Yost, *op. cit. supra,* at pp. 222-223.

But, despite the strongly religious origin of these laws, beginning before the eighteenth century, nonreligious **[p. 434]** arguments for Sunday closing began to be heard more distinctly, and the statutes began to lose some of their totally religious flavor. In the middle 1700's, Blackstone wrote,

"[T]he keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness."

4 Bl.Comm. 63. A 1788 English statute dealing with chimney sweeps, 28 Geo. III, c. 48, in addition to providing for their Sunday religious affairs, also regulated their hours of work. The preamble to a 1679 Rhode Island enactment stated that the reason for the ban on Sunday employment was that "persons being eville minded, have presumed to employ in servile labor, more than necessity requireth, their servants. . . ." 3 Records of the Colony of Rhode Island and Providence Plantations 31. The New York law of 1788 omitted the term "Lord's day" and substituted "the first day of the week commonly called Sunday." 2 Laws of N.Y. 1785-1788, 680. Similar changes marked the Maryland statutes, discussed below. With the advent of the First Amendment, the colonial provisions requiring church attendance were soon repealed. Note, 73 Harv.L.Rev. *supra* at pp. 729-730.

More recently, further secular justifications have been advanced for making Sunday a day of rest, a day when people may recover from the labors of the week just passed and may physically and mentally prepare for the week's work to come. In England, during the First World War, a committee investigating the health conditions of munitions workers reported that

"if the maximum output is to be secured and maintained for any length of **[p. 435]** time, a weekly period of rest must be allowed. . . . On economic and social grounds alike, this weekly period of rest is best provided on Sunday.[[11]](#footnote-11) "

The proponents of Sunday closing legislation are no longer exclusively representatives of religious interests. Recent New Jersey Sunday legislation was supported by labor groups and trade associations, Note, 73 Harv.L.Rev. 730-731; modern English Sunday legislation was promoted by the National Federation of Grocers and supported by the National Chamber of Trade, the Drapers' Chamber of Trade, and the National Union of Shop Assistants. 308 Parliamentary Debates, Commons 2158-2159.

Throughout the years, state legislatures have modified, deleted from and added to their Sunday statutes. As evidenced by the New Jersey laws mentioned above, current changes are commonplace. Almost every State in our country presently has some type of Sunday regulation, and over forty possess a relatively comprehensive system. Note, 73 Harv.L.Rev. 732-733; Note, 12 Rutgers L.Rev. 506. Some of our States now enforce their Sunday legislation through Departments of Labor, *e.g.,* 6 S.C.Code Ann. (1952), § 64 5. Thus have Sunday laws evolved from the wholly religious sanctions that originally were enacted.

Moreover, litigation over Sunday closing laws is not novel. Scores of cases may be found in the state appellate courts relating to sundry phases of Sunday enactments.[[12]](#footnote-12) Religious objections have been raised there on numerous occasions, but sustained only once, in *Ex parte Newman,* 9 Cal. 502 (1858), and that decision was overruled three years later, in *Ex parte Andrews,* 18 Cal. 678. A substantial number of cases in varying postures bearing **[p. 436]** on state Sunday legislation have reached this Court.[[13]](#footnote-13) Although none raising the issues now presented has gained plenary hearing, language used in some of these cases further evidences the evolution of Sunday laws as temporal statutes. Mr. Justice Field wrote in *Soon Hing v. Crowley,* 113 U. S. 703, at p. 113 U. S. 710:

"Laws setting aside Sunday as a day of rest are upheld not from any right of the government to legislate for the promotion of religious observances, but from its right to protect all persons from the physical and moral debasement which comes from uninterrupted labor. Such laws have always been deemed beneficent and merciful laws, especially to the poor and dependent, to the laborers in our factories and workshops and in the heated rooms of our cities, and their validity has been sustained by the highest courts of the States."

While a member of the California Supreme Court, Mr. Justice Field dissented in *Ex parte Newman, supra,* at pp. 519-520, 528, saying:

"Its requirement is a cessation from labor. In its enactment, the Legislature has given the sanction of law to a rule of conduct which the entire civilized world recognizes as essential to the physical and moral wellbeing of society. Upon no subject is there such a concurrence of opinion among philosophers, moralists and statesmen of all nations as on the necessity of periodical cessations from labor. One **[p. 437]** day in seven is the rule, founded in experience, and sustained by science. . . . The prohibition of secular business on Sunday is advocated on the ground that, by it, the general welfare is advanced, labor protected, and the moral and physical wellbeing of society promoted."

This was quoted with approval by Mr. Justice Harlan in *Hennington v. Georgia, supra,* who also stated:

"It is none the less a civil regulation because the day on which the running of freight trains is prohibited is kept by many under a sense of religious duty. The legislature having, as will not be disputed, power to enact laws to promote the order and to secure the comfort, happiness and health of the people, it was within its discretion to fix the day when all labor, within the limits of the State, works of necessity and charity excepted, should cease."

*Id.* at 163 U. S. 304. And Mr. Chief Justice Fuller cited both of these passages in *Petit v. Minnesota, supra.*

Before turning to the Maryland legislation now here under attack, an investigation of what historical position Sunday Closing Laws have occupied with reference to the First Amendment should be undertaken, *Everson v. Board of Education, supra,* at p. 330 U. S. 14.

This Court has considered the happenings surrounding the Virginia General Assembly's enactment of "An act for establishing religious freedom," 12 Hening's Statutes of Virginia 84, written by Thomas Jefferson and sponsored by James Madison, as best reflecting the long and intensive struggle for religious freedom in America, as particularly relevant in the search for the First Amendment's meaning. *See* the opinions in *Everson v. Board of Education, supra.* I n 1776, nine years before the bill's **[p. 438]** passage, Madison co-authored Virginia's Declaration of Rights, which provided, *inter alia,* that "all men are equally entitled to the free exercise of religion, according to the dictates of conscience. . . ." 9 Hening's Statutes of Virginia 109, 111-112. Virginia had had Sunday legislation since early in the seventeenth century; in 1776, the laws penalizing "maintaining any opinions in matters of religion, *forbearing to repair to church,* or the exercising any mode of worship whatsoever" (emphasis added), were repealed, and all dissenters were freed from the taxes levied for the support of the established church. *Id.* at 164. The Sunday labor prohibitions remained; apparently, they were not believed to be inconsistent with the newly enacted Declaration of Rights. Madison had sought also to have the Declaration expressly condemn the existing Virginia establishment.[[14]](#footnote-14) This hope was finally realized when "A Bill for Establishing Religious Freedom" was passed in 1785. In this same year, Madison presented to Virginia legislators "A Bill for Punishing . . . Sabbath Breakers," which provided in part:

"If any person on Sunday shall himself be found labouring at his own or any other trade or calling, or shall employ his apprentices, servants or slaves in labour, or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall forfeit the sum of ten shillings for every such offence, deeming every apprentice, servant, or slave so employed, and every day he shall be so employed as constituting a distinct offence.[[15]](#footnote-15) "

This became law the following year, and remained during the time that Madison fought for the First Amendment in the Congress. It was the law of Virginia, and similar **[p. 439]** laws were in force in other States, when Madison stated at the Virginia ratification convention:

"Happily for the states, they enjoy the utmost freedom of religion. . . . Fortunately for this commonwealth, a majority of the people are decidedly against any exclusive establishment. I believe it to be so in the other states. . . . I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom.[[16]](#footnote-16) "

In 1799, Virginia pronounced "An act for establishing religious freedom" as "a true exposition of the principles of the bill of rights and constitution," and repealed all subsequently enacted legislation deemed inconsistent with it. 2 Shepherd, Statutes at Large of Virginia, 149. Virginia's statute banning Sunday labor stood.[[17]](#footnote-17)

In *Reynolds v. United States,* 98 U. S. 145, the Court relied heavily on the history of the Virginia bill. That case concerned a Mormon's attack on a statute making bigamy a crime. The Court said:

"In connection with the case we are now considering, it is a significant fact that, on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration in a bill of rights that 'all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience,' the legislature **[p. 440]** of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, 'it hath been doubted whether bigamy or poligamy be punishable by the laws of this Commonwealth.' 12 Hening's Stat. 691. From that day to this, we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all of this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life."

*Id.* at 98 U. S. 165. In the case at bar, we find the place of Sunday Closing Laws in the First Amendment's history both enlightening and persuasive.

But in order to dispose of the case before us, we must consider the standards by which the Maryland statutes are to be measured. Here, a brief review of the First Amendment's background proves helpful. The First Amendment states that "Congress shall make no law respecting an establishment of religion. . . ." U.S.Const., Amend. I. The Amendment was proposed by James Madison on June 8, 1789, in the House of Representatives. It then read, in part:

"The civil rights of none shall be abridged on account of religious belief or worship, *nor shall any national religion be established,* nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed."

(Emphasis added.) Annals of Congress 434. We are told that Madison added the word "national" to meet the scruples of States which then had an established church. 1 Stokes, Church and State in the United **[p. 441]** States, 541. After being referred to committee, it was considered by the House, on August 15, 1789, acting as a Committee of the Whole. Some assistance in determining the scope of the Amendment's proscription of establishment may be found in that debate.

In its report to the House, the committee, to which the subject of amendments to the Constitution had been submitted, recommended the insertion of the language, "no religion shall be established by law." I Annals of Congress 729. Mr. Gerry "said it would read better if it was that no religious doctrine shall be established by law." *Id.* at 730. Mr. Madison

"said, he apprehended the meaning of the words to be that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. . . . He believed that the people feared one sect might obtain a preeminence, or two combine together, and establish a religion to which they would compel others to conform."

*Id.* at 730-731.

The Amendment, as it passed the House of Representatives nine days later, read, in part:

"Congress shall make no law establishing religion. . . ."

Records of the United States Senate, 1A-C2 (U.S.Nat.Archives). It passed the Senate on September 9, 1789, reading, in part:

"Congress shall make no law establishing articles of faith or a mode of worship. . . ."

*Ibid.*

An early commentator opined that the

"real object of the amendment was . . . to prevent any national ecclesiastical establishment, which should give to an hierarchy the exclusive patronage of the national government."

3 Story, Commentaries on the Constitution of the United States, 728. But the First Amendment, in its final form, **[p. 442]** did not simply bar a congressional enactment *establishing a church;* it forbade all laws *respecting an establishment of religion.* Thus, this Court has given the Amendment a "broad interpretation . . . in the light of its history and the evils it was designed forever to suppress. . . ." *Everson v. Board of Education, supra,* at pp. 330 U. S. 14-15. It has found that the First and Fourteenth Amendments afford protection against religious establishment far more extensive than merely to forbid a national or state church. Thus, in *McCollum v. Board of Education,* 333 U. S. 203, the Court held that the action of a board of education permitting religious instruction during school hours in public school buildings and requiring those children who chose not to attend to remain in their classrooms to be contrary to the "Establishment" Clause.

However, it is equally true that the "Establishment" Clause does not ban federal or state regulation of conduct whose reason or effect merely happens to coincide or harmonize with the tenets of some or all religions. In many instances, the Congress or state legislatures conclude that the general welfare of society, wholly apart from any religious considerations, demands such regulation. Thus, for temporal purposes, murder is illegal. And the fact that this agrees with the dictates of the Judaeo-Christian religions while it may disagree with others does not invalidate the regulation. So too with the questions of adultery and polygamy. *Davis v. Beason,* 133 U. S. 333; *Reynolds v. United States, supra.* The same could be said of theft, fraud, etc., because those offenses were also proscribed in the Decalogue.

Thus, these broad principles have been set forth by this Court. Those cases dealing with the specific problems arising under the "Establishment" Clause which have reached this Court are few in number. The most extensive discussion of the "Establishment" Clause's latitude **[p. 443]** is to be found in *Everson v. Board of Education, supra,* at pp. 330 U. S. 15-16:

"The 'establishment of religion' clause of the First Amendment means at least this: neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

Under challenge was a statute authorizing repayment to parents of their children's transportation expenses to public and Catholic schools. The Court, speaking through MR. JUSTICE BLACK, recognized that "it is undoubtedly true that children are helped to get to church schools," and

"[t]here is even a possibility that some of the children might not be sent to the church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to a public school would have been paid for by the State."

*Id.* at 330 U. S. 17. But the Court found that the purpose and effect of the statute in question was general "public welfare legislation," **[p. 444]** *id.* at 330 U. S. 16; that it was to protect all school children from the "very real hazards of traffic," *id.* at 330 U. S. 17; that the expenditure of public funds for school transportation, to religious schools or to any others, was like the expenditure of public funds to provide policemen to safeguard these same children or to provide "such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks," *id.* at 330 U. S. 17-18.[[18]](#footnote-18)

In light of the evolution of our Sunday Closing Laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is not difficult to discern that, as presently written and administered, most of them, at least, are of a secular, rather than of a religious, character, and that presently they bear no relationship to establishment of religion as those words are used in the Constitution of the United States.

Throughout this century and longer, both the federal and state governments have oriented their activities very largely toward improvement of the health, safety, recreation and general wellbeing of our citizens. Numerous **[p. 445]** laws affecting public health, safety factors in industry, laws affecting hours and conditions of labor of women and children, weekend diversion at parks and beaches, and cultural activities of various kinds, now point the way toward the good life for all. Sunday Closing Laws, like those before us, have become part and parcel of this great governmental concern wholly apart from their original purposes or connotations. The present purpose and effect of most of them is to provide a uniform day of rest for all citizens; the fact 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 now reach the Maryland statutes under review. The title of the major series of sections of the Maryland Code dealing with Sunday closing -- Art. 27, §§ 492-534C -- is "Sabbath Breaking"; § 492 proscribes work or bodily labor on the "Lord's day," and forbids persons to "profane the Lord's day" by gaming, fishing et cetera; § 522 refers to Sunday as the "Sabbath day." As has been mentioned above, many of the exempted Sunday activities in the various localities of the State may only be conducted during the afternoon and late evening; most Christian church services, of course, are held on Sunday morning and early Sunday evening. Finally, as previously noted, certain localities do not permit the allowed Sunday activities to be carried on within one hundred yards of any church where religious services are being held. This is the totality of the evidence of religious purpose which may be gleaned from the face of the present statute and from its operative effect. **[p. 446]** The predecessors of the existing Maryland Sunday laws are undeniably religious in origin. The first Maryland statute dealing with Sunday activities, enacted in 1649, was entitled "An Act concerning Religion." 1 Archives of Maryland 244-247. It made it criminal to

"profane the Sabbath or Lords day called Sunday by frequent swearing, drunkennes or by any unciville or disorderly recreation, or by working on that day when absolute necessity doth not require it."

*Id.* at 245. A 1692 statute entitled "An Act for the Service of Almighty God and the Establishment of the Protestant Religion within this Province," 13 Archives of Maryland 425-430, after first stating the importance of keeping the Lord's Day holy and sanctified and expressing concern with the breach of its observance throughout the State, then enacted a Sunday labor prohibition which was the obvious precursor of the present § 492.[[19]](#footnote-19) There was a reenactment in 1696 entitled "An Act for Sanctifying & keeping holy the Lord's Day Commonly called Sunday." 19 Archives of Maryland 418-420. By 1723, the Sabbath-breaking section of the statute assumed the present form of § 492, omitting the specific prohibition against Sunday swearing and the patently religiously motivated title. Bacon, Laws of Maryland (1723), c. XVI.

There are judicial statements in early Maryland decisions which tend to support appellants' position. In an 1834 case involving a contract calling for delivery on Sunday, **[p. 447]** the Maryland Court of Appeals remarked that

"Ours is a christian community, and a day set apart as the day of rest, is the day consecrated by the resurrection of our Saviour, and embraces the twenty-four hours next ensuing the midnight of Saturday."

*Kilgour v. Miles,* 6 Gill and Johnson 268, 274. This language was cited with approval in *Judefind v. State,* 78 Md. 510, 514, 28 A. 405, 406 (1894). It was also stated there:

"It is undoubtedly true that rest from secular employment on Sunday does have a tendency to foster and encourage the Christian religion -- of all sects and denominations that observe that day -- as rest from work and ordinary occupation enables many to engage in public worship who probably would not otherwise do so. But it would scarcely be asked of a Court in what professes to be a Christian land to declare a law unconstitutional because it requires rest from bodily labor on Sunday (except works of necessity and charity), and thereby promotes the cause of Christianity. If the Christian religion is, incidentally or otherwise, benefited or fostered by having this day of rest, as it undoubtedly is, there is all the more reason for the enforcement of laws that help to preserve it. Whilst Courts have generally sustained Sunday laws as 'civil regulations,' their decisions will have no less weight if they are shown to be in accordance with divine law, as well as human."

*Id.* at 515-516, 28 A. at 407. But it should be noted that, throughout the *Judefind* decision, the Maryland court specifically rejected the contention that the laws interfered with religious liberty and stated that the laws' purpose was to provide the "advantages of having a weekly day of rest, *from a mere physical and political standpoint.'" Id. at 513, 28 A. at 406.*

Considering the language and operative effect of the current statutes, we no longer find the blanket prohibition **[p. 448]** against Sunday work or bodily labor. To the contrary, we find that § 521 of Art. 27, the section which appellants violated, permits the Sunday sale of tobaccos and sweets and a long list of sundry articles which we have enumerated above; we find that § 509 of Art. 27 permits the Sunday operation of bathing beaches, amusement parks and similar facilities; we find that Art. 2B, § 28, permits the Sunday sale of alcoholic beverages, products strictly forbidden by predecessor statutes; we are told that Anne Arundel County allows Sunday bingo and the Sunday playing of pinball machines and slot machines, activities generally condemned by prior Maryland Sunday legislation.[[20]](#footnote-20) Certainly, these are not works of charity or necessity. Section 521's current stipulation that shops with only one employee may remain open on Sunday does not coincide with a religious purpose. These provisions, along with those which permit various sports and entertainments on Sunday, seem clearly to be fashioned for the purpose of providing a Sunday atmosphere of recreation, cheerfulness, repose and enjoyment. Coupled with the general proscription against other types of work, we believe that the air of the day is one of relaxation, rather than one of religion.

The existing Maryland Sunday laws are not simply verbatim reenactments of their religiously oriented antecedents. Only § 492 retains the appellation of "Lord's day," and even that section no longer makes recitation of religious purpose. It does talk in terms of "profan[ing] the Lord's day," but other sections permit the activities **[p. 449]** previously thought to be profane. Prior denunciation of Sunday drunkenness is now gone. Contemporary concern with these statutes is evidenced by the dozen changes made in 1959, and by the recent enactment of a majority of the exceptions.

Finally, the relevant pronouncements of the Maryland Court of Appeals dispel any argument that the statutes' announced purpose is religious. In *Hiller v. Maryland,* 124 Md. 385, 92 A. 842 (1914), the court had before it a Baltimore ordinance prohibiting Sunday baseball. The court said:

"What the eminent chief judge said with respect to police enactments which deal with the protection of the public health, morals and safety apply with equal force to those which are concerned with the peace, order and quiet of the community on Sunday, for these social conditions are well recognized heads of the police power. Can the Court say that this ordinance has no real and substantial relation to the peace and order and quiet of Sunday, as a day of rest, in the City of Baltimore?"

*Id.* at 393, 92 A. at 844. *See also Levering v. Williams,* 134 Md. 48, 5459, 106 A. 176, 178-179 (1919). And the Maryland court declared in its decision in the instant case: "The legislative plan is plain. It is to compel a day of rest from work, permitting only activities which are necessary or recreational." *McGowan v. State, supra,* at p. 123, 151 A.2d at 159. After engaging in the close scrutiny demanded of us when First Amendment liberties are at issue, we accept the State Supreme Court's determination that the statutes' present purpose and effect is not to aid religion, but to set aside a day of rest and recreation.

But this does not answer all of appellants' contentions. We are told that the State has other means at its disposal **[p. 450]** to accomplish its secular purpose, other courses that would not even remotely or incidentally give state aid to religion. On this basis, we are asked to hold these statutes invalid on the ground that the State's power to regulate conduct in the public interest may only be executed in a way that does not unduly or unnecessarily infringe upon the religious provisions of the First Amendment. *See Cantwell v. Connecticut, supra,* at pp. 310 U. S. 304-305. However relevant this argument may be, we believe that the factual basis on which it rests is not supportable. It is true that, if the State's interest were simply to provide for its citizens a periodic respite from work, a regulation demanding that everyone rest one day in seven, leaving the choice of the day to the individual, would suffice.

However, the State's purpose is not merely to provide a one-day-in-seven work stoppage. In addition to this, the State seeks to set one day apart from all others as a day of rest, repose, recreation and tranquility -- a day which all members of the family and community have the opportunity to spend and enjoy together, a day on which there exists relative quiet and disassociation from the everyday intensity of commercial activities, a day on which people may visit friends and relatives who are not available during working days.[[21]](#footnote-21) **[p. 451]** Obviously, a State is empowered to determine that a "rest one day in seven" statute would not accomplish this purpose; that it would not provide for a general cessation of activity, a special atmosphere of tranquility, a day which all members of the family or friends and relatives might spend together. Furthermore, it seems plain that the problems involved in enforcing such a provision would be exceedingly more difficult than those in enforcing a "common day of rest" provision.

Moreover, it is common knowledge that the first day of the week has come to have special significance as a rest day in this country. People of all religions and **[p. 452]** people with no religion regard Sunday as a time for family activity, for visiting friends and relatives, for late sleeping, for passive and active entertainments, for dining out, and the like. "Vast masses of our people, in fact, literally millions, go out into the countryside on fine Sunday afternoons in the Summer. . . ." 308 Parliamentary Debates, Commons 2159. Sunday is a day apart from all others.[[22]](#footnote-22) The cause is irrelevant; the fact exists. It would seem unrealistic for enforcement purposes and perhaps detrimental to the general welfare to require a State to choose a common day of rest other than that which most persons would select of their own accord. For these reasons, we hold that the Maryland statutes are not laws respecting an establishment of religion.

The distinctions between the statutes in the case before us and the state action in *McCollum v. Board of Education, supra,* the only case in this Court finding a violation of the "Establishment" Clause, lend further substantiation to our conclusion. In *McCollum,* state action permitted religious instruction in public school buildings during school hours and required students not attending the religious instruction to remain in their classrooms during that time. The Court found that this system had the effect of coercing the children to attend religious classes; no such coercion to attend church services is present in the situation at bar. In *McCollum,* the only alternative available to the nonattending students was to remain in their classrooms; the alternatives open to nonlaboring persons in the instant case are far more diverse. In *McCollum,*there was direct cooperation between state officials and religious ministers; no such direct participation exists under the Maryland laws. In *McCollum,* tax-supported buildings were used to aid religion; in the **[p. 453]** instant case, no tax monies are being used in aid of religion.

Finally, we should make clear that this case deals only with the constitutionality of § 521 of the Maryland statute before us. We do not hold that Sunday legislation may not be a violation of the "Establishment" Clause if it can be demonstrated that its purpose -- evidenced 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.

Accordingly, the decision is

*Affirmed.*

[For opinion of MR. JUSTICE FRANKFURTER, joined by MR. JUSTICE HARLAN, *see post,* p. 366 U. S. 459.]

[For dissenting opinion of MR. JUSTICE DOUGLAS, *see post,* p. 366 U. S. 561.]

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*APPENDIX TO OPINION OF THE COURT*

"*Md.Ann.Code, Art. 27"*

"*Sabbath Breaking."*

"*§ 492. -- Working on Sunday; Permitting children or servants to game, fish, hunt, etc. --* No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation, and every person transgressing this section and being hereof convicted before a justice of the peace shall forfeit five dollars, to be applied to the use of the county. " **[p. 454]** "*§ 509. -- Beaches, amusement parks, picnic groves, etc., in Anne Arundel County. --* It shall be lawful to operate, work at, or be employed in the occupations of operating any bathing beach, bathhouse, amusement park, dancing saloon, the sale or selling of any novelties, souvenirs, accessories, or other merchandise essential to, or customarily sold at, or incidental to, the operation of the aforesaid occupations and businesses, at retail, picnic groves, amusements, games, amusement rides, amusement devices, entertainments, shows and the hiring or renting of boats, tables, chairs, beach umbrellas, on the first day of the week, commonly called Sunday, within Anne Arundel County, and §§ 492, 521 and 522 of this article are repealed, insofar and to the extent that they prohibit the operating of and/or the working of or employment of persons in the operation of any bathing beach, bathhouse, amusement park, dancing saloon, the sale or selling at retail of any merchandise, essential to or customarily sold or incidental to the operation of the aforesaid occupations or businesses, picnic groves, amusements, games, amusement rides, amusement devices, entertainments, shows, and the hiring and renting of boats, tables, chairs, beach umbrellas, on the first day of the week, commonly called Sunday, in Anne Arundel County."

"*§ 521. -- Sale, etc., of merchandise on Sunday; exceptions.*"

"(a) *Sunday sales of merchandise prohibited; excepted articles. --* No person in this State shall sell, dispose of, barter, or deal in, or give away any articles of merchandise on Sunday, except retailers, who may sell and deliver on said day tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases."

"(b) *Additional excepted articles in Anne Arundel County; certain establishments excepted. --* In Anne Arundel County, in addition to the articles of merchandise **[p. 455]** hereinbefore mentioned, retailers may sell, barter, deal in, and deliver on Sunday the following articles of merchandise: butter, eggs, cream, soap and other detergents, disinfectants, vegetables, meats, and all other food or food stuffs prepared or intended for human consumption, automobile accessories and parts, boating and fishing accessories, artificial and natural flowers and shrubs, toilet goods, hospital supplies, thermometers, camera films, souvenirs, surgical instruments, rubber goods, paper goods, drugs, medicines, patent medicines, and all other articles used for the relief of pain or prescribed by a physician; provided, however, that nothing in this subtitle shall be construed to prevent the operation of any retail establishment on Sunday, the operation of which does not entail the employment of more than one person, not including the owner or proprietor."

"(c) *Penalty for violation; second and subsequent offenses; revocation of license. --* Any person violating any one of the provisions of this section shall be liable to indictment in any court in this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum of not less than twenty nor more than fifty dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than $50 nor more than $500, and be imprisoned for not less than 10 nor more than 30 days, in the discretion of the court, and his, her or their license, if any was issued, shall be declared null and void by the judge of said court, and it shall not be lawful for such person or persons to obtain another license for the period of twelve months from the time of such conviction, nor shall a license be obtained by any other person or persons to carry on said business on the premises or elsewhere, if the person, so as aforesaid convicted, has any interest whatever therein, or shall derive any profit whatever therefrom, and in case **[p. 456]** of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be imprisoned for not less than thirty nor more than sixty days, and fined a sum not less than double that imposed on such person or persons on the last preceding conviction, and his, her or their license, if any was issued, shall be declared null and void by the court, and no new license shall be issued to such person or persons for a period of two years from the time of such conviction, nor to anyone else to carry on said business wherein he or she is in anywise interested, as before provided for the second violation of the provisions of this section; all the fines to be imposed under this section shall be paid to the State."

"(d) *Apothecaries: sale of newspapers and periodicals. --* This section is not to apply to apothecaries and such apothecaries may sell on Sunday drugs, medicines, and patent medicines as on week days, and this section shall not apply to the sale of newspapers and periodicals."

"*§ 622. -- Keeping open or using dancing saloon, opera house, tenpin alley, barber saloon or ball alley on Sunday. --* It shall not be lawful to keep open or use any dancing saloon, opera house, tenpin alley, barber saloon or ball alley within this State on the Sabbath day, commonly called Sunday, and any person or persons, or body politic or corporate, who shall violate any provision of this section, or cause or knowingly permit the same to be violated by a person or persons in his, her or its employ shall be liable to indictment in any court of this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum not less than fifty dollars nor more than one hundred dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons, or body politic or corporate shall be fined a sum not less than one hundred nor more than five hundred dollars, and if a natural person shall be imprisoned, not less than ten nor **[p. 457]** more than thirty days in the discretion of the court, and in the case of any conviction or convictions under this section subsequent to the second, such person or persons, body politic or corporate shall be fined on each occasion a sum at least double that imposed upon him, her, them or it on the last preceding conviction, and if a natural person, shall be imprisoned not less than thirty nor more than sixty days in the discretion of the court; all fines to be imposed under this section shall be paid to the State."

"*Md.Ann.Code, Art. 2B"*

"*§ 28. -- Anne Arundel County.*"

"(a) *Special Sunday licenses. --*"

"(1) Notwithstanding any other provision of this article, no license for sale of alcoholic beverages issued by the board of license commissioners for Anne Arundel County (except 'special licenses' provided for in § 22 of this article) shall be deemed to nor shall it permit or authorize the holder thereof to sell any alcoholic beverages in Anne Arundel County after 2 A.M. on Sundays, except as hereinafter provided."

"(2) Any person holding a license for the sale of alcoholic beverages in Anne Arundel County (except persons holding any Class BP, WP, LP, or LT license, 'Package Goods -- off sale license,' 'six day tavern license,' or 'special licenses') issued by the board of license commissioners for Anne Arundel County, shall, upon application made as for new licenses and approval thereof by the board of license commissioners for Anne Arundel County, as provided for by §§ 60 and 67(c) of this article, be issued a license to be known as a 'special Sunday license,' upon payment of the fee therefor as provided herein."

"(3) Such 'special Sunday license' shall authorize the holder thereof to sell alcoholic beverages of the same kind, and subject to the same limitations as to hours, alcoholic content of the beverages to be sold thereunder, restrictions **[p. 458]** and provisions, as govern such other license for the sale of alcoholic beverages, issued to and held by the holder of such 'special Sunday license,' on each Sunday. No 'special Sunday license' shall be issued to any person who does not hold an alcoholic beverage license of some other class issued by the board of license commissioners for Anne Arundel County."

"*§ 90 -- Sundays. --*"

"(a) *Bar and counter sales. --*"

"(1) No retail dealer holding a Class B or C license shall be permitted to sell any alcoholic beverage at a bar or counter on Sunday."

"(2) Provided, that, in Anne Arundel County it shall be lawful to sell, vend, serve, deliver and/or consume any alcoholic beverages permitted by law to be sold in the first, second, third, fourth, fifth, seventh and eighth districts of Anne Arundel County at any bar or counter on any day on which the sale of alcoholic beverages is permitted by law."

"(b) *General restrictions. --*"

"(1) In the jurisdictions in which this subsection is applicable, it shall be unlawful for anyone to sell or for any licensed dealer to deliver, give away or otherwise dispose of any alcoholic beverages on Sunday. Any person selling or any licensed dealer delivering, giving away or otherwise disposing of such beverages in such jurisdictions on Sunday shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding fifty dollars ($50.00) for the first offense and for each succeeding offense shall be fined not exceeding one hundred dollars ($100.00), or imprisoned in the county jail for not more than thirty (30) days, or be both fined and imprisoned, in the discretion of the court."

"(2) This subsection shall be applicable and have effect in Caroline, Carroll, Cecil, Dorchester, Garrett, Harford, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico and Worcester counties, provided that it shall not apply to or affect special Class C licenses **[p. 459]** issued under the provisions of this article, nor shall it apply to special Class C licenses issued in Washington County for temporary use."

1. These statutes, in their entirety, are found in Md.Ann.Code, 1957, Art. 27, §§ 492-534C; Art. 2B, §§ 28(a), 90-106; Art. 66C, §§ 132(d), 698(d). Those sections specifically referred to hereafter may be found in an Appendix to this opinion, post, p. 366 U. S. 453. [↑](#footnote-ref-1)
2. Companion arguments made by appellants are that the exceptions to the Sunday sale's prohibition so undermine the alleged purpose of Sunday as a day of rest as to bear no rational relationship to it, and thereby render the statutes violative of due process; that the distinctions drawn by the statutes are so unreasonable as to violate due process. [↑](#footnote-ref-2)
3. More recently we declared:

   "The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Tigner v. Texas, 310 U. S. 141. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. Semler v. Dental Examiners, 294 U. S. 608. The legislature may select one phase of one field and apply a remedy there, neglecting the others. AFL v. American Sash Co., 335 U. S. 538. The prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

   Williamson v. Lee Optical, 348 U. S. 483, 348 U. S. 489. (Emphasis added.) [↑](#footnote-ref-3)
4. Whether § 509 is to be read this way or is to be read to permit the sale of such merchandise by all vendors in Anne Arundel County is unclear. The Maryland Court of Appeals found it unnecessary to reach this question of state law. For purposes of this argument, we accept the construction of § 509 set forth by appellants. [↑](#footnote-ref-4)
5. Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 303; Murdock v. Pennsylvania, 319 U. S. 105, 319 U. S. 108; West Virginia State Board of Education v. Barnette, 319 U. S. 624, 319 U. S. 639; Everson v. Board of Education, 330 U. S. 1, 330 U. S. 5; McCollum v. Board of Education, 333 U. S. 203, 333 U. S. 210. [↑](#footnote-ref-5)
6. MR. JUSTICE BLACK is of the opinion that appellants do have standing to raise this contention. He believes that their claim is without merit for the reasons expressed in Braunfeld v. Brown, post, p. 366 U. S. 599, at pp. 366 U. S. 602-610, and Gallagher v. Crown Kosher Super Market, post,p. 366 U. S. 617, at pp. 366 U. S. 630-631. [↑](#footnote-ref-6)
7. Madison's Memorial and Remonstrance Against Religious Assessments, Par. 8, reprinted in the Appendix to Mr. Justice Rutledge's dissenting opinion in Everson v. Board of Education, supra, at p. 330 U. S. 68. [↑](#footnote-ref-7)
8. Cf. Doremus v. Board of Education, 342 U. S. 429, where complainants failed to show direct and particular economic detriment. [↑](#footnote-ref-8)
9. English statutes subsequent to this are cited and discussed in Lewis, op. cit. supra, pp. 111-142. [↑](#footnote-ref-9)
10. A 1695 New York Sunday law provided:

    "Whereas, the true and sincere worship of God according to his holy will and commandments, is often profaned and neglected by many of the inhabitants and sojourners in this province, who do not keep holy the Lord's day, but in a disorderly manner accustom themselves to travel, laboring, working, shooting, fishing, sporting, playing, horse-racing, frequenting of tippling houses and the using many other unlawful exercises and pastimes, upon the Lord's day, to the great scandal of the holy Christian faith, be it enacted, etc."

    Id. at 200-201. [↑](#footnote-ref-10)
11. Ministry of Munitions, Health of Munition Workers Committee, Report on Sunday Labour, Memorandum No. 1 (1915), 5. [↑](#footnote-ref-11)
12. See cases collected at 50 Am.Jur. 802 et seq.; 24 A.L.R.2d 813 et seq.; 57 A.L.R.2d 975 et seq. [↑](#footnote-ref-12)
13. See Soon Hing v. Crowley, 113 U. S. 703; Hennington v. Georgia, 163 U. S. 299; Petit v. Minnesota,177 U. S. 164; Friedman v. New York, 341 U.S. 907; McGee v. North Carolina, 346 U.S. 802; Gundaker Central Motors, Inc. v. Gassert, 354 U.S. 933; Grochowiak v. Pennsylvania, 358 U. S. 47; Ullner v. Ohio, 358 U. S. 131; Kidd v. Ohio, 358 U. S. 132. [↑](#footnote-ref-13)
14. Brant, James Madison, The Virginia Revolutionist, 245-246. [↑](#footnote-ref-14)
15. 2 The Papers of Thomas Jefferson 555. [↑](#footnote-ref-15)
16. 3 Elliot's Debates (2d ed. 1836) 330. [↑](#footnote-ref-16)
17. In Judefind v. State, 78 Md. 510, 515, 28 A. 405, 407 (1894), the Maryland Court of Appeals stated,

    "Article thirty-six of our Declaration of Rights guarantees religious liberty; but the members of the distinguished body that adopted that Constitution never supposed they were giving a death blow to Sunday laws by inserting that Article." [↑](#footnote-ref-17)
18. Mr. Justice Rutledge, joined by MR. JUSTICE FRANKFURTER, Mr. Justice Jackson and Mr. Justice Burton, filed a lengthy dissenting opinion in which the First Amendment's history was studied in detail. He defined the "establishment" problem as follows:

    "Compulsory attendance upon religious exercises went out early in the process of separating church and state, together with forced observance of religious forms and ceremonies. Test oaths and religious qualification for office followed later. These things none devoted to our great tradition of religious liberty would think of bringing back. Hence, today, apart from efforts to inject religious training or exercises and sectarian issues into the public schools, the only serious surviving threat to maintaining that complete and permanent separation of religion and civil power which the First Amendment commands is through use of the taxing power to support religion, religious establishments, or establishments having a religious foundation whatever their form or special religious function."

    Id. at 330 U. S. 44. (Emphasis added.) [↑](#footnote-ref-18)
19. "[N]o Person or Persons within this Province shall work or do any bodily Labour or Occupation upon any Lords Day commonly called Sunday, nor shall command or willfully suffer or permitt any of his or their children Servants or Slaves to work or labour as aforesaid (the absolute works of necessity and mercy allways Excepted), nor shall suffer or permitt any of his her or their Children Servants or Slaves or any other under their Authority to abuse or Prophane the Lords Day by drunkenness, Swearing Gaming, fowling fishing, hunting or any other Sports Pastimes or Recreations whatsoever."

    Id. at 426. [↑](#footnote-ref-19)
20. A 1674 Maryland statute provided, in part:

    "[T]hat noe ordinary Keeper shall from and after the publicacon hereof directly nor indirectly upon the Sabbath or Lords Day draw or sell any strong Liquors nor permit or suffer in or about their house or houses any tipling or gaming att Cards, Dice, ninepinn playing or other such unlawfull exercises whatsoever. . . ."

    2 Archives of Maryland 414. [↑](#footnote-ref-20)
21. This purpose has been articulated in various ways at different times. The parliamentary debates on the British Shops (Sunday Trading Restriction) Bill in 1936 are particularly instructive. The sponsor of the Bill stated:

    "I realise also that the State today is interfering more and more with family life and more and more controlling the family liberty, and, were this a Bill to restrict liberty, and above all to restrict the liberty of the family, I would not be responsible for introducing it. But I hope to show to the House that it is a Bill which is necessary to secure the family life and liberty of hundreds of thousands of our people. . . . They have the right to a holiday on Sunday, to be able to rest from work on that day and to go out into the parks or into the country on a summer day. That is the liberty for which they are asking, and that is the liberty which this Bill would give to them."

    308 Parliamentary Debates, Commons 2157-2158.

    Another member stated:

    "As a family man, let me say that my family life would be unduly disturbed if any member had his Sunday on a Tuesday. The value of a Sunday is that everybody in the family is at home on the same day. What is the use of talking about a six-day working week in which six members of a family would each have his day of rest on a different day of the week?"

    Id. at 2198.

    Reports of the International Labour Conferences are also revealing:

    "Social custom requires that the same rest-day should as far as possible be accorded to the members of the same working family and to the working class community as a whole. It is a fact that, originally, religious motives determined the rest-day, and that the tradition thus established has subsequently been maintained by law. It appears to be a universal rule that workers in the same area or in the same country have the same rest-day, and that the rest-day coincides with the day established by tradition or custom, and the International Labour Office proposes that this rule should be maintained."

    Rep. VII, International Labour Conference, 3d Sess.1921, 127-128.

    "A study of national standards shows that the most usual practice is to grant the weekly rest collectively on specified days of the week. This tendency to ensure that the weekly rest is taken at the same time by all workers on the day established by tradition or custom has an obvious social purpose, namely to enable the workers to take part in the life of the community and in the special forms of recreation which are available on certain days."

    Rep. VII(1), International Labour Conference, 39th Sess.1956, 24. [↑](#footnote-ref-21)
22. The Constitution itself provides for a Sunday exception in the calculation of the ten days for presidential veto. U.S.Const., Art. I, § 7. [↑](#footnote-ref-22)