AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Religion/Establishment

**Johnston v. Commonwealth, 22 Pa. 102** (PA 1853)

*William Johnston was convicted before an alderman of the city of Pittsburgh of driving a horse-drawn bus for fee on Sunday. Johnston was employed to drive the “Excelsior Line,” which ran a three-mile route between Pittsburgh and Lawrenceville. The bus made regular stops each day at designated locations on the route to pick up paying passengers. A 1794 state statute imposed fine or imprisonment for anyone performing “worldly employment or business” on Sunday, except for “works of necessity and charity.” Johnston appealed to the state supreme court, arguing that operating the bus on Sunday was a necessity.*

*In a 3-2 decision, the Supreme Court of Pennsylvania affirmed the conviction of the driver and upheld the constitutionality of the Sunday laws. The two dissenting opinions went unrecorded. The majority opinion partly echoed the view of the legislative report of the Committee on Vice and Immorality, which had recently reaffirmed its support for the state’s Sabbath laws. The committee report also argued, “as ours is emphatically a Christian Commonwealth, there can be no difficulty in fixing the day in which it shall not be lawful to disturb the moral instruction and rest of the people, by unnecessary secular business,” and so long as the state did not “enact penal laws compelling the observance of religious ceremonies” there could be no conflict with constitutional requirements to respect rights of conscience. Would the Supreme Court necessarily agree with that sentiment? Why did the Court think that Sunday laws were consistent with state constitutional requirements? Pennsylvania’s Sunday laws, or “blue laws,” survived judicial challenges through the twentieth century but were gradually amended by statute.*

JUSTICE WOODWARD delivered the opinion of the Court.

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Omnibuses are great conveniences in large towns and populous districts, and the driving them may, in many circumstances which it were easy to imagine, be both a necessity and a charity, and as such perfectly lawful on Sunday, but we are not now dealing with special cases, or extraordinary occasions, but with ordinary everyday employment. . . . We therefore hold, that driving an omnibus as an ordinary public conveyance, is a work neither of necessity nor charity, within the meaning of the statute, and consequently, that the defendant was properly convicted.

. . . .

Now the argument is, that though, in the abstract, running omnibuses on Sunday may not be a work of necessity within the meaning of the statute, yet, inasmuch as this particular line furnishes people, otherwise unprovided, with means of attending churches and the cemetery, at a cheap rate, it becomes a work of necessity, and is lawful.

It is not our business to discuss the obligations of Sunday any further than they enter into and are recognized by the law of the land. . . . It is apparent from the authorities, as well as from the whole history of the instituted Sabbath . . . that *rest*, and the *public worship of Almighty God*, were the primary objects of the institution, both as a divine and civil appointment, and it seems to follow, as a necessary consequence, that no means reasonably necessary to these ends can be regarded as prohibited. . . . Some would no doubt avail themselves of the omnibus to ride for health and strength, to visit the cemetery, and to go to church, not only on Sunday, but on other days of the week, but he was, notwithstanding, a *common carrier*, pursuing his ordinary occupation . . . . The motives of an occasional customer do not determine the character of a man’s business. . . .

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. . . . Doubtless some partial inconvenience will be experienced from stopping these omnibuses on Sunday, and if this prove too a price for the good results that may accrue, the remedy must be sought, not in the Courts, but in the legislature. . . . Our fathers, who planted in our fundamental law the assertion of those immortal truths, that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences, that no man can be compelled to attend, erect, or support any place of public worship, and that no human authority can in any case whatever control or interfere with the rights of conscience, enacted, also, the statutes for the suppression of worldly employment on Sunday. So far from *conflicting* with those invaluable rights of conscience, they regarded such statutes as indispensable to *secure* them. It would be a small boon to the people of Pennsylvania to declare their indefeasible right to worship God according to the dictates of their consciences, and the din and confusion of secular employments, and with desecration of every hand of what they conscientiously believe to be hallowed time. These statutes were not designed to compel men to go to church, or to worship God in any manner inconsistent with personal preferences, but to compel a cessation of those employments which are calculated to interfere with the rights of those who choose to assemble for public worship. The day was set apart for a purpose, and the penal enactments guard it, but they leave every man free to use it for that purpose or not. If he wish to use it for the purpose designed, the law protects him from the annoyance of others – if he do not, it restrains him from annoying those who do so use it. Thus the law, without *oppressing* anybody, becomes auxiliary to the rights of conscience. And there are other rights, intimately associated with the rights of conscience, which are worth preserving. The right to rear a family with a becoming regard to the institutions of Christianity, and without compelling them to witness hourly infractions of one of its fundamental laws – the right to enjoy the peace and good order of society and the increased securities of life and property which result from a decent observance of Sunday – the right of the poor to rest from labor, without diminution of wages, or loss of employment – the right of beasts of burden to repose one-seventh of their time from their unrequited toil – these are real and substantial interests which the legislature sought to secure by this enactment, and when has legislation aimed at higher objects? . . . .

*Affirmed*.

CHIEF JUSTICE BLACK and JUSTICE LEWIS dissented.