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Thou Shall Not Hunt:
A Historical Introduction to and Discussion of the Modern Debate Over Sunday Hunting Laws

Mike Balestra

INTRODUCTION

Long ago, when the church bells tolled, everyone listened. Sundays harbored a constant, unbending force in the lives of Americans. There was never any doubt about what that day held in store—that was God's day, a day of rest and worship. So important were Sundays that restrictions on what one may or may not do, according to religious authority, found a way into the law books of many American states. Statutes which came to be known as “blue laws” restricted “working, shopping, drinking, dancing and other activities on the Sabbath.” Actually, many of the laws simply prohibited almost everything except worship, and to compile an exhaustive list of prohibitions would be nearly impossible. However, one notable prohibition pertains to hunting on Sundays, and the laws enforcing it will be the focus of this Note.

For a time, Sunday laws were heeded and valued. However, time leaves nothing untouched—even the untouchable persuasion of God. Accordingly, public distaste for Sunday laws developed and eventually led to their general demise. Nonetheless, relics of a past time, a time when Sundays were reserved for rest and worship, remain in the statutes of many states. Many of those relics concern the sale or consumption of alcohol on Sunday and this is probably the prohibition most commonly linked to the term blue law. For example, the state of Kentucky retains a blue law outlawing the retail sale of alcohol on Sundays unless such sales are approved locally. Maine also forbids the sale of alcohol on Sunday between

1 Mike Balestra is a 2005 graduate of Colgate University and is expected to graduate from the University of Kentucky College of Law in 2008.
3 See Andrew J. King, Sunday Law in the Nineteenth Century, 64 ALB. L. REV. 675, 676 (2000).
4 KY. REV. STAT. ANN. § 244.290(2)-(3) (West 2006).
the hours of 6:00 a.m. and 9:00 a.m. Even Alabama has been influenced by the tradition of blue laws, whose legislature has made it unlawful, unless authorized by a local act, "to buy, give away, sell, or serve for consumption on or off the premises, or to drink or consume any alcoholic beverages in any cafe, lunchroom, restaurant, hotel dining room, or other public place on Sunday after the hour of two o’clock A.M.“

Similar to the ban on alcohol sales on Sunday in some states, eleven states enforce laws that ban or restrict hunting on Sundays. The following is a discussion of these Sunday hunting laws. Part I of this discussion will explore the history of their predecessor blue laws, which date nearly as far back as written history, and it will focus in particular on the Christian lineage of these laws and their tradition. Proscriptions on Sunday activity have a rich and sometimes humorous history in America, and some background knowledge is essential to understanding the modern debate surrounding these laws. Further, it helps place contemporary issues in a proper perspective. Part II will briefly discuss the old justifications for such legislation and touch on the issues surrounding modern justifications. Part III will cast Sunday hunting laws in a constitutional light, discussing *McGowan v. Maryland* and other important case law that has upheld these laws on Constitutional grounds. This Note will also discuss the First and Fourteenth Amendments and their very important role in carving out a place for Sunday legislation in today’s society. Part IV will explore some specific Sunday hunting laws and illustrate notable variations from state to state. These variations are important in the modern debate surrounding Sunday hunting laws, which will be addressed in Part V. Hunters, on the one hand, seek to have these laws repealed in order to create increased opportunities for their hunting pursuits, to protect the tradition of their sport, as well as for economic considerations. Conversely, proponents of these laws advocate a variety of reasons for keeping them on the books, including some of the same religious concerns that spawned the legislation. Finally, the conclusion will suggest that Sunday hunting laws should be


8 See infra notes 16-27 and accompanying text.

9 See infra notes 28-33 and accompanying text.

10 See infra notes 34-52 and accompanying text.


12 See infra notes 53-82 and accompanying text.

13 See infra notes 83-111 and accompanying text.

repealed, at least so far as they concern private land. Some states that still maintain Sunday hunting laws have taken steps in this direction, but have yet to succeed.

I. HISTORY OF SUNDAY HUNTING LAWS

Laws that legislate the use of one’s time on Sundays have taken on various names and for variety’s sake, many shall be used in the following text. Examples include “‘blue laws,’ ‘Sunday legislation,’ ‘Sunday-closing laws,’ or ‘Sunday statutes.’” For the purposes of this discussion, the subset restricting hunting on Sundays will also be referred to as “Sunday hunting laws.” No discussion of these laws could be complete without a brief introduction into their rich and interesting history.

Most associate Sunday laws with Christianity, but the practice of resting on Sunday seems to have been borrowed from an even earlier pagan tradition. Constantine in 321 A.D. ordered, “let all judges and all city people and all tradesmen rest upon the venerable day of the sun.” Constantine went on to preclude farmers from the provision in some instances, but that was seemingly the only exception. Because early Americans were Christians, it was the Bible that governed their behavior. Therefore, it is necessary to note the original Sunday restriction as far as Christianity is concerned, Exodus 20:8–11:

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.

If only today’s legislation could be so clear. No resort to outside sources is needed to glean the meaning of this text. According to the Bible, Sundays are for rest, period.

Exodus 20:8–11 has been inducing secular legislation for centuries, and the tradition was transported to America from England with vigor. “The first Sunday law passed by British subjects on American soil was enacted

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15 See infra notes 112–15 and accompanying text.
17 Id. at 9 (quoting A.H. Lewis, A Critical History of Sunday Legislation: From 321 to 1188 A.D. 19 (1888)).
18 See id. (quoting Lewis, supra note 17, at 19).
19 Exodus 20:8–11 (King James).
20 Laband & Heinbuch, supra note 16, at 3.
by the Colony of Virginia in 1610."\(^{21}\) Perhaps an influential predecessor of "three strike laws," that law provided capital punishment for third-time offenders who failed to "repair in the morning to the divine service and sermons preached upon the Sabbath day, and in the afternoon to divine service, and catechizing ... ."\(^{22}\) Luckily, punishments lessened in severity as time passed, though the laws maintained their influence. For example, in Tennessee in 1803, "exercising any of the common vocations of life" earned one a $10 penalty.\(^{23}\) Adjusted to today's dollars, that equals roughly $135.\(^{24}\) Long before that in Virginia, just thirteen years after capital punishment was deemed appropriate for third-time offenders, the punishment was reduced to forfeiture of a pound of tobacco for missing service on Sunday, and forfeiture of fifty pounds if one missed a month of service.\(^{25}\)

Even society's elite were not immune from the reach of Sunday legislation. In 1789, President George Washington created a stir in Connecticut for traveling on Sunday.\(^{26}\) Perhaps it was because of his political swagger, or maybe because he was on his way to attend church in New York, but Washington was apparently let off the hook with the modern-day equivalent of a warning—so long as he traveled no further than he promised.\(^{27}\)

It is clear that these laws were to be taken seriously when first enacted. Hunting on Sunday was such a serious offense that it might have caused a colonist in 1610 to meet an early fate, and perhaps justifiably so, as such audacity might cause the same to more fragile members of the community due to the sheer shock value. Today, such strong reactions to Sunday hunting laws are rarely heard from the pulpit, so why do they still exist? The next section will discuss this issue.

II. ORIGINAL AND MODERN JUSTIFICATIONS

It is surprising how much society can change in a short few hundred years. Looking at early American Sunday legislation, it is obvious that citizens were prohibited from partaking in certain activities—essentially everything but worship—on Sundays to force them to worship.\(^{28}\) In fact, for people

\(^{21}\) Id. at 30.

\(^{22}\) Id. (quoting WILLIAM ADDISON BLAKELY, AMERICAN STATE PAPER BEARING ON SUNDAY LEGISLATION 33 (William Allen Colcord ed., De Capo Press 1970) (1911)).

\(^{23}\) Id. at 37; TENN. CODE ANN. § 39–4001 (1803).


\(^{25}\) LABAND & HEINBUCH, supra note 16, at 30 (quoting BLAKELY, supra note 22, at 34).

\(^{26}\) Id. at 38 (citing ALICE MORSE EARLE, THE SABBATH IN PURITAN NEW ENGLAND 74–75 (1891)).

\(^{27}\) Id. (citing EARLE, supra note 26).

\(^{28}\) See id. at 30–37 (listing colonial blue laws by colony, in chronological order).
SUNDAY HUNTING LAWS

who left their home in England so they could worship as they pleased, early Americans were remarkably intolerant of people actually doing so. Indeed, Sunday legislation was written to require people to worship and effectively “enforce the church’s monopoly vis-à-vis saving men’s souls and collecting alms.” Statutes did not hide their purpose and did not need to do so. For example, a law passed in Georgia in 1762 provided:

Whereas there is nothing more acceptable to God than the true and sincere worship and service, according to his holy will, and that the keeping holy of the Lord’s day is a principal part of the true service of God, which in this province is too much neglected by many . . . be [sic] it enacted . . . that all and every person and persons whatsoever, shall [sic] on every Lord’s day, apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly or privately, or having no reasonable or lawful excuse, on every Lord’s day shall resort to their parish church . . . .

Contrast that language to a modern Delaware statute, one fairly representative of a typical Sunday hunting law:

On Sundays, no person shall hunt or pursue any game birds or game animals with any dog or any kind of implement which is capable of killing said game birds or game animals, except as provided in subsection (b) of this section.

Though times have changed and likewise, the passions of legislators have subsided, the effect these statutes have on Sunday hunting remains the same.

As in the comparison of the 1762 Georgia law to the modern Delaware statute, what modern Sunday hunting laws lack in unadulterated religious fervor, they more than make up for with boredom and ambiguity as to their rationale. Rightfully so, for it should come as no surprise that after being beaten, killed, or forced to forfeit fifty pounds of tobacco for not attending church, citizens grew wary of Sunday legislation and thought it best to keep religion out of law books. Thus, whatever the modern justifications for these laws may be (indeed, one may opine as to whether the justifications have changed at all amongst many legislators), they are required to at least be maintainable on some grounds other than religion. The reasons for this will be discussed in the Part IV. First, we should take a brief survey of modern Sunday hunting laws.

29 See id. at 39.
30 Id.
31 Id. at 34–35 (quoting BLAKELY, supra note 22, at 51–52).
III. SUNDAY HUNTING LAWS BY STATE

Some Sunday hunting laws are more rigid than others. Most states that still have a prohibition on Sunday hunting have narrowed them to only apply in certain circumstances—usually to fulfill a specific policy goal. For example, New Jersey’s Sunday hunting law allows some latitude to farmers who have a strong interest in controlling nuisance species on their property. Pennsylvania has a similar provision specifically identifying foxes and coyotes as species to be targeted. Further, Delaware allows the hunting of red foxes with dogs on Sundays, but by no other means.

Deer is another nuisance species that has spurred the relaxation of some states’ Sunday hunting laws. However, unlike foxes and coyotes, which mainly plague farmers by killing livestock, deer overpopulation affects a much larger portion of the population, including those in suburban areas. In Maryland, for example, the Department of Natural Resources may allow deer hunting on the first Sunday of the firearms and archery seasons in some counties.

Sunday hunting laws have been relaxed with regard to the trapping and dispatching of animals in many other states as well. New Jersey allows trapped animals to be killed with certain low-caliber rifles on Sundays, presumably to keep disturbance to a minimum.

Maine has perhaps the most stringent Sunday hunting law, providing no exceptions to the ban. That law simply states that “[a] person may not . . . [h]unt wild animals or wild birds on Sunday,” whereas some states such as Maryland have relaxed their laws so as to render them riddled with exceptions as previously mentioned. Virginia’s law is also strict, allowing only an exception for raccoon hunting until 2:00 a.m. on Sunday morning. Additionally, the Virginia statute specifically forbids the hunting of nuisance species on Sundays. Nonetheless, there is ample evidence of a strong movement to eliminate Virginia’s prohibition. Last year, a bill was presented to the Virginia House Committee on Agriculture, Chesapeake and Natural Resources that, if passed, would allow hunting on Sundays west of the Blue

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35 34 Pa. STAT. ANN. § 2303(b.1) (West 1997).
36 Del. CODE ANN. tit. 7, § 712(b).
40 Id.
41 See Md. CODE ANN., NAT. RES. § 10–410(a)(2)–(3).
43 Id.
Ridge Mountains. Unfortunately for Virginia’s hunters, the bill never made it out of the committee. But there is still pressure to change the law in Virginia. Though the law likely will not change in the near future, the Virginia House of Delegates once again considered lifting the ban as it concerns private land. Suspicions that this may finally be the time to lift Virginia’s Sunday hunting ban were spurred when the Virginia Department of Game and Inland Fisheries “recently released survey findings showing that 62 percent of the state’s hunters favor Sunday hunting, while only 34 percent oppose it.” However “[c]ompelling as they may be, those figures weren’t enough to convince politicians to abandon their traditional stance on the controversial subject.” This study does present encouraging news for those advocating change, as just a decade ago the majority of hunters that were polled supported the ban. However, this recent effort to repeal it lacked the political leadership needed to undo this law, the roots of which have no doubt taken a strong hold on Virginia’s law books.

Though each state’s law is different, West Virginia has adopted a well-crafted law that allows counties, and thus specific factions of the state, to control their Sunday hunting directly. The law holds that while Sunday hunting on public land is prohibited statewide, counties may elect to waive a default ban on Sunday hunting on private property. This unique law allows citizens much more leverage to control their activities and mold legislation to their particular interests. It is an excellent example of a middle ground struck between those opposed to and those in favor of Sunday hunting.

Contrary to this middle ground, a recent bill introduced in the Massachusetts House of Representatives on January 10, 2007 would have completely repealed the Sunday hunting law in that state. The bill did not pass, and while the likelihood of passing such a drastic bill was slight, it is evidence that actions are being taken in Massachusetts to allow Sunday hunting. In the future, it may be wise to initiate a more moderate attempt at attacking the law.

Though Sunday hunting laws differ from state to state, each must pass constitutional muster, and constitutional attacks are one way in which

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45 Id.
47 Id.
48 Id.
49 Id.
50 Id.
citizens have tried to eliminate these laws. The following section will include a brief discussion of the Establishment Clause and the Equal Protection Clause of the Constitution, and how they have been used to challenge Sunday legislation, including Sunday hunting laws.

IV. SUNDAY HUNTING LAWS AND THE CONSTITUTION

Before the Bill of Rights found its way into the text of the Constitution, Sunday laws of all sorts were legitimate. That soon changed with the addition of the Establishment Clause of the First Amendment, which reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Originally, this language seems to have been read as proscribing any form of national religion—fitting for a country founded on the idea that one should be free from religious persecution. However, at the time the First Amendment was drafted, the states were free to create any such religion, or laws in respect thereof, that they pleased.53 Indeed, many states did just this. States including "Connecticut, Georgia, Maryland, Massachusetts, New Hampshire, and South Carolina"56 had laws creating state sponsored religions at the time the First Amendment was passed.57 On the other hand, some states followed Congress’ lead in adopting policies against such laws. “At the time of the adoption of the First Amendment, Virginia, Delaware, New Jersey, New York, North Carolina, Pennsylvania, and Rhode Island had enacted policies opposing the establishment of state religions.”58 These states represented the forerunners of a movement that preceded the Fourteenth Amendment, which officially applied the proscription recognized by Congress to the states. That Amendment reads, in pertinent part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws.59

53 U.S. CONST. amend. I.
54 See Robert R. Baugh, Applying the Bill of Rights to the States: A Response to William P. Gray, Jr., 49 ALA. L. REV. 551, 555-56 (1998) ("On its face, the First Amendment applies to the national government, not the states"). Thus, the federal government was prohibited from making laws respecting religion, but states were free to do so.
55 See id.
56 Id. at 556.
57 Id.
58 Id.
59 U.S. CONST. amend. XIV, § 1.
This section, affectionately known as the Equal Protection Clause, is thought by some to have done away with state-supported religion. Interestingly, however, most if not all states had done so on their own initiative before the Fourteenth Amendment was passed.

The United States changed considerably between 1791, when the First Amendment was adopted, and 1868, when the Fourteenth Amendment became a part of the Constitution. Our nation's history following the passage of the First Amendment shows a complete abandonment of state established religions. Consequently, by the time the Fourteenth Amendment was adopted, freedom to exercise religion had come to mean that states would not impose religious views on their citizens.

Thus, the Fourteenth Amendment does more than it would seem on its face. States certainly may not recognize a state religion; that much is clear. However, they must also abstain from creating laws that respect religion.

State Sunday legislation was suddenly in the crosshairs of Congress, and became a hot issue of debate. State-established religions may have essentially been a thing of the past by the time the Fourteenth Amendment was ratified, but Sunday legislation was not. The obvious issue with an altered conception of the meaning of the Establishment Clause concerned the validity of Sunday legislation, and whether it, by its very nature, violated the Constitution. This issue has reached the United States Supreme Court on more than one occasion. The court considered the legality of blue laws for the first time in the case of Soon Hing v. Crowley. But it was not until 1961 that the court ruled decisively on the issue, and although there were several cases decided that year, McGowan v. Maryland is regarded as the most significant.

McGowan v. Maryland did not concern Sunday hunting laws, but it laid the foundation for future challenges to those laws on Constitutional grounds. The appellants in McGowan were employees of a department store who violated a Maryland statute when they sold "a three-ring loose-leaf binder, a can of floor wax, a stapler and staples, and a toy submarine" on a Sunday. The statute "prohibited, throughout the State, the Sunday sale of all merchandise except the retail sale of tobacco products, confectioneries, milk, bread, fruits, gasoline, oils, greases, drugs and medicines, and newspapers and periodicals." The Constitutional issue raised was whether Maryland's

60 Baugh, supra note 54, at 556.
61 See generally U.S. CONST. amend. XIV.
62 Soon Hing v. Crowley, 113 U.S. 703 (1884).
65 Id. at 422–23.
statute violated the Establishment Clause of the First Amendment made applicable to the states through the Fourteenth Amendment.66

This case's usefulness is perhaps derived from the obvious and general argument made by the appellants,

that Sunday is the Sabbath day of the predominant Christian sects; that the purpose of the enforced stoppage of labor on that day is to facilitate and encourage church attendance; that the purpose of setting Sunday as a day of universal rest is to induce people with no religion or people with marginal religious beliefs to join the predominant Christian sects; that the purpose of the atmosphere of tranquility created by Sunday closing is to aid the conduct of church services and religious observance of the sacred day.67

This argument could as easily be made with regard to a Sunday law prohibiting hunting; however, the Court's response would make such an argument, in most foreseeable instances, futile. In McGowan, the laws in question were originally enacted with religious motives—this much is undisputed and conceded by the court.68 However, what proved to be critical, and still is, was that there be a potential present motivation for having such a law that is rationally related to a legitimate secular interest.69

It was held that the "state had a secular interest in setting one day apart as a day of rest, repose, recreation, and tranquility. That is, the state was recognized as maintaining a legitimate public interest in promoting the well-being of its citizenry; discretion in such promotion was left, of course, to the states."70

Another Constitutional argument that has been made against Sunday hunting laws falls under the Equal Protection Clause (outlined above). The underlying theory in support of this argument is that hunters who must obey prohibitions on Sunday hunting are being discriminated against relative to those that do not. An illustrative case is Lee v. South Carolina Department of Natural Resources.71 In this case, two big-game hunters who wished to hunt on their private land were denied the opportunity to do so despite the fact that hunters in twenty-eight South Carolina counties could hunt on Sunday.72 Feeling discriminated against, the hunters sued under the Equal Protection Clause of the U.S. Constitution.

As in McGowan, the court was not receptive to the anti-Sunday-legislation respondents. The court held that recreational hunting of this kind was not a fundamental right and that the hunters did not comprise a

66 Laband & Heinbuch, supra note 16, at 40.
67 McGowan, 366 U.S. at 431.
68 Laband & Heinbuch, supra note 16, at 40.
69 Id. at 41.
70 Id. at 40.
72 Id. at 113.
suspect class; therefore, once again, all that was needed was a rational basis for the regulation.\textsuperscript{73} Specifically, the statute "must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis."\textsuperscript{74} The court went on to state: 
"[w]e must give great deference to the General Assembly's classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue. Further, the classification does not need to completely accomplish the legislative purpose with delicate precision in order to survive a constitutional challenge."\textsuperscript{75} Thus, it seems the odds are stacked against challengers to such a statute based on these constitutional grounds.

The South Carolina Department of Natural Resources contended that this law was necessary to preserve finite resources in the particular counties where it applied and to preserve an opportunity for non-hunters to enjoy the outdoors without interference.\textsuperscript{76} It also concluded "it would be difficult, if not impossible, to enforce the statewide ban on Sunday hunting on Wildlife Management Area (WMA) lands in the eighteen Upstate counties if hunting is allowed on adjacent private properties."\textsuperscript{77} The court agreed with all of these arguments, concluding that they constituted rational bases for the statute and that they sufficiently supported the legislative purpose.\textsuperscript{78}

The opinions in \textit{McGowan} and \textit{Lee} are good illustrations of typical cases attacking Sunday hunting laws on Constitutional grounds. They show that the Establishment Clause and the Equal Protection Clause are of little use in overturning the laws as long as there is some reasonable explanation for the law that supports a legislative purpose. \textit{Lee} shows that such a purpose can be readily found, and may be as simple as providing an opportunity for non-hunters to enjoy the outdoors without disturbance one day per week during hunting season.\textsuperscript{79} Furthermore, \textit{McGowan} established that it is of no matter that a law's original legislative purpose included religious considerations.\textsuperscript{80} So long as a rational, secular explanation now exists, the law will not violate the Establishment Clause.\textsuperscript{81} Thus, states clearly are

\begin{itemize}
\item \textsuperscript{73} \textit{Id.}
\item \textsuperscript{74} \textit{Id. at 114.}
\item \textsuperscript{75} \textit{Id.} (quoting \textit{Foster v. S.C. Dep't of Highways & Pub. Transp.}, 413 S.E.2d 31, 36 (S.C. 1992)).
\item \textsuperscript{76} \textit{Id. at 114–15.}
\item \textsuperscript{77} \textit{Id. at 114.}
\item \textsuperscript{78} \textit{Id. at 114–15.}
\item \textsuperscript{79} \textit{Id. at 115.}
\item \textsuperscript{80} \textit{McGowan v. Maryland}, 366 U.S. 420, 445 (1961); \textit{LABAND & HEINBUCH, supra} note 16, at 40.
\item \textsuperscript{81} \textit{McGowan}, 336 U.S. at 425–26, 445; \textit{LABAND & HEINBUCH, supra} note 16, at 40–41.
\end{itemize}
authorized to enact Sunday hunting laws under the Constitution. For those who wish to abolish or change these laws, reform will most likely come from within the legislature, not the judiciary. Moreover, such changes will most likely result from the consideration of issues such as those presented in Part V.

V. The Modern Debate

The concerns outlined in this section will likely be those that tip the legislative scales in favor of lifting the bans on Sunday hunting, if changes are to be made at all. Several states, including Pennsylvania, North Carolina, Virginia, and Maine, have very recently taken steps to abolish their respective laws or study the effects of a repeal. Each state that retains these laws no doubt has specific concerns and circumstances that influence the ultimate decisions of legislators. Furthermore, some states appear to debate the issue more actively than others. As one columnist in Virginia reports, "[e]very winter, Sunday hunting bills make their appearance in the General Assembly session, and every winter they die quick deaths at the hands of House and Senate committees." Nonetheless, for those states that actively debate this issue, the following arguments tend to recur no matter how relatively persuasive they may be.

A. Opponents of Sunday Hunting Laws

A common and perhaps most obvious argument in favor of lifting state bans on Sunday hunting is that doing so would allow sportsmen an extra day to enjoy the outdoors. Losing one weekend day is very significant to hunters. Many people work six days per week and only have Sunday available to hunt. "Concern about the ability of Pennsylvania's working hunters to participate in hunting opportunities has brought the Sunday hunting issue to the forefront repeatedly over the years. But that concern has never been able to overcome traditional opposition to a change."

Furthermore, a recent study by the Pennsylvania Legislative Budget and Finance Committee found that hunters would hunt an additional 4.7

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82 See Laband & Heinbuch, supra note 16, at 43.
84 Taylor, supra note 46.
85 Emily Bazan, Hunters Argue Pros and Cons of Sunday Ban, USA Today, Oct. 3, 2006, at 16A (quoting Trent Sorrell as saying "I have friends who work six days a week. Sundays are their only day off and they can't hunt").
86 Moyer, supra note 83.
days per season on average if the ban on Sunday hunting were lifted.\footnote{87} Similarly, the argument can be made that the deep tradition of hunting is increasingly threatened by Sunday hunting laws, as is illustrated by the declining numbers of hunters in states such as Virginia. “Those who support easing the restriction often point to the steadily declining number of Virginia hunters as evidence that some Virginians are giving up the sport because of the limitation of weekend hunting days.”\footnote{88} It is hard to dispute that many would hunt more if bans were lifted. This fact, presumably, has always been true yet has failed to sway legislators.

Another argument in favor of lifting the ban on Sunday hunting centers on the deer population management problems that many states have encountered. Deer herds in some areas have grown tremendously and several states with Sunday hunting bans, including Maryland and Connecticut, have lifted them in certain areas, presumably where the deer have outgrown their place among residents.\footnote{89} An article in \textit{USA Today} states that “Maryland legislators have opened a few Sundays to deer hunting in some counties as a way to control the state’s deer population.”\footnote{90} According to Paul Peditto, director of the state’s Wildlife and Heritage Service, “[w]hen you can increase participation by hunters, they can be successful in reducing deer populations.”\footnote{91} Thus, remedying deer overpopulation has proven to be a legitimate argument in favor of lifting Sunday hunting bans.

Overpopulation is also a concern among farmers, and evidence of crop destruction by foraging animals could bolster an argument to repeal hunting bans. A farmer’s livelihood depends on his or her crops and there is an important economic incentive in protecting this constituency. Thus, allowing hunters an extra day each week to manage overpopulation could be very beneficial.

Pennsylvania has adopted a program to protect suburban farm landowners from the destruction deer impose on their property, recognizing a chronic problem with overpopulation throughout the state.\footnote{92} “Though the plan specifically concerns the economic impact on suburban farmers “who provide a tasty green oasis among a patchwork of houses,”\footnote{93} there is little reason to believe that deer find rural croplands any less appealing or cause less harm to them. This plan recognizes that “traditional hunting is the
most economical and effective way to manage deer populations, but falls short of permitting hunting on Sundays. Sunday hunting would be an easy method of reducing the population. However, Pennsylvania opted for different measures, including extended hunting seasons, extended hunting hours, and the use of crossbows to harvest deer. Obviously, overpopulation and the resulting nuisance deer pose to landowners is a well-recognized problem in Pennsylvania. Should the remedial measures the State has taken fall short, lifting the Sunday hunting ban may bolster its efforts to control the deer herd and thus protect the agricultural industry from the destruction the species imposes on crops. This, however, is but one example of the potential economic benefits of lifting Sunday hunting bans.

Economic considerations of another sort have pushed their way to the forefront of the argument over Sunday hunting in several states. For example, the same legislative study in Pennsylvania that predicted hunters would hunt 4.7 additional days per season if the ban were lifted estimated that such action “would stimulate $184 million in hunters’ expenditures on travel, lodging, meals and equipment, and generate $5.4 million in additional state tax revenue.” Further, this study found that a total repeal of the ban “could spur an additional $629 million in economic activity and create 5,300 new full- and part-time jobs.” These are by no means small numbers and are important considerations for legislators.

Similarly, Maine has also been deeply moved by economic considerations. In fact, the Maine House of Representatives approved a bill in 2004 that would create an opportunity for Sunday hunting in some parts of the state, but the bill has not passed in the state Senate. “Representative Monica McGlocklin . . . —the bills [sic] sponsor—believe[d] that the limited Sunday hunt would give those who work all week another opportunity to hunt. It would also increase the potential for weekend hunting getaways—a prospective draw for tourists and boon to the local economy.”

Maine is not alone in realizing the potential financial gain Sunday hunting could provide. The Virginia board of the Department of Game and Inland Fisheries has recently shown interest in allowing Sunday hunting for its revenue raising potential. “Will it help hunter recruitment and lead to more license sales? If it does, will those be enough to offset the ill will it could lead to among some hunters, landowners and non-hunting outdoors enthusiasts?” These are questions that need to be addressed,

94 Id.
95 Id.
96 Moyer, supra note 83.
97 Bazar, Hunters Argue Pros and Cons of Sunday Ban, supra note 85.
98 Maine House Approves Sunday Hunting, supra note 83.
99 Id.
100 Taylor, supra note 46.
as answers in the affirmative may be enough to push a pro-Sunday hunting bill through the legislature. Perhaps this method of raising state revenue is attractive due to its simplicity. Nonetheless, whatever the reason, it is a recurring discussion in some states and monetary concerns may someday prevail over opposition to lifting Sunday hunting laws. However, strong evidence of the economic benefits of lifting Sunday hunting bans will probably be necessary. While conditions vary from state to state, it is conceivable, and some argue in states such as North Carolina, that the benefits obtained from increased license sales and other hunting-related expenses would be offset simply by the added expenses of employing and compensating conservation officers. Contrast this to Virginia’s situation, where the Department of Game and Inland Fisheries has shown interest in lifting Virginia’s Sunday hunting ban for the economic benefit to the Department. A recent article in The Roanoke Times referred to the board of the Department as “for all intents and purposes, running a company that is losing customers every year while facing rising costs.” The “customers” referred to are, of course, the state’s dwindling number of hunters. Thus, the policies that may eventually lead to the demise of Sunday hunting laws vary from state to state, but may one day become persuasive enough to induce the repeal of these statutes.

B. Proponents of Sunday Hunting Laws

On the other side of the coin are the people who are in favor of Sunday hunting laws and enjoy the “day of rest” those laws provide. After all, as one citizen opposed to the recently proposed amendment to Virginia’s Sunday hunting law asked, “[s]o where is the rest or the holiness in gutting, dragging, loading, skinning, and cleaning up after killing a deer?” Just as the original justification for the laws concerned religious motives, a faction of modern supporters shares the same interest. These people feel that Sunday has always been and remains a holy day of the week and should remain free of gunshots resounding through the woods. They maintain that Sunday hunting bans “protect[] rural churches from dangerous

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101 Id.
102 See Bazar, Hunters Argue Pros and Cons of Sunday Ban, supra note 85.
104 Taylor, supra note 46.
105 Id.
106 Id.
108 Perez, supra note 14.
disruptions." This argument, of course, would not carry much weight in court after *McGowan*. If this were found to be the sole rationale for a Sunday hunting law, it would clearly be in violation of the Constitution, as discussed above. Furthermore, this argument is questionable in its forcefulness, as it can be made in regard to every activity other than worship that may be partaken on a Sunday, including notable examples such as NASCAR races, NFL football, and virtually any other activity requiring or compelling one to stay home from church.

The principal argument in favor of Sunday hunting laws is simply that non–hunters wish to have one day per week to enjoy the outdoors without the fear of being shot by a hunter or disturbed by gunshots. "Opponents include farm organizations speaking for farmers who want a day of quiet, and bird–watchers who want time outdoors free from gunshots." Other citizens simply believe that hunters already have ample opportunities and liberal seasons to pursue their quarry.

While both of these reasons are legitimate, it will be interesting to see if they are enough to stave off legislators thirsty for revenue. Sunday hunting laws are a proverbial “duck on the pond” in terms of raising money for the state pot.

**CONCLUSION**

Sunday hunting laws have undergone quite an evolution over several hundred years of American history. Beginning with essentially absolute prohibitions on all activity but worship, they are now watered–down and perhaps ready for extinction. In my opinion, that is exactly what is called for, at least partially. Those in favor of Sunday hunting laws have nothing but a slender foot to stand on and time, as it changes all, may soon deprive that foot of its balance. Not only would allowing hunting on Sunday increase state revenue dramatically, it would eliminate an unnecessary and outdated burden on the liberty of hunters.

Whether or not to allow hunting on public land is a debate best left to the states, and in my opinion the most determinative factor is the economic reality Sunday hunting will boost license sales and otherwise increase economic activity. Allowing hunting on private land, however, is an easy decision. Arguments that landowners wish to have their land to themselves one day per week, or that hikers and other non–hunters should be able to enjoy the outdoors fall on their face concerning private land. If landowners

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109 *Id.*

110 *Nat'l Ctr. for Policy Analysis, supra* note 2.

111 *Giannico, supra* note 107.


113 *See Maine House Approves Sunday Hunting, supra* note 83.
wish to restrict hunting on Sunday, that is their absolute right. Furthermore, non-landowners have little to complain about on private land, as they have no right to use the land in the first place. West Virginia has taken steps toward such a result, but still requires a county-specific resolution to allow Sunday hunting on private land.\textsuperscript{114} Similarly, the unsuccessful Virginia bill discussed earlier would have allowed Sunday hunting on private land for landowners and those with permission to enter the property for that purpose.\textsuperscript{115} Eventually, I believe Sunday hunting laws will fall by the wayside. Until then, moving toward policies such as West Virginia's is an admirable start.

\textsuperscript{114} W. VA. CODE ANN. § 20-2-5(28) (LexisNexis Supp. 2007).
