AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era – Federalism

**City of New York v. Miln, 36 U.S. 102** (1837)

*George Miln was the master of the* Emily*. On August 27, 1829, the* Emily *arrived in New York from Liverpool, England, with 100 passengers aboard. New York law required the masters of ships arriving in the port of New York City to provide a written record of information on all ship passengers from out of state, post a bond for each passenger, and indemnify the city for any passengers that accepted poor relief from the city within two years of their arrival. Miln neither provided New York City with the legally required written record nor posted bond for each passenger. When the city initiated proceedings in local court to collect penalties, Miln had the case removed to a federal circuit court. That lower court was divided, and the constitutional question was certified for hearing by the Supreme Court. The city argued that the law was a valid exercise of the state police powers. Miln argued that the law was an unconstitutional infringement on the congressional authority to regulate foreign and interstate commerce.*

*The Supreme Court ruled that the New York City law was constitutional. Justice Philip Barbour declared that the commerce clause did not prohibit states from exercising their traditional police powers to regulate for the health, safety, welfare, and morals of the community. The decision in* Miln *had implications for similar passenger laws targeting poor immigrants in the North, and for southern laws prohibiting free black sailors in state ports. The Marshall Court had long avoided addressing such issues. The Taney Court was inclined to give room to the states to manage the people who came within their borders.*

JUSTICE BARBOUR, delivered the opinion of the Court.

. . . .

We shall not enter into any examination of the question whether the power to regulate commerce, be or be not exclusive of the states, because the opinion which we have formed renders it unnecessary: in other words, we are of opinion that the act is not a regulation of commerce, but of police; and that being thus considered, it was passed in the exercise of a power which rightfully belonged to the states.

 . . .

Now, we hold that both the end and the means here used, are within the competency of the states, since a portion of their powers were surrendered to the federal government. Let us see what powers are left with the states. The Federalist, in the 45th number, speaking of this subject, says; the powers reserved to the several states, will extend to all the objects, which in the ordinary course of affairs, concern the lives, liberties, and properties of the people; and the internal order, improvement, and prosperity of the state.

And this Court, in the case of Gibbons v. Ogden (1824) . . . in speaking of the inspection laws of the states, say; they form a portion of that immense mass of legislation which embraces every thing within the territory of a state, not surrendered to the general government, all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, etc. are component parts of this mass.

 . . . If we look at the place of [the act’s] operation, we find it to be within the territory, and, therefore, within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction. If we look at the persons for whose benefit it was passed, they are the people of New York, for whose protection and welfare the legislature of that state are authorized and in duty bound to provide.

If we turn our attention to the purpose to be attained, it is to secure that very protection, and to provide for that very welfare. If we examine the means by which these ends are proposed to be accomplished, they bear a just, natural, and appropriate relation to those ends.

 . . .

 . . . We choose . . . to plant ourselves on what we consider impregnable positions. They are these: That a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation; where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive.

 . . .

Now in relation to the section in the act immediately before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons, who come from foreign countries without possessing the means of supporting themselves. There can be no mode in which the power to regulate internal police could be more appropriately exercised. New York, from her particular situation, is, perhaps more than any other city in the Union, exposed to the evil of thousands of foreign emigrants arriving there, and the consequent danger of her citizens being subjected to a heavy charge in the maintenance of those who are poor. It is the duty of the state to protect its citizens from this evil; they have endeavored to do so, by passing, amongst other things, the section of the law in question. We should, upon principle, say that it had a right to do so.

 . . .

JUSTICE THOMPSON, concurring.

 . . .

It is not necessary, in this case, to fix any limits upon the legislation of congress and of the states, on this subject; or to say how far congress may, under the power to regulate commerce, control state legislation in this respect. It is enough to say that whatever the power of congress may be, it has not been exercised so as, in any manner, to conflict with the state law; and if the mere grant of the power to congress does not necessarily imply a prohibition of the states to exercise the power, until congress assumes to exercise it; no objection, on that ground, can arise to this law.

 . . .

JUSTICE STORY, dissenting.

 . . .

 . . . If then the regulation of passenger ships, be in truth a regulation of trade and commerce, it seems very difficult to escape from the conclusion, that the act in controversy is, in the sense of the objection, an act which assumes to regulate trade and commerce between the port of New York and foreign parts. It requires a report, not only of passengers who arrive at New York, but of all who have been landed at any places out of the territorial limits of New York, whether in foreign ports or in the ports of other states. It requires bonds to be given by the master or owner for all passengers not citizens; and it compels them to remove, or pay the expenses of removal of all passengers, who are citizens, and are deemed likely to become chargeable to the city, under severe penalties. If these enactments had been contained in any act passed by congress, it would not have been doubted that they were regulations of passenger ships engaged in foreign commerce. Is their character changed by their being found in the laws of a state?

I admit, in the most unhesitating manner, that the states have a right to pass health laws and quarantine laws, and other police laws, not contravening the laws of congress rightfully passed under their constitutional authority. I admit, that they have a right to pass poor laws, and laws to prevent the introduction of paupers into the state, under the like qualifications. I go further, and admit, that in the exercise of their legitimate authority over any particular subject, the states may generally use the same means which are used by congress, if these means are suitable to the end. But I cannot admit that the states have authority to enact laws, which act upon subjects beyond their territorial limits, or within those limits, and which trench upon the authority of congress in its power to regulate commerce. . . .

 . . .

It has been argued that the power of congress to regulate commerce is not exclusive, but concurrent with that of the states. If this were a new question in this Court, wholly untouched by doctrine or decision; I should not hesitate to go into a full examination of all the grounds upon which concurrent authority is attempted to be maintained. But in point of fact, the whole argument on this very question, as presented by the learned counsel on the present occasion, was presented by the learned counsel who argued the case of Gibbons . . . and it was then deliberately examined and deemed inadmissible by the Court. Mr. Chief Justice Marshall, with his accustomed accuracy and fullness of illustration, reviewed at that time the whole grounds of the controversy; and from that time to the present, the question has been considered (as far as I know) to be at rest. The power given to congress to regulate commerce with foreign nations, and among the states, has been deemed exclusive; from the nature and objects of the power, and the necessary implications growing out of its exercise. Full power to regulate a particular subject implies the whole power, and leaves no residuum; and a grant of the whole to one, is incompatible with a grant to another of a part. . . .