

IN FAVOUR OF KEEPING SUNDAY “SPECIAL”

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1. INTRODUCTION

When the Shops Bill was defeated at its Second Reading in the House of Commons in the early hours of 15 April 1986, Mrs Thatcher is believed to have said that a “mercy killing” had been performed. The Bill had run into considerable difficulty under a weight of public opposition, coming at the time of some disarray in the Government, following the Westland and Leyland controversies and the resignation of two Cabinet Ministers. It was only the second time since 1924 that a Government Bill had been defeated at Second Reading, and was caused by 72 Government backbenchers defying a three-line whip and voting with the opposition.

As presented to Parliament (House of Lords), the Shops Bill had four clauses, the last being by way of consequential amendment. The first abolished Part I of the Shops Act 1950 (hours of closing), and Part IV and the Sunday Acts of 1579 and 1661 (Sunday Trading). Clause 2 removed the regulation of half-day holidays, meal times and Sunday employment for shop assistants (etc.) over 18, contained in sections 17, 19, 21, 22 and 23 of the Shops Act 1950. Clause 3 provided certain rights to established shop workers in connection with Sunday trading.

The nub of the opposition to the Bill was the deregulation of Sunday trading within the wider framework of the removal of restrictions on all shop opening hours. Within the public campaign against the Shops Bill stood the Christian churches, and conspicuously, the Church of England. Only days before the Second Reading of the Shops Bill in the House of Commons, three representatives of the Christian constituency in Britain, the Archbishop of Canterbury, the Archbishop of Westminster and the Moderator of the Free Church Federal Council, had visited the Home Secretary to express their misgivings and to present the Government with a petition of 1.2 million signatories against the content of the Bill. Following the defeat of the proposed legislation, the churches bore the brunt of the criticism for what was perceived to be a narrow-minded and bigoted imposition of religious values on, and against the wishes of, the general population. Criticism even came from otherwise favourable quarters. Lord Hailsham marked his retirement as Lord Chancellor by describing the opposition of the Church to the Shops Bill (in a speech) as a “morass of muddled thinking and even hypocrisy”.¹

The defeat of the Shops Bill 1986 highlighted two particular political and theological problems. The first could be detected at the heart of the Conservative Party. The dispute over Sunday trading demonstrated a friction between libertarian and paternalistic philosophies. The ascendent libertarian ideology, exalting the market and declaring the sovereignty of the consumer seemed at odds with the tradition of a party that sought to ‘conserve’ the very best in British society and to safeguard the family against undue external pressure, whether from the State or the market. The other problem was theological, a difficulty that the Church has wrestled with throughout history: the extent to which Christian theology should

1. “Lord Hailsham’s bitter attack on ‘pontificating’”, Church of England Newspaper, 26 June 1987.

inform and inspire the legislative and commercial programmes of an increasingly non-Christian society. It is necessary to trace the history and theology of Sunday before these questions can satisfactorily be addressed.

2. THE EVOLUTION OF BRITAIN'S SUNDAY TRADING LAWS

A general prohibition on Sunday trading seems to have been in place since as early as the tenth century. A memorandum from Latimer House in Oxford entitled 'Sunday Trade – A Christian Perspective' makes reference to an Act regulating Sunday trading dating back to the reign of King Athelstan (925-942 A.D.) The next and best known statute was the Fairs and Markets Act of 1448. Both the Reformation and the rise of Puritanism in Britain led to a series of Acts that sought to curb amusements, trading and other secular activities on Sunday (e.g. the Sunday Observance Acts of 1625, 1627 and 1677). The current law governing commerce on Sundays is the Shops Act 1950, itself a consolidating Act which incorporates Acts and Regulations from 1912 to 1938. In particular, it reproduces the provisions of the Shops (Hours of Closing) Act 1928, the Shops (Sunday Trading Restrictions) Act 1936 and the Retail Meat Dealers Shops (Sunday Closing) Act 1936.

Section 47 of the 1950 Act states that: "Every shop shall . . . be closed for the serving of customers on Sunday." That is the general principle. Exceptions to this principle are set out in the Fifth Schedule to the Act. This lists exempted goods that it is permissible to sell on a Sunday. Local authorities can make a partial exemption order (permitting shops to open on Sunday morning until 10 o'clock) by virtue of section 48 of the Shops Act 1950 for the sale of bread, fish and other provisions commonly sold in grocers' shops. Section 51 of the Act permits Sunday trading in a holiday resort for up to 18 Sundays a year in goods listed in the Seventh Schedule to the Act. Section 54 creates a number of exemptions for markets in London established prior to 1 January 1936.

There are a number of additional special statutory exemptions to the ban on Sunday trading in the Shops Act 1950. These are, variously, airport shops (Airports Act 1986), quayside markets, Newcastle (Tyne and Wear Act 1976), National Exhibition Centre Birmingham (West Midlands County Council Act 1980) and a number of venues in Greater London by virtue of the Greater London Council (General Powers) Acts 1981 and 1983.

As there was a wide political and retail consensus on the ban on Sunday trade after the war, and partly because the Shops Act 1950 was a consolidatory measure, very little time was spent in Parliamentary debate on the issue. This, to a degree, accounts for some of the Act's undoubted deficiencies. The four decades since the passing of the Act have seen over 20 attempts to reform or abolish the ban on Sunday trading. It was not until the 1980's that initiatives to change the law grew more concerted and sophisticated, beginning with a bill by Baroness Trumpington in the House of Lords, which would have repealed all restrictions on Sunday trading and which passed all its stages in the Lords in 1981 but failed to make progress in the Commons, and culminating with the Government Shops Bill of 1986. The erosion of the post-war consensus has been put down to many reasons, some of which have more merit than others.

3. THE EROSION OF CONSENSUS

Many cultural changes have taken place in the last two decades which have contributed to the pressure to reform the law. Chief of these has been the growth in the numbers of married women in paid employment. The case is made

that married couples, particularly, need longer shop opening hours to do both functional shopping, e.g. for groceries, and time-intensive shopping, e.g. for furniture. A relaxation of the Sunday laws would apparently make life easier for growing numbers of double-income families. Against this may be set the lengthening of *weekday* shop opening hours, and the shortening of the working week, a trend that by the next century should supply greater leisure time for those in paid employment. The case for the consumer has been put for many years by both the Consumers' Association and the National Consumer Council. A steady flow of public opinion polls have been produced, allegedly showing a majority of consumers wanting to give more shops the opportunity to open on Sunday.

Alongside the changing life-style of the consumer has been the changing profile and placement of the retailer. The retail trade has evolved vigorously in recent years. Britain has seen the establishment of the trend towards out-of-town trading at the expense of the High Street. The multiple chains have pioneered this development, and many of these chains have also taken the initiative in the deregulation of shop hours. Chief players in this scene are the DIY multiple chains. The economic and cultural circumstances of Britain have combined to provide a rapid breeding ground for the DIY trade. Large increases in home ownership, encouraged by the Conservative Government throughout the 1980's, coupled with greater household wealth and easier credit, have fuelled the DIY trade. A number of DIY chains have made huge profits, enabling them to multiply and diversify with considerable success. The opportunity to trade on Sunday would sustain the financial success of the DIY multiples. The idea is that Sunday provides married couples with the opportunity to deliberate over large purchases. It seems that some chains achieve 25 per cent of their weekly turn over on Sundays alone. A similar story may be related about horticultural trade. A number of food supermarkets have also expressed an active interest in the deregulation of Sunday trading and believe they can carve a niche in the Sunday market as well.

Cultural and economic changes of this description, though significant, are not determinative. A political impetus is required, and this has been supplied by the Conservative Government. Since coming to power in 1979, the Thatcher administration has sought countless opportunities to free trade and increase competition and efficiency. Unnecessary constraints on the market have been vigorously pursued. In time it became clear to the Cabinet, and a Home Office under Leon Brittan, that Sunday was one such constraint. For many holding to a free market philosophy, the Shops Act 1950 has been the embodiment of protectionism, the power of vested producer interests secured at the expense of the ordinary consumer. In an era when the consumer is sovereign, the Shops Act has been perceived as a fetter on the consumer's choice.

Soon after the return to power in 1983, the Home Secretary, Leon Brittan Q.C., set up a Committee of Inquiry "To consider what changes are needed in the Shops Acts, having regard to the interests of consumers, employers and employees and to the traditional character of Sunday, and to make recommendations as to how these should be achieved." It was chaired by Robin Auld Q.C. and had two other members, Liliana Archibald (then International Affairs Adviser to Lloyds) and Frances Cairncross (then Womens' Page Editor of "The Guardian"). The hope was that the Committee would produce an answer broadly in line with the Government's philosophy. Its conclusion in October 1984 was that "We recommend the abolition in England, Wales and Scotland of all legal restrictions on the hours for which shops may be open to serve customers". The hope had been fulfilled. In December 1983, the Home Secretary also appointed the Institute for Fiscal Studies to undertake an economic review of the likely effects of

possible changes in the permitted trading hours of shops. Its conclusions were that “Our analysis shows that although extensions to trading hours undoubtedly would have effects on retailing costs, prices and employment, these effects would generally be small.”

The twin themes of Auld, and subsequently the Government, were that the existing Shops Act was both unenforceable and riddled with anomalies. Each tended to bring the law into disrepute. The argument about anomalies was particularly emphasised. There was much political capital to be made out of a law that apparently allowed the sale on Sundays of pornography, but not the Bible, that permitted the sale of gin, but not dried milk and which gave a special exemption for consumers needing fodder for their mules but not nails for their DIY. The case was set. A climate for deregulations had been created. It was against this backdrop that the Church, and others, began to campaign against the Shops Bill.

4. A BIBLICAL MANDATE FOR SUNDAY?

Against this rise of political and economic pressure can be traced a decline in spiritual interest. Religious observance has waned in the same period that the impetus for deregulation has gained. The two may not be unconnected, as a decrease in spiritual interest, most evident on Sunday, would seem to leave a vacuum most naturally filled by material consumption! Professor Victor Frankl of Vienna has detected and diagnosed what is described as the ‘Sunday neurosis’, a depression that afflicts some people when, after a week of activity, the emptiness of a life is exposed by the quiet of Sunday.²

A restlessness of this nature may be satisfactorily alleviated by an extension of activity to a seventh day. This diagnosis, though pertinent, leaves the Church to find a sound basis on which to campaign. This basis must adequately address the deceptively simple concept of an individual’s freedom of choice. This *laissez faire* philosophy is at the heart of Government ideology and in this particular instance obliges the individual to make his/her choice about whether to “keep Sunday special” or not. If a person wishes to shop, or to play sport, that is their choice, and the criminal law should play no part in coercing a particular response, whether to engage in or refrain from a course of action on Sunday. By this token, the Church is not in a position to impose its views on an individualistic society, and should refrain from campaigning on what people may do on a Sunday. If the Church, therefore, is to find safe ground, its response should be found in the authority of Scripture. A biblical mandate may indeed be found for opposing the commercialisation of Sunday. Its *origin* is not, however, found in the decalogue of Mount Sinai, but in the creation narrative of early Genesis.

When Moses delivered the decalogue to Israel, the reason given for keeping the Sabbath was that the example of the Sabbath rest had been set by God himself in the creation.

“By the seventh day God had finished the work he had been doing; so on the seventh day he rested from all his work. And God blessed the seventh day and made it holy, because on it he rested from all the work of creating that he had done”.

Genesis 2 v. 2-3

The Sabbath, therefore, is a creation ordinance. It is of *universal* applicability, a principle designed by the Maker for the good of society in general. The work of creation had taken six days, and on the seventh God had rested from

2. Quoted in Paul Tournier, “Learning to Grow Old”, Highland Press 1985.

his labour. The language used in Genesis is anthropomorphic, but the message is apparent: God had once and for all set a pattern of one day's rest in seven from work.

This is reinforced in the restatement of the law to Israel in Deuteronomy. The nation was obliged to observe the Sabbath day in order "that your manservant may rest as well as you" (Deut. 5 v. 14). The Sabbath had been made for man so that he could enjoy the benefits God intended for him. Indeed, the protection of Sundays for low-income workers was, and still is, one of the simplest and clearest ways to legislate against exploitation. It has been described by the late Earl of Stockton as the "greatest social reform in the history of civilisation."³

The Israelites clearly understood that the Sabbath belonged to the Lord and that the community was to set this day aside in honour of Him. It was, furthermore, a sign of Israel's redemption from slavery in the land of Egypt, where the Jews had no rest from their labours. With a day set aside from the pattern of work, the Israelites were compelled to recognise that there was more to life than the day by day treadmill of work and the monotonous trade in material possessions. The resettling of the nation of Israel was a most remarkable achievement. The possession of the fertile land of Canaan gave many people the first opportunity to make great wealth for themselves: people who had previously been under cruel taskmasters. The temptation to overwork and make material possessions an end in themselves must have been great. The Sabbath enjoined Israel to recognise eternal values, and to pause and appreciate who it was that had given them this remarkable deliverance from captivity and the ability to make wealth for themselves.

The prophets often isolated the abuse of the Sabbath as evidence of the nation's spiritual decline (e.g. Amos 8 v. 4-6). Conversely, Isaiah showed that if people refrained from indulging their own wishes on the Sabbath, and sought God's purpose for the day, he would bless and prosper all their ways (Is. 58 v. 13-14). Some have interpreted Christ's clashes with the religious establishment of his day over the use of the Sabbath as an indication that he had little respect for the Mosaic Law. This idea is, however, ill-conceived. The legalistic additions of the Pharisees to the community observance of the Sabbath had made the day a misery-bound tradition. Christ cut away at these man-made rules, to rediscover for the Jews the day that God intended.

Following the death and resurrection of Jesus Christ, the Christian Church came, over many years, to recognise the first day of the week as 'the Lord's Day'. This description was given to Sunday because it was the day when Christ's Lordship was manifest in the resurrection. In the same way that Israel remembered their freedom from slavery in Egypt on the Sabbath, so Christians remember their freedom from the slavery to sin and the devil on the Lord's Day. This demonstrates an important theological principle on which the Church campaigned in 1986, that the Old Testament Sabbath does not find its fulfilment in the New Testament Sunday. Rather, the Sabbath rest into which God's people can enter is the salvation that God has provided through Christ's atoning death on the cross (Heb. 4 v. 1-11). However Christian observance of Sunday through the centuries has meant that God's beneficent purposes for mankind through the institution of the Sabbath have been enjoyed worldwide.

3. House of Lords Official Report, 21 January 1986, Vol. 470, No. 30, Col. 160.

Sunday is the day when the Christian community generally gathers to worship. It is also a day appreciated by millions of people for the rest and peace it provides from the increasingly hectic pace of modern life. It is a day for recreation and the renewal of strength, providing a focal point as the one day when all family members can be sure of a day together. These benefits demonstrate the inadequacy of alternative patterns of rest. The more each individual takes a different day off, with some off work on Tuesdays and some Thursdays for instance, the more the fruit of the one shared day will wither. Inevitably, some have to work on Sundays to cater for the needs of others. This cannot be avoided. But the numbers working can, and should, be minimised in so far as is reasonable for the benefit of all. There is a delicate, yet crucial balance to be struck between those who serve and those being served.

The notion that Sunday is merely what the individual chooses to make of it is therefore rather simplistic, because it overlooks the critical value to the *community as a whole* in sharing the benefits of a special day. This was the principle on which the Church campaigned. Certain claims, made with hindsight, that the Church was defending a vested interest, or that they submitted to the authority of producer and labour organisations with vested interests, are unfounded. A close inspection of the consequences of the ban on Sunday trading confirms the theory that God has designed the pattern of life this way for the benefit of the wider society.

5. THE BENEFITS OF THE HISTORICAL SUNDAY

Any assessment of longer retail hours should consider the social impact involved. There are approximately 2.3 million people working in retailing. To add to this are many working in ancillary services such as police, transport and waste disposal. Proposals to deregulate Sunday trading would deprive many shop staff and ancillary workers of the only day off work that they can share with their families. Time off in lieu during the week when a spouse is at work and the children are at school is inadequate compensation. A Marplan survey in June 1988 revealed that over 80% of people have lunch with their families on Sunday. The survey also revealed that over 20% of the population regularly visit elderly relatives and other elderly people on a Sunday. Keeping shops shut on a Sunday gives many people space to nurture these family ties. It is difficult also to imagine how shop staff would be adequately protected from being compelled to work on Sundays. The Auld Committee conceded that a statutory provision to protect shop staff from being discriminated against if they refuse to work on Sunday would be "impracticable". It is easy for an unfair employer to discover ways to circumvent the clause, perhaps by denying promotion opportunities. It would seem that the only effective way to protect shop staff in law is by continuing the general prohibition on Sunday trading.

Another section of the community that would suffer through unlimited Sunday trading are residents who live close to shopping areas, who would lose what little respite they have from the noise and bustle of the week. The Auld Committee recognised that local residents would lose out, but could offer no safeguards to protect them from the effects of seven day trading. Heavy traffic and litter would prove a continuing problem. The Association of Chief Police Officers maintains the view, presented to the Home Office in 1985, that the deregulation of Sunday trading would increase the possibility of public disorder and violence, and mean that traffic and parking regulations would need revising. This would require more police and traffic wardens to work on Sundays, and reduce police cover in the week unless there was an increase in public expenditure on

police services. A Co-operative Union poll in November 1985 showed that 70% agreed that “it would be a shame if Sunday became just like any other day”. Commercial activity on Sunday is likely to make a significant impact on the environment.

A third area of concern is the viability of the independent trader. Seven days trading would increase overheads, but is unlikely to generate additional turnover for most shops, especially smaller traders. The Institute for Fiscal Studies observed in its report that unlimited trading would lead to an acceleration in the decline of the independent trader (Institute for Fiscal Studies, “The Regulation of Retail Trading Hours”, 1984, para. 15). There would be an increase in the trend towards out-of-town shopping in a market dominated by multiple chains. This is likely to result in less consumer choice, the very thing deregulation is supposed to enhance. The groupings likely to suffer would be the elderly, low-income and low-mobility families.

For reasons such as these, the Church campaigned against Sunday trading in 1986 and will continue to do so as successive efforts are made to deregulate shop opening hours. The basis of this opposition is not narrow self-interest but a concern that the needy and marginalised in society are not cast aside in the strife for extra profit. In December 1988, the Archbishops of Canterbury and Westminster, the Moderator of the Free Church Federal Council and the Chief Rabbi wrote to the Home Secretary to affirm these principles. Declaring their common biblical heritage, the religious leaders said that a “nationally observed day in the week substantially set apart for activities which are other than commercial in nature . . . helps to preserve and enhance many of our society’s values.” The letter went on to say:

“Moreover, the specific abandonment of such a nationally observed day poses a real danger to family life and social relationships and, in particular, to the welfare of workers who would be affected. This then weakens and impoverishes society as a whole, it is a threat to more than just the Christian communities and their committed members.”

The Church must necessarily be positive in asserting a better way, and part of the responsibility of Christians, if not the Church itself, is to propose adequate and workable alternatives to the partly flawed Shops Act 1950.

6. THE NEED FOR A SENSIBLE REFORM OF THE LAW

There is a wide consensus that the Shops Act 1950 is in need of reform even though there is little agreement on how far that reform should go. The Church has been careful to distinguish between principle and policy in its political statements. It is difficult, if not dangerous, for the Church *qua* Church to pronounce policy statements. However, there are times when Christian institutions, if not the Church itself, must bridge the gap between principles and policies. This is most apparent in the Sunday trading debate.

The Conservative Government has committed itself in the 1987 Election Manifesto to securing a reform of the Shops Act that will give “sense and consistency to the law.” The former Minister of State at the Home Office in charge of the process, Mr Timothy Renton MP, personally favoured the deregulation of Sunday trading from 12 noon to 6 p.m., with so-called “community shops” (e.g. newsagents and petrol stations) able to open for the rest of the day as well. This idea has also been proposed by the large commercial lobby group called the Shopping Hours Reform Council, who are backed by many of the DIY multiple chains.

It would seem that the same problems are associated with this proposal as with the defeated Shops Bill 1986. A half-day trading option is expected to be a prelude to entire deregulation in time. Once the principle of Sunday trading is established it will be difficult to resist the logic of abolishing all restrictions on commercial activity on Sunday. Resistance to a proposal of this nature is, however, only effective if a viable alternative both to it and the vagaries of the Shops Act can be created. The Church can be grateful that the Jubilee Centre in Cambridge has been working on alternatives for three years now and has come up with some concrete proposals. As the Jubilee Centre acts as secretariat to the influential Keep Sunday Special Campaign, there is scope for these proposals to affect Parliamentary decision-making. The search for an alternative with an inner consistency and durability that could capture the consensus began in Europe.

A curious dimension to the debate in 1986 was the way the Continental Sunday was held up as the model of economic freedom to follow. The idea of open shops and brisk trading in Europe is misleading, however, and it owes much to the power of the cliché that the idea gained ascendancy. Jubilee Centre research into the trading laws of Britain's five major EEC partners demonstrated an underlying Continental theme. West Germany, Italy and the Netherlands have a general prohibition on Sunday shop opening similar to the general prohibition in the Shops Act 1950. However, exemptions from this rule are framed not by classes of goods but by type of shop. France and Belgium, on the other hand, prohibit Sunday trading by laying down sanctions against the employment of shop staff on Sundays. All of Britain's European partners in the EEC have legislation to protect the special character of Sunday, and it was apparent that Britain could learn from the European experience.

The most obvious lesson was that a careful regulation of Sunday retailing was sustainable in other dynamic economies. The second lesson from Europe was that exemptions from the Sunday ban could be framed by category of shop, and not type of goods as found in the Shops Act. This approach helps to solve an embarrassing and awkward problem for retailers selling on an exempt product basis, by relieving them of the need to cordon off sections of their shop, or to agree to check-out certain items but not others. If a shop could open, it would be free to trade in its full product range.

The one problem remaining with this approach is which criteria, if any, could be employed to indicate which shops could open and which could not. The REST principles supplied this. Acknowledging that Sunday is crucial to shopworkers and to the wider community as a family day of rest, recreation and worship, while recognising that there are legitimate consumer needs, helped the Jubilee Centre to enunciate four categories on which to frame exemptions. These were Recreation, Emergencies, Social gatherings and Travelling public. An additional principle that limited trading within these categories was whether the purchase could reasonably be made before, or after Sunday.

This conceptual framework provided the basis on which to establish classes of exempt shop, selling mainly goods which fall within these REST principles. These would include restaurants and take-aways, off-licences, chemists (for medical items), small general food shops, small newsagents, petrol stations and motor spares shops, historic houses and sports centre outlets, garden centres, florists and travel centre kiosks. A system of self-financing registration with the local authority would facilitate the task of enforcement officers and ease the growing burden on the courts. It would also give teeth to the law by raising penalties to a more realistic level. A consultative document called "The REST Proposals"

containing these proposals, which has already obtained the support of major retailing bodies such as the National Chamber of Trade, the Co-operative Union and the Horticultural Trade Association, was published in September 1988.

In the REST proposals a fresh stance has been taken. It is not the only compromise available, but in sorting out systematically and thoroughly the problem of anomalies in the law, it provides a rallying point for those who wish to fight to preserve family life, and to protect the interests of a large and relatively low-paid section of our work force.

In November 1989 the European Court held in *Torfaen Borough Council v B. and Q.* that it was for the Member States of the EEC, not for the EEC itself, to determine regulations regarding Sunday trading. B and Q had argued that the Shops Act Contravened Article 30 of the Treaty of Rome, but the European Court ruled that it did not, provided that the main effect of the Act was to protect Sunday as a unique day rather than to restrict imports. The adjourned case In Torfaen is accordingly due to be heard at the end of January.

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