WHAT'S SUNDAY ALL ABOUT?

The Rise and Fall of California's Sunday Closing Law

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One Sunday in April 1858, Morris Newman decided to keep his tailor shop, located at 100 J Street in Sacramento, open for business.[1] Soon after, Newman was arrested, tried, and convicted for violating the California law known as "An Act for the better observance of the Sabbath."[2] Newman's actions had been plainly illegal under this statute. By selling his wares on a Sunday, Newman had violated the law's requirement "that no person shall, on the Christian Sabbath, or Sunday, keep open any store, warehouse, mechanic-shop, work-shop, banking-house, manufacturing establishment" or sell "any goods, wares, or merchandise on that day . . . ."[3] As a result of this conviction the trial court imposed a fine of twenty-five

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[1] *Ex Parte* Newman, 9 Cal. 502, 504 (1858); William M. Kramer, Jewish-Activist Lawyers of Pioneer California 5 (1990).

[2] *Newman*, 9 Cal. at 503.

[3] *Id.* at 519 (Field, J., dissenting).

dollars on Newman. When he failed to pay, the judge ordered Newman imprisoned for thirty-five days.[4]

Newman's desire to break California's Sunday closing law stemmed from his religious affiliation. As an observant Jew, Newman followed his faith's tradition and celebrated the Sabbath on Saturday.[5] Because Newman's religion required him to refrain from work on Saturday, he chose to flaunt the Sunday closing law and keep his shop open on the day of rest demanded by the state.[6]

Newman emphasized this law's burden on his religious exercise when he subsequently challenged the constitutionality of the act before the California Supreme Court. In the case of *Ex Parte Newman*, he contended that the Sunday closing law conflicted with California Constitution article I, section 4's guarantee that individual rights to "the free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever allowed in the state."[7]

Ex Parte Newman was the first volley in the almost quarter-century-long debate over the state's Sunday closing law. This contest played out in both the legal and political realms of nineteenth-century California. Opponents of the law believed that the state was granting an impermissible benefit to a particular religious outlook when it declared all must rest on the traditional Christian Sabbath. Those in favor of the Sunday closing did not focus on the law's effect on religious exercise. These Californians considered the law to be a legitimate extension of the state's police power. In the nineteenth-century understanding of this doctrine, the police power conferred to the states included broad constitutional authority to regulate the people's health, welfare, and morals in order to promote the public good.[8] Because the act's only actual prohibition was on the time period

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[4] *Id.* at 504.

[5] Kramer, *supra* note 1, at 5.

[6] *Newman*, 9 Cal. at 504.

[7] Cal Const. art. I, § 4 (amended 1879). Newman also argued that a law totally banning business activity on any day of the week, even if devoid of religious effect, violated California Constitution article I, section 1's protection of property rights. *Newman*, 9 Cal. at 503.

[8] *See* Thomas M. Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 572–77 (1868).

Californians could work, supporters of the law characterized it as a simple labor regulation born from the state's traditionally broad police powers.

Ex Parte Newman rejected this police power rationale for the Sunday closing and instead held that the act violated article I, section 4's guarantee of individual religious rights.[9] *Ex Parte Newman's* precedential value was, however, quite minimal.[10] Three years later the California Supreme Court reversed course and found that the Sunday closing did not unconstitutionally interfere with religious rights. The Court now held that the law was "purely a civil regulation, and spends its whole force upon matters of civil economy."[11] Over the next two decades the California Supreme Court pushed questions of religious preference to the sideline as it repeatedly affirmed that the Sunday closing law was rooted in the state's police power.[12] By 1882 the judiciary's comfort with this interpretation was so complete that the California Supreme Court did not feel it necessary to discuss the law's effect on individual religious exercise when it again upheld the statute.[13]

Although California's judges had come to a consensus concerning this law, popular opinion of the ban on Sunday work was decidedly mixed. Indeed, the people of California never wholly adopted the Court's opinion of the Sunday closing law. While civil issues of labor regulation, public morals and temperance did seep into the people's understanding of the law, many Californians continued to view the prohibition on Sunday work as primarily concerning spiritual matters.

In the nineteenth century, the opinion of California's judges and of its people diverged. In decision after decision, the California Supreme Court sustained the Sunday closing law as a reflection of the state's police power to legislate for the general welfare. A conflicting view of the Sunday closing law held sway among the people. Throughout the second half of the

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9 *Newman*, 9 Cal. at 506.

10 *Ex Parte Newman* appears to be the only instance in which a state supreme court struck down a Sunday closing law. Alan Raucher, *Sunday Business and the Decline of Sunday Closing Laws: A Historical Overview*, 36 Journal of Church and State 13, 16 (1994).

11 *Ex Parte* Andrews, 18 Cal. 678, 685 (1861).

12 *Ex Parte* Burke, 59 Cal. 6, 19 (1881); *Ex Parte* Koser, 60 Cal. 177, 189 (1882).

13 *Koser,* 60 Cal. at 189.

nineteenth century the people of California clung to a belief that their state's Sunday closing law was inextricably tied to religion.

In the United States, laws banning Sunday work date back to the colonial era.[14] In 1610 the Virginia Colony enacted a law commanding attendance at religious services on Sunday.[15] Forty years later, the Plymouth Colony followed suit and passed a law forbidding its citizens to participate in servile work, unnecessary travels, and selling alcoholic beverages on Sunday.[16] By the time of the Revolutionary War essentially all the colonies had a Sunday closing law.[17] This trend continued after independence when the new states both adopted their own constitutions guaranteeing some form of religious freedom, and also passed statutes banning Sunday work.[18]

Throughout the states there were many challenges to the constitutionality of local Sunday closing laws.[19] Each one of these failed.[20] Prior to

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[14] David N. Laband & Deborah Hendry Heinbuch, Blue laws: the history, economics, and politics of Sunday-closing laws 29 (1987). The Sunday closing laws, like many aspects of Anglo-American culture, has biblical roots. "Remember the Sabbath day, to keep it holy. Six days shalt thou labor, and do all thy work: but the seventh day is the Sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: for in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore, the Lord blessed the Sabbath day, and hallowed it." Exodus 20: 8–11.

[15] *Id.* at 29 (Virginia modeled this law after an English act passed by the twenty-ninth Parliament of Charles II).

[16] McGowan v. State of Md., 366 U.S. 420, 433 (1961).

[17] Laband, *supra* at note 34, 30–37.

[18] Andrew King, *Sunday Law in the Nineteenth Century*, 64 Alb. L. Rev. 675, 685 (2000). During the early republic era, the states repealed statutes providing for mandatory church attendance. Virginia acted first in 1776. Connecticut, however, had a statute requiring Sunday church attendance as late as 1838. Note, *State Sunday Laws and the Religious Guarantees of the Federal Constitution*, 73 Harv. L. Rev. 729, 746 (1960).

[19] At this time, the substantive rights within the United States Constitution's Bill of Rights did not bind the actions of the state governments. Barron v. Baltimore, 32 U.S. 243, 247 (1833). Not until the 1947 case, *Everson v. Bd. of Education*, were the protections of religion within the First Amendment of the United States Constitution incorporated against the states. 330 U.S. 1, 16 (1947).

[20] Early nineteenth-century decisions defended Sunday closing laws as a legitimate means to encourage religious practice. In 1811, for example, New York's highest court stated that bans on Sunday work served to "consecrate the first day of the week, as

the California Supreme Court's decision in *Ex Parte Newman*, every state court that reviewed a Sunday closing law held that its prohibitions complied with constitutional protections of individual religious rights. In 1858, when the California Legislature took its turn and declared Sunday to be the state's official day of rest, contemporary constitutional jurisprudence provided a strong foundation for this law.

California enacted its Sunday closing law eight years after the state entered the union. In the preceding Gold Rush years the California electorate apparently lacked much interest in reserving Sunday as a day of rest. Rather, in these nascent days of statehood, "more business was done on Sunday than any other day of the week."[21]

For the more responsible of California's early white inhabitants, Sunday was the day to obtain provisions, wash and prepare for the next week in the mines. Others disposed of Sunday in a less productive manner. These Californians found the first day of the week to be an ideal time for watching a horse race or dog fight, drinking in the local saloon or "risking part or all the week's earnings against the luck and skill and percentage of the professional dealer of faro or monte."[22] During the first decade of

holy time." People v. Ruggles, 8 New York (Johnson's) 290, 297 (1811). Similarly in 1817, the Pennsylvania Supreme Court held that the state's Sunday closing law did not violate constitutional protections of religion because, "the rights of conscience" were never "intended to shelter those persons, who, out of mere caprice, would directly oppose those laws, for the pleasure of showing their contempt and abhorrence of the religious opinions of the great mass of the citizens." Commonwealth v. Wolf, 3 Serg. & Rawle 48, 51 (1817). As the nineteenth century wore on, state supreme courts ceased to accept open endorsement of religious practice as an acceptable constitutional justification for the law. In 1843, North Carolina's renowned Chief Justice Edmund Ruffin declared that working on Sunday could not qualify as a common law nuisance because, "it is not so in the sense that an act contrary to the precepts of our Savior or of Christian morals, is, necessarily, indictable," as acts "against God and religion were left to the correction of conscience, or the religious authorities of the State." State v. Williams, 26 N.C. 400, 407 (1843). By 1848 the Pennsylvania Supreme Court had chosen to uphold a Sunday closing law as legislation that fulfilled non-religious needs for the "absolutely necessary" day of rest "at stated intervals, so that the mass of which the community is composed, may enjoy a respite from labour at the same time." Specht v. Commonwealth, 8 Pa. 312, 322 (1848).

[21] *The Sunday Law: Address by Judge Nye Before the Home Protection Society*, The Morning Call, Jan. 15, 1882.

[22] Arnold Roth, *Sunday "Blue Laws" and the California State Supreme Court*, 55 Southern California Quarterly 43, 43 (1973).

California's statehood many of its residents enthusiastically patronized businesses on Sunday, and took advantage of both the practical and licentious products for sale.

By 1858 California had changed. Most notably, diverse economic activity displaced bonanza mining as the primary way of making a living in the state. Soon, permanent communities, replete with women, children, and an array of businesses, replaced the mining camp as the center of California's communal life. As more established American social and business practices took hold in the state, support for enacting a venerable Sunday closing law surged.[23]

In 1855 California's legislature took a preliminary step toward meeting the "propelling force that has been moving California forward in its march on moral advancement" and declared that participating in noisy activities on Sunday was a nuisance violation.[24] This effort culminated in 1858 when the Legislature passed a law banning all Sunday business.[25]

Many Californians would have been happy to voluntarily shut their shops on Sunday.[26] For the vast Christian majority of California, Sunday was the natural day of rest, and thus a law forbidding business during that time was of no great consequence. The specter of competition from their own less pious and Jewish counterparts left some in the majority hesitant to close up on their own accord. During the Assembly's debate over the law, an opponent of the proposed act pointed out that it "would act more for the protection of certain merchants of Santa Cruz and Santa Clara, who found their trade interfered with, because the Jew merchants saw fit to open their shops on a Sunday."[27]

During this same legislative debate, all in the Assembly seemed to be aware that the Sunday closing law burdened those whose religion did not require resting on Sunday. In one such discussion Assembly Speaker William W. Stow declared that he had "no sympathy with the Jews," who were "a class

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[23] *Id*. at 42 (In 1853 the Legislature received a number of petitions from Californians urging the passing of Sunday closing laws).

[24] *Roth*, at 44.

[25] *Newman*, 9 Cal. at 503.

[26] *Roth*, at 43.

[27] 13 Occident and Am. Jewish Advocate 124 (1855) (excerpted in Jewish Voices of the California Gold Rush: A Documentary History, 1849–1880, 408 (Eva Fran Kahn ed., 2002)).

of people who only came here to make money, and leave as soon as they had effected their object." In regard to the Sunday closing law, the Jewish preference for the Saturday Sabbath was irrelevant to Stowe as the Jews "ought to respect the laws and opinions of the majority."[28]

In 1858, popular support for a Sunday closing law reached its apex. That spring the Legislature passed "An Act for the better observance of the Sabbath," so making it a crime for any Californian to "keep open any store, warehouse, mechanic-shop, work-shop, banking-house, manufacturing establishment" or sell "any goods, wares, or merchandise" on Sunday.[29] Sunday was now the state-mandated day of rest in California.

Almost immediately after the Sunday closing law passed, the California Supreme Court was given an opportunity to review this statute's constitutionality. In *Ex Parte Newman* the Jewish shopkeeper convicted under the Sunday closing law contended that this act clashed with the California Constitution article I, section 4 guarantee of the individual right to practice religion free of government discrimination or preference.[30] From this case two conflicting perspectives on the constitutionality of the Sunday closing law emerged.

Justice David Terry's majority decision took exception with California's Sunday closing law from the start. Even the name of the very statute drew his ire. With a scorching tone, Terry disputed that any law entitled 'An Act for the better observance of the Sabbath'" whose "prohibitions in the body of the act are confined to the 'Christian Sabbath'" could be an acceptable exercise of the state's normal police powers.[31] Instead, Terry held that by requiring the closing of business on the Christian day of rest, the state preferred "the observance of a day held sacred by the followers of one faith, and entirely disregarded by all the other denominations within the State."[32]

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[28] *Id*. Stow also argued the religious roots of Sunday closing laws. "The Bible lay at the foundation of our institutions, and its ordinances ought to be covered and adhered to in legislating for the state."

[29] *Id*. at 519 (Field, J. dissenting).

[30] *Newman*, 9 Cal. at 503.

[31] *Newman*, 9 Cal. at 504–5.

[32] *Id*. at 505.

Ex Parte Newman held that article I, section 4's guarantee of "free exercise and enjoyment of religious profession and worship, without discrimination or preference" provided an absolute right for individual Californians to practice their religion free from interference from the state.[33] "When our liberties were acquired, . . . we deemed that we had attained not only toleration, but religious liberty in its largest sense — a complete separation between Church and State, and a perfect equality without distinction between all religious sects."[34] In Terry's opinion, the Sunday closing law violated this constitutional protection because it granted sanction to the Christian day of rest while denying this same benefit to Californians whose religions mandated a different time for the Sabbath.

Justice Field's dissent in *Ex Parte Newman* took a contrary view of the Sunday closing law. Field held that the statute was merely an exercise of the state's police power to regulate the health, safety and morals of the community. Consequently, Newman could not claim to be the victim of state-sanctioned religious discrimination. "The petitioner is an Israelite, engaged in the sale of clothing, and his complaint is, not that his religious profession or worship is interfered with, but that he is not permitted to dispose of his goods on Sunday." In Field's opinion, the law did not impinge on Newman's religious rights because this act only made it so "his secular business is closed on a day on which he does not think proper to rest."[35] The Sunday closing law's mandate of a universal day of rest on Sunday was thus, "only a rule of civil conduct . . . limiting its command to secular

[33] *Id.* at 508. Terry's promotion of individual rights over the Legislature's expression of the collective will did not confine itself to the realm of religion. *Ex Parte Newman* also held that even if devoid of religious elements, a Sunday closing law would still violate California Constitution article I, section 1's protections of individual property rights. For Terry, an individual's decision to "seek cessation from toil" was a matter of personal choice — not communal consensus as "the amount of rest which would be required by one-half of society may be widely disproportionate to that required by the other." The Sunday closing law annulled a person's ability to choose to engage in economic activity on a particular day of the week, leading Terry to find that the act "infringes upon the liberty of the citizen, by restraining his right to acquire property." This argument would again rear its head during the *Lochner* era of American law. Joseph R. Grodin, *The California Supreme Court and State Constitutional Rights: The Early Years*, 31 Hastings Const. L.Q. 141, 153 (2004).

[34] *Newman*, 9 Cal. at 506.

[35] *Id.* at 519. (Field, J., dissenting).

pursuits," and "as to the forms in which that profession or worship shall be exhibited, the law is silent."[36] Because this act neither required nor prohibited any particular religious practice, Field found that the statute did not conflict with article I, section 4's protection of individual religious rights.[37]

In 1861 the California Legislature passed another Sunday closing law.[38] The newly resurrected law, known as "An Act for the Observance of the Sabbath," mirrored the earlier iteration of this statute. This new version did, however, provide for a few exceptions allowing boarding houses, stables, and retail drugstores to stay open on Sunday. The law still mandated that most stores, saloons, and banks shut down on Sunday.[39]

Soon after this act came into being, another San Francisco challenge made its way to the California Supreme Court. With the Court only three years earlier declaring the Sunday closing law to be unconstitutional, it would seem that this defendant could depend on the rule of *stare decisis* to liberate him from the clutches of the law. He would be sorely disappointed.

At this time the *Ex Parte Newman* Court, which had ventured out on uncharted legal grounds when it struck down the Sunday closing law in 1858, no longer existed. By 1861 Justices David Terry and Peter Burnett, the two members of the California Supreme Court who had found the Sunday closing law to be unconstitutional, had left the bench.[40] With two new members and Justice Field now serving as its leader, the newly constituted bench was eager to amend the ways of its predecessor.

This case, *Ex Parte Andrews*, marked a complete reversal of *Ex Parte Newman*. The Court's unanimous decision held that the Sunday closing law was a legitimate extension of the state's police power and accordingly

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36 *Id.* at 520.

37 *Id.*

38 *Ex Parte* Andrews, 18 Cal. 678, 678 (1861).

39 *Id.*

40 Justice Terry's exit from the court was dramatic. In 1859 Terry became embroiled in a dispute with California's United States Senator David Broderick and Terry challenged him to a duel. Although Terry had a few months left in his term on the Court, he resigned his seat and made himself busy with preparation to restore his honor. When Terry and Broderick met, the judge's aim was superior to that of the senator's. The shot Terry landed mortally wounded Broderick. Paul Kens, Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age 86 (1997).

complied with all constitutional protections of religion. The decision expressed disdain for both the legal reasoning within, and even the mere presence of, *Ex Parte Newman*. Indeed, *Ex Parte Andrews* did not even mention the contrary precedent of *Ex Parte Newman* by name, instead only stating that "[t]hese sections were commented upon by the several Judges of this Court at the April term, 1858, when the law of that year upon this general subject was under review."[41] The California Supreme Court had broken away from its sister courts when it struck down the Sunday closing law in *Ex Parte Newman*. In *Ex Parte Andrews*, the state's highest court returned California law to the fold.[42]

The Court now held that California Constitution article I, section 4's protections of religion did not conflict with California's Sunday closing law because these protections only prohibited legislation "that invidiously discriminates in favor of or against any religious system." The Sunday closing law fell within this constitutionally acceptable space because it "requires no man to profess or support any school or system of religious faith, or even to have any religion at all . . . ."[43] Accordingly, *Ex Parte Andrews* held the statute to be a proper manifestation of the state's police power. "The operation of the act is secular, just as much as the business on which the act bears is secular; it enjoins nothing that is not secular, and it commands nothing that is religious . . . ."[44]

In order to separate California law from Justice Terry's legal principles, this curt, six-page decision ended by stating that the Court "did not deem it necessary to pursue the discussion" anymore as "the opinion of Mr. Justice Field in *Ex Parte Newman* . . . discusses the main question involved, and more fully expresses our views."[45] The decision was clear. In *Ex Parte Andrews*, the California Supreme Court deemed the Sunday closing law to be a constitutionally permissible exercise of the state's police power to

41 *Andrews*, 18 Cal. at 681.

42 *Id.* *Ex Parte Andrews* began its defense of California's Sunday closing laws by reiterating the broad acceptance of Sunday closing laws in America. For the *Ex Parte Andrews* court, the constitutionality of Sunday closing laws was such a settled legal issue that "[p]robably such strong concurrence of opinion on one leading question affecting the general community, cannot be found in the history of American jurisprudence."

43 *Id.* at 684.

44 *Id.* at 685.

45 *Id.*

regulate the health, welfare, and morals of the community. It would continue doing so.[46]

In the wake of *Ex Parte Andrews*, future challenges to the state's Sunday closing law also failed before California's highest court.[47] In an 1881 case, the California Supreme Court quickly disposed of a defendant's challenge claiming that the Sunday closing law violated his constitutionally protected religious rights.[48] This decision expanded on the precedent set forth in *Ex Parte Andrews* and declared that the Sunday closing law "was purely a secular, sanitary, or police regulation . . . in no manner influenced by sectarian or puritanical ideas."[49] Contrary to its earlier fickleness, the California Supreme Court did not again waver in its opinion of the Sunday closing. As the nineteenth century entered its last decades, settled California law dictated that the state's police power justified the ban on Sunday work.

One year later, in 1882, yet another defendant attempted to argue that California's Sunday closing law was unconstitutional. Here, the majority of

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[46] *Ex Parte Andrews* also held that California Constitution article I, section 1's protection of individual property rights did not conflict with the Sunday closing law. This court held that the clause "did not deprive the Legislature of the power of prescribing the mode of acquisition, or of regulating the conduct and relations of the members of the society in respect to property rights." *Id*. at 682. A few months after the *Ex Parte Andrews* decision, the California Supreme Court rejected another challenge to the Sunday closing law in a brief one-page decision. *Ex Parte* Bird, 19 Cal. 130, 130 (1861).

[47] *Ex Parte* Burke, 59 Cal. at 19.

[48] *Id*. Since the 1861 decision in *Ex Parte Andrews*, the wording of California Constitution article I, section 4 had been slightly changed. During the 1879 constitutional convention the delegates revised the section so that the last phrase now read, "forever guaranteed in this state." Cal Const. art. I § 4. (1879); David A. Carrillo, *California Constitutional Law: The Religion Clauses*, 45 U.S.F. L. Rev. 689, 718–21 (2011) (providing a thorough history of the religion clauses in the California Constitution). *Ex Parte Burke* held that the slight differences in language did not affect the substantial protections afforded by article I, section 4, as the original and revised provision were "precisely same, *totidem verbis*." *Burke*, 59 Cal. at 13.

[49] *Burke*, 59 Cal. at 13–16. Burke also challenged the law under the new constitutional provision in article IV, section 25, which mandated that "the legislature shall pass no local or special laws." Impermissible special laws apply to one individual segment of the population rather than the whole community. Burke argued that the Sunday closing law's exceptions for business such as hotels and stables made this statute special legislation. The *Ex Parte Burke* court rejected this argument before reaching the merits of this issue by holding that the new constitutional ban on special legislation was prospective and thus could not reach the Sunday closing law passed in 1861. *Id*. at 8.

the California Supreme Court did not even consider it necessary to waste ink discussing the Sunday closing law's harmony with the state's police power or individual religious rights as "most of the questions arising in this case were passed on in *Ex Parte Andrews*."[50]

On three separate occasions the California Supreme Court had affirmed the constitutionality of the Sunday closing law as a proper exercise of the state's police power. By 1882 judicial opinion concerning the Sunday closing law had settled. No longer could opponents of this statute make any plausible claim in court that the Sunday closing law abridged constitutional guarantees of individual religious practice.

San Francisco Police Chief Patrick Crowley had a frightfully full day ahead of him. On Sunday, March 19, 1882, San Francisco's leaders decided to resume rigorous prosecution of the state's Sunday closing law.[51] San Francisco's efforts to enforce the statewide prohibition on Sunday work were somewhat novel. During its two decades of existence, the Sunday closing law did not always inspire local authorities to action. By 1882 it had become apparent that local authorities varied in their devotion to the Sunday closing law.

To be sure, some communities enforced the Sunday closing law with vigor. A report from Woodland in 1873 indicated that on Sunday "every saloon in town as well as every store (drug stores excepted), being closed . . . the streets presented a quiet and Christian like appearance and

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[50] *Koser*, 60 Cal. 177, 189–90 (1882) In *Ex Parte Koser*, the Supreme Court also rejected the defendant's claim that the Sunday closing law was special legislation. Koser actually did have some reason to believe that the Court would strike down the law on this ground because it had recently found a regulation banning the opening of bakeries on Sunday to be an impermissible special law. *Ex Parte* Westerfield, 55 Cal. 550, 551 (1880). Here, the appeal to the constitutional prohibition on special legislation did not sway the California Supreme Court. *Ex Parte Koser* held that these exemptions for certain lines of work and the corollary mandate that saloons, banks, and stores remain closed on Sunday was permissible because these two categories of business were different "in their essential features, as regards society and the health and comfort of those who constitute a community . . . ." *Koser*, 60 Cal. at 190.

[51] *The Sunday Law: Result of the First Day's Enforcement,* S.F. Chronicle, Mar. 21, 1882.

the churches were well filled."[52] Such strict observance to the law continued into the next decade around some parts of the state. In the spring of 1882, for example, the authorities in San Luis Obispo continued to demand "the closing of every business house" and issued a harsh warning that anyone conducting business on the Sabbath would be arrested and prosecuted.[53]

Other communities paid little heed to the Sunday closing law. Reports from Bakersfield found that "no attempt has been made here to enforce the Sunday law since its constitutionality was affirmed by the Supreme Court."[54] At the same time in the Calaveras County town of San Andreas both the people and the authorities demonstrated little appetite for enforcing the law. Dispatches from one Sunday in this town disclosed that all the saloons and restaurants continued to operate on Sundays as the local prosecutor had announced that the practice of continuing business on the first day of the week was "sanctioned by the community" and the law itself to be "regarded as a failure of the Supreme Court."[55]

Against a degree of public apathy, Chief Crowley had to attempt to enforce the state's Sunday closing law in San Francisco. This mission, bestowed on Crowley by San Francisco Mayor Maurice Blake, was herculean. In the four decades since the Gold Rush, San Francisco had grown into California's largest city, sporting a population of approximately 234,000.[56] San Francisco's size did not erase its rugged edge.[57] At this time, 2,000 saloons dotted the city's streets, providing one place of libation for every 117 men, women, and children within San Francisco.[58] It was the city's many saloonkeepers who became one of the main targets of renewed efforts to enforce the Sunday closing law.[59]

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[52] *The Sunday Law: Its Observance in Different Parts of the State*, S.F. Chronicle, Jan. 16, 1873.

[53] *The Issue of the Day: Saloon Keepers as a Rule, Bid Defiance to the Sunday Law*, The Morning Call, Mar. 20, 1882.

[54] *Id.*

[55] *Id.*

[56] R. Hal Williams, The Democratic Party and California Politics: 1880–1896 4 (1973).

[57] Carl Nolte, *100 Years Ago: The Great Election of 1882*, S.F. Chronicle.

[58] *Id.*

[59] *The Issue of the Day, supra* note 53.

Chief Crowley met his responsibilities with zeal. After dividing San Francisco into multiple districts, he assigned parties of ten officers and one commander to gather evidence of any business operating on Sunday. The authorities devoted most of their time to inspecting the city's saloons, cigar shops, and groceries, and avoided citing small places of business such as fruit peddlers, and newsstands.[60] Even though they could not cover the entire city, their labors were fruitful. In one district, the police collected evidence of 114 places of business open on Sunday even before Crowley's men were able to investigate two thirds of the area.[61]

Sorting the mounds of evidence against San Francisco's mischievous businessmen nearly overwhelmed the city's prosecuting attorney.[62] Crowley's sweep had yielded enough evidence to make out 800 viable arrest warrants. On the following Monday a flurry of activity swept through the local courthouse as the police and judges attempted to issue arrest warrants. One witness to the scene claimed that "[a]s fast as the warrants and complaints were filled out they were laid before the Judges for signing, the officers swearing to them in batches of fifty."[63] Even with this expedited process, the court was unable to finish issuing the warrants before nightfall, and as a result no arrests were made until the next day.[64]

This attempt to enforce the Sunday closing law divided Californians. After hundreds of San Francisco businessmen eventually had received arrest warrants, doubts emerged about the feasibility of holding trials for the putative violators of the Sunday closing law. Contemporary predictions were pessimistic. One report surmised that because of "the prominence Sunday law cases have obtained, and the feeling that people have for and against the law" the courts would struggle to field a neutral jury in any Sunday closing prosecution. Due to the deep rifts in people's opinions of the law, this critic anticipated that the authorities would require initial jury pools "of at least one hundred persons" in order to eventually empanel

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60 *Id*. One contemporary report noted that the grocers of San Francisco's outskirts only complied with the Sunday closing law to the extent that they shut their front doors. *Id*.

61 *Over Five Hundred Warrants Issued for the Offenders*, The Morning Call, Mar. 21, 1882.

62 *The Sunday Law, supra* note 51.

63 *Over Five Hundred Warrants, supra* note 61.

64 *Id*.

twelve "good and true" San Franciscans capable of hearing a Sunday closing case without bias.[65] As 1882 turned from spring to summer, the people of California had yet to collectively decide whether to support or oppose the state's constitutionally valid Sunday closing law.

During the spring of 1882, both friends and foes of the Sunday closing law took measures to turn California's public toward their side. A group known as the Ministerial Union took their ardent support for the Sunday closing law directly to the halls of power.[66] This group of Protestant leaders implored Mayor Blake of San Francisco to enforce the existing state ban on Sunday business. The Ministerial Union referred to the political clout of its members, assuring San Francisco's authorities that it represented "a large, calm and determined constituency," who "resolved to do what they may in every legitimate way to defeat the machinations of rebellion, and prevent such a triumph of conspiracy as would blast the good name of the city . . . ."[67]

In San Francisco and the neighboring communities, opponents of the Sunday closing law also drew on their collective power. The League of Freedom, an association of saloonkeepers and other businessmen, supplied the primary organized opposition to the law.[68] The League employed multiple methods to resist the Sunday closing law. Operating as a mutual protection society, the League collected fees from its members and in exchange advocated against the Sunday closing law, represented its members in court, and made bond payments for those who had violated the law.[69]

The fissures in Californians' opinions of the Sunday closing law soon rose to the top of state politics. During the spring of 1882, both the Republicans and Democrats staked out positions on the Sunday closing law in advance of the upcoming fall election. The Republicans, who had carried

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[65] *Id.*

[66] *Id.*; *About Sunday Law: The Questions Discussed by Ministers*, S.F. Chronicle, Aug. 19, 1890.

[67] *The Sunday Law, supra* note 51.

[68] *The Issue of the Day, supra* note 53. The League of Freedom's strategy to bring about public opposition to the law was clever. Instead of calling for immediate abrogation, the League promoted "impartial enforcement of the law" and "the arrest of anyone and all that violated it" so that the "people would rise up *en masse* and call for its repeal." *Id.*

[69] *Id.*

the governor's office four years earlier, threw their support behind sustaining the legal prohibition on Sunday work. Representatives from California's churches had advocated fiercely for the law and warned the politicians to "be careful of their platform in this direction" because "[a]ny yielding or temporizing on this and kindred subjects will be resented by the better class of our citizens, who, in all cases, are the power of the land."[70] Although the Republicans did not embrace the same pious language as the churchmen, they did endorse renewing the Sunday closing law.

In late August the Republicans convened their party convention. There they adopted a plank that recommended "preserving one day in seven as a day of rest from labor" if victorious at the polls.[71] In their announcement to the electorate, the Republicans hewed closely to the police power reasoning utilized by the California Supreme Court. Like California's courts, the Republican Party portrayed the Sunday closing law as a non-religious means to promote the health and welfare of the people. "We are in favor of observing Sunday as a day of rest and recreation, and while we expressly disavow the right or the wish to place any class of citizens [under compulsion] to spend that day in a particular manner, we do favor the maintenance of the present Sunday laws, or similar laws, providing for the suspension of all unnecessary business on that day." Whatever their motivations for preserving the Sunday closing law may have been, Californians in favor of the ban now had a statewide political party to support them.

The Democrats took a contrary view of the Sunday closing law.[72] Recent turmoil within this political party had left the Democrats ripe to oppose the Sunday closing law. After losing a considerable share of their

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[70] Warren L. Johns, Dateline Sunday, U.S.A.: The story of three and a half centuries of Sunday-law battles in America 90 (1967).

[71] *Republican Convention,* S.F. Evening Bulletin, Aug. 31, 1882.

[72] Within the Democratic Party, especially among those most influenced by Jacksonianism, opposition to Sunday closing laws had a long history. Jacksonian political thought was always vigilant to promote *laissez faire* policies, and thus saw Sunday closing laws as yet another pernicious instance of state interference with individuals' lives. As early as the late 1820s Democratic politicians, such as the orator Theophilius Fisk, were denouncing Sunday closing laws as the work "of a proud and aspiring priesthood, [possessed of] a determination to establish an Ecclesiastical Hierarchy, and to reduce us to a worse than Egyptian bondage." Theophilius Firsk, *Priestcraft Unmasked* (excerpted in Manuel Cachán, *Justice Stephen Field and "Free Soil, Free Labor Constitutionalism": Reconsidering Revisionism*, 20 Law & Hist. Rev. 541, 556 (2002)).

constituents to the Workingmen's Party in the previous decade, the Democrats were in need of resurgence by 1882.[73] One of the men who would bring the Democratic Party back to power was a San Francisco political leader known as Christopher "The Blind Boss" Buckley.[74]

Buckley operated a political machine out of the Alhambra Saloon on the corner of Bush and Kearny Streets in San Francisco, and controlled Democratic politics with "a power bordering on absolute despotism."[75] Buckley expanded his political power by extending patronage networks into San Francisco's Italian, French, Jewish and German communities. Always in search of new avenues of power, Buckley even formed an alliance with a Chinatown boss known as Little Pete who affectionately referred to Buckley as the "the Blind White Devil."[76] Buckley, along with mining millionaire George Hearst formed a group representing the "anti-monopolist" wing of the California Democratic Party.[77] At the Democratic Party Convention in June 1882, the anti-monopolists won the nomination for the former Union general George Stoneman as the party's candidate for governor.[78] A few months later, Stoneman led the legislative push to end California's Sunday closing law.[79]

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[73] In the 1870s the Democrats had lost substantial support to Dennis Kearney's populist Workingmen's Party. The Workingmen appealed to mass rage against both the monopoly of the railroad and newly arrived Chinese immigrants. In the election of 1879, the Workingmen displayed themselves as a powerful political force in California. That year's election saw the Workingmen candidate win 28 percent of the gubernatorial vote, just behind the 30 percent claimed by the Democratic candidate and in shouting distance of the victorious Republican's 48 percent share. Although by 1880 internal disputes within the Workingmen's Party had stalled the party's political rise, many of its members joined the Democrats but continued to hold onto many of their ideals. Williams, *supra* note 56, at 19–20.

[74] Buckley was a fascinating character. After losing his eyesight during adulthood, Buckley took advantage of his other assets and was able to "marshal men and matters into a formidable phalanx with unnerving precision." His "illimitable and infallible" memory was reportedly so sharp that Buckley could recognize visitors by the grip of their handshakes. Nolte, *supra* note 57.

[75] *Id.*

[76] *Id.*

[77] Williams, *supra* note 56, at 21.

[78] *Id.* at 25–27.

[79] Johns, *supra* note 70, at 92–93.

At this same convention, the Democrats also resolved to officially oppose the Sunday closing law.[80] Chairing the committee considering the Sunday law was none other than former California Supreme Court Justice David Terry. Despite Terry's avowed opposition to the law, some Democrats feared opposing the law would rob them of the support of religious folk.[81] Terry, however, condemned the law as "a religious holiday," which only represented a "parcel of nonsense put up by the judges."[82] By a vote of eight-to-one at the convention, the Democrats committed themselves to repealing the Sunday closing law if the electorate so chose to empower them.

The result of the election of 1882 was clear. That November, Stoneman carried 55 percent of the gubernatorial vote while his fellow Democrats claimed the majority of seats in the Assembly and Senate.[83] Now ascendant in the politics of California, the Democrats quickly moved to repeal the Sunday closing law. In early 1883, Governor Stoneman called on the Legislature to end the Sunday closing law. Both houses complied, and soon California became the first state in the nation to entirely eliminate legal prohibitions on Sunday business.[84]

At this time the California Supreme Court, following Field's dissent in *Ex Parte Newman*, had taken multiple occasions to affirm that the state's police power provided the lone legal justification for the Sunday closing law. By embracing this constitutional theory, the judiciary had largely excised the question of religious preference from legal debate over the Sunday law. This view did not, however, define the whole of the political sphere. When the people and politicians of California evaluated the Sunday closing law, the issue of the state's permissible interaction with religion again took the forefront.

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80 *Id*.

81 *Id*. at 91.

82 *Democratic Convention*, S.F. Evening Bulletin, Jun. 21, 1882.

83 Paul Kens, Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age 26 (1997). (Stoneman won 44 of California's 52 counties and 23,500 more votes than the Republican candidate.)

84 Alan Raucher, *Sunday Business and the Decline of Sunday Closing Laws: A Historical Overview*, 36 Journal of Church and State 13, 18 (1994).

Ever since the Legislature first passed a Sunday closing law, public critics of the law complained that this state-sanctioned ban on work impermissibly interfered in their religious affairs. One 1866 article argued that the Sunday closing law conflicted in spirit with the state's existing religious diversity.[85] For this observer of San Francisco life, his community was "one of the most cosmopolitan cities in the world" where a "great liberality of thought and feeling prevails." Thus, the city welcomed "all religions and creeds and no-creeds, from the strictest form of Calvinism now in existence, to Spiritism, Atheism, and Materialism." Here, a wide variety of individual religious practices met "not only with toleration, but with tolerance, which is a much rarer phenomenon."[86] Upon this diverse population, bans on Sunday business seemed to be the work of puritanical forces, representing nothing less than "narrowness and bigotry, and petty tyranny, as were ever developed in Connecticut under the *regime* of the Blue Laws."[87]

While this critic did not dispute the beneficial results of dedicating Sunday to rest and prayer, he disapproved of the state's enforcing such behavior. "The evil of all this is not apparent to that class of well-meaning persons who look no further than the *end in view* . . . a class incapable of understanding that the violation of the personal rights of the citizen as a free moral agent, upon the mere ground of compelling him to be virtuous against his inclination, is in its tendency subversive to all liberty."[88] This rebuke of California's Sunday closing law avoided delving into whether the law actually benefited the people's welfare. Rather, it condemned the law's mere attempt, be it beneficial or not, to interfere with Californians' religious choices.

In another tract against the Sunday closing law, a critic humorously contended that the true preferences of many San Franciscans lay outside of church services on the weekend. This writer argued that participating

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85 *Blue Law Legislation*, Daily Dramatic Chronicle, Nov. 23, 1866.

86 *Id.*

87 *Id.* (emphasis in original).

88 *Id.* (emphasis in original). Utilizing comparisons between Sunday closing and sumptuary laws, this writer warned that a government that maintained a Sunday closing law could, "on the same principle . . . legislate as to what people should eat and wear; make it a penal offense to eat mussels, on the ground they are indigestible; to smoke, because it injures the nerves; to wear corsets, because they produce disease and shorten life." *Id.*

in public recreation was the ideal way to spend a California Sunday. "It does them more good to go to Hayes Park, or the Cliff House, or Bay View, or to take a trip to Oakland, and enjoy themselves according to their tastes and inclinations than to go to church."[89] In this tract's opinion it was wrong for the state to push citizens toward religious observance and it asserted that there should be no Sunday closing law so that "the church-goers enjoy the liberty of acting according to their own convictions and tastes; but let the theater-goer possess the same liberty."[90]

The declaration that emerged from the Democratic Convention in the spring of 1882 further demonstrates that much of the opposition to the Sunday closing law stemmed from a fear of state interference in religious affairs. This plank framed the Sunday closing law as wrongfully interfering with individual religious choice:

> That the Democratic Party, inheriting the doctrine of Jefferson and Jackson, hereby declares its unqualified enmity to all sumptuary legislation, regarding all such exercise of the law-making power as against the just objects of free government, and that all laws intended to restrain or direct a free and full exercise by any citizen of his own religious and political opinion, so long as he leave others to enjoy their rights unmolested, are antidemocratic and hostile to the principles and traditions of the party, create unnecessary antagonism, cannot be enforced, and are a violation of the spirit of the republican government; and we will oppose the enactment of all such laws and demand the repeal of those now existing."[91]

This plank plainly states that the Sunday closing law impinged on individual religious preferences and employed many of the arguments first stated by Justice Terry in *Ex Parte Newman*. The Democrats warned the public that the law would "restrain or direct a free and full exercise by any citizen of his own religious and political opinion." The apparent truth that the Sunday closing law did not explicitly impel religious practice or criminalize spiritual belief mattered little. Even though the law permitted religious minorities "to enjoy their rights unmolested," compelling those

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89 *The Sunday Law*, S.F. Chronicle, Mar. 6, 1867.

90 *Id.*

91 *Democratic Convention*, S.F. Evening Bulletin, Aug. 31, 1882.

who lacked a spiritual compunction to rest on Sunday was still in "violation of the spirit of the republican government." Terry and others of the same opinion had failed to convert the California Supreme Court to their belief that the Sunday closing law violated individual religious rights. In 1882 they brought their same case to the people.

After the Democrats' victory in the election of 1882, the newly elected governor quickly acted to repeal the Sunday closing law. Governor Stoneman's remarks to the Legislature show a preoccupation with the statute's effect on religious practice. Besides acknowledging that it was "unwise to cumber the statute books with an enactment which experience has proven cannot be enforced," Stoneman proclaimed that the Legislature must repeal the law because "the right to worship free from hindrance or molestation should always be carefully guarded."[92] The paths of the people and courts had departed from each other. The judiciary had held the Sunday closing law to be a pure manifestation of the state's police power. The people, believing that the Sunday closing law negatively interfered with their own religious practice, declared the same law to be poor policy.[93]

Political debates over the Sunday closing law did not only concern religion. Both opponents and proponents of the law marshaled a variety of arguments to promote their view of the law. For example, the League of Freedom's primary complaint focused upon the fact that the Sunday closing law detracted from their ability to profit financially from keeping their saloons open every day of the week. This economic distaste for the law was apparent when the League's leader denounced the prohibition of Sunday work as an "obnoxious and unpopular law" and swore they had "the whole

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92 *Stoneman's Address*, S.F. Evening Bulletin, Jan. 10, 1883.

93 Later attempts to pass Sunday closing laws also aroused the people's concerns over the state's granting religious preference. An 1883 *San Francisco Chronicle* article evaluated a proposed Massachusetts ban on Sunday railroad shipping and found that "[t]o Californians accustomed to nearly the full freedom of Continental cities, it seems strange that objections should be made to the running of railroads on Sundays" and that "to declare as a violation of the Sabbath the running of trains, the delivery of bread, milk, newspapers and other articles indispensible to the modern breakfast, is a relic of barbarianism which will soon find as few defenders as the Massachusetts legislation against witchcraft or the old Blue Laws of California." *Sabbatarianism*, S.F. Chronicle, Dec. 27, 1883.

mercantile community, both wholesalers and retailers, to back them up" in this opposition.[94] Other critics of the Sunday closing law found this regulation to be undesirable because it was simply impractical. One editorial argued for repeal because it believed the authorities lacked the will to enforce it. "[S]uch laws are more than useless: they are absolutely mischievous and demoralizing in their tendency by engendering a disrespect for law in general. Whatever tends to disassociate the idea of law from an idea of justice in the popular mind is a public evil of the greatest magnitude."[95] This opponent expressed little concern that the Sunday closing law could interfere with individual religious rights. It campaigned against continuing the legal restriction on Sunday work purely because this law was unpopular.

Those who supported the Sunday closing law contended that civil concern, falling under the province of the state's police power, justified the act. During public debate over the law, these Californians provided many reasons why the electorate should back the statute as an act "founded on consideration of the public good . . . health and material prosperity."[96] In many ways these arguments fit well into the template of police power legislation that the California Supreme Court had employed when it found the Sunday closing law to be constitutional.

Support for the Sunday closing law melded with larger efforts to promote temperance. The union of these two movements was natural, as saloons were one of the primary targets of the Sunday closing law. Many of those in favor of the Sunday closing law stressed how increasing access to the saloons, by allowing them to stay open on Sunday, imperiled California with the "ravage of the rum curse which is capturing the people every day."[97] At a meeting of a pro-Sunday closing group known as the Home Protection Society, a speaker urged support for the law because the state needed to restrict the dangerous greed of the saloonkeeper who claimed the right "to open the gilded gates of hell even on a Sunday."[98] While this

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94 *The Issue of the Day, supra* note 53.

95 *Unpopular Laws*, S.F. Chronicle, Jun. 12, 1876.

96 *The Issue of the Day, supra* note 53.

97 *The Sunday Law: A New Batch of Arrests To-Day: Notes and Discussion*, S.F. Chronicle, Mar. 27, 1882.

98 *Id.*

speaker's message utilized religious symbolism, his message expressed concern for the people's health rather than their souls.

Even some voices from California's churches specifically called for maintaining the Sunday closing law as a means to counteract the social harms of liquor. One San Francisco religious leader, for example, lamented that the consumption of liquor was the primary public evil in California. Saloons, said the Reverend Dile, "take more money than the Chinese, the Land League, fires, floods and crime and more that is required for orphans, paupers, railroads and war." To his congregation Dile bemoaned the saloonkeeper who continued to flaunt the law and, in a moment of retributive hyperbole, requested: "Oh! would to God we had General Jackson here to hang these rebels who openly avow the purpose to not abide by law of the land, and Ben Butler [a notoriously tough Union general] to close up the saloons at the point of the bayonet."[99] The link between Sunday closing and temperance was both strong and natural. Even when preaching to their congregations, California's ministers found it persuasive to promote the Sunday closing law as a means to protect society from the harms of liquor. Through appealing to a desire to rid the state of the harms of alcohol, proponents of the closing law offered the public a reason to support the law that did not touch upon religion.

Some California ministers also promoted the Sunday closing law as a means to improve working conditions. Reverend Simmons of St. Paul's Church in San Francisco urged his flock to support the Sunday closing law because "there are thousands of laboring men and women all over the state that have no control of their time having sold that to their employers for that upon which they and their families subsist."[100] Across the city at Grace Church, Reverend Needham similarly reasoned that the people should continue to support the act "not so much from a religious as from a sanitary point of view."[101]

Despite the use of civil rationales, proponents of the Sunday closing never entirely abandoned religious justifications for the Sunday closing law. A sermon given by Dr. Beckwith at the Third Congregational Church in San Francisco illustrates how some Californians, even as late as 1882, believed

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99 *The Issue of the Day, supra* note 53.

100 *Id.*

101 *Id.*

the Sunday closing law's primary purpose was promoting religion.[102] Beckwith urged the people to support the law because no one "has any right to come between me and my season of restful communion" and, "having inherited the Sabbath from God, we have a right to it just as God made it." This argument did not rely upon the state's broad police power to justify the law. Beckwith believed California should have a Sunday closing law because his religious beliefs dictated so.

Beckwith's religious defense of the Sunday closing law conflicted with the civil rationales offered by the judiciary and other public supporters of the law. Unlike them, Beckwith rejected that a Sunday closing law properly could serve as a regulation on working conditions. "Men do not need one day in seven for carousels and picnics. If the Sabbath is to be put in these uses it would be better for men's health and prosperity for all the seven days to be consumed by honest labor." For Beckwith, a week without a day of rest was preferable to devoting the Sabbath day to secular activities. "This perverted use by some, prevents its full enjoyment by those who treat it as a day of worship and rest." Instead "it would be better to drive toll through every day than to stop one day to give more time to run a wearier and swifter race of sin." Beckwith further avowed that it "would be false to God, to ourselves, to the Sabbath-breakers themselves, if we did not oppose the secularization of one day of rest." By offering religious rationales for the Sunday closing law, this supporter of the act opposed both those citizens who wished to keep Sunday open for business and the California courts that had declared the law to be a constitutional reflection of the state's broad police powers to legislate for the health, welfare, and morals of the people.

The aftermath of the Sunday closing law's repeal further demonstrates how far popular and judicial opinions had diverged. In 1893 a new statute was enacted that guaranteed each California employee one day of rest in seven.[103] Instead of mandating a statewide closure of businesses on Sunday, this new measure gave each employer the discretion to choose

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[102] *Id.* Beckwith also stated that there were civil rationales for sustaining the Sunday closing law. "We need it for our financial prosperity, our public morals, our social security, our intellectual culture, the perpetuity of our free government."

[103] Johns, *supra* note 70, at 176. The Assembly approved of this Act by a vote of 56–4, the Senate by a tally of 29–0.

the day of rest.[104] Californians treated this new legislation quite differently than the old Sunday closing law. One decade earlier the Legislature had enthusiastically repealed the Sunday closing law, despite strong arguments that its purpose was to promote the public welfare by ensuring that Sunday would be a day of rest for all. Now, once the law had been stripped of its association with Sunday, the Legislature did not hesitate to approve it. The same police power justifications that had failed to convince the California Supreme Court to uphold the Sunday closing law in 1858 carried the day once the specter of religious preference ceased to encumber the law.

SUMMARY

In *Ex Parte Newman* the California Supreme Court departed from contemporary constitutional notions of individual religious rights and declared the state's Sunday closing law to be unconstitutional. This novel legal perspective, however, failed to attain any lasting impact on California jurisprudence. Starting with Justice Field's dissent in *Ex Parte Newman*, the California Supreme Court continually held that this statute did not clash with constitutional protections of religious exercise. By 1882, the Sunday closing law enjoyed an unassailable legal foundation within the state's authority to regulate health, welfare, and morals through its police power.

The citizens of California held a contrary opinion of the Sunday closing law. While the need for labor regulation and temperance certainly had a place in the public's understanding of the law, questions of religious preference never abated. Indeed, during the election of 1882 the victorious opponents, and to some degree the defeated supporters of the Sunday closing law, relied on overtly religious arguments to convince the population to join their cause.

The legal justification, based on the state's police power, has endured.[105] By 1882 it had become settled California law that the prohibition on Sunday

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104 *Id.*

105 Field's doctrine also proved influential when the United States Supreme Court considered a Sunday closing law's constitutionality under the United States Constitution, as one justice declared that "Justice Field's dissent in this case has become a leading pronouncement on the constitutionality of Sunday laws." *McGowan*, 336 U.S. 420, 511 nt. 96 (Frankfurter, J. concurring).

work was "purely a secular, sanitary, or police regulation . . . in no manner influenced by sectarian or puritanical ideas."[106] Time has, however, proved this statement to be only partially correct. During the second half of the nineteenth century, the judiciary excluded questions of religious preference from their opinion of the Sunday closing law. The people of California did not.

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[106] *Burke*, 59 Cal. at 13.