

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era – Individual Rights/Property/Due Process

The Mayor and Alderman of Mobile and Yuille, 3 Ala. 137 (1841)

Yuille was a baker in Mobile, Alabama. In 1826, Mobile passed a law requiring bakers to obtain licenses from the city and prescribing standards for making loaves of bread. Yuille sold a loaf of bread under the legally mandated weight. For this action, he was fined \$20. Yuille insisted the fine violated his property rights under the constitution of Alabama. The trial judge agreed and reversed the fine. Mobile authorities appealed that decision to the Supreme Court of Alabama.

The Alabama Supreme Court sustained the Mobile Bread Ordinance. Judge Ormond insisted that elected officials had broad discretion to determine what laws promoted the public good. Yuille is typically of Jacksonian judicial decisions sustaining state and local laws. The vast majority of due process attacks on legislation failed. They did so because justices determined that governing officials were promoting the public good. Compare Yuille to other cases during this era in which state judges declared laws unconstitutional. Would Judge Ormond have sustained the laws under constitutional attack in these cases or would he have found relevant constitutional differences? Would the judges who declared the laws unconstitutional in those cases have struck down the bread ordinance in Yuille?

JUDGE ORMOND

...
... Doubtless, under the form of government, which exists in this and the other States of this Union, the enjoyment of all the rights of property, and the utmost freedom of action which may consist with the public welfare, is guaranteed to every man, and no restraint can be lawfully imposed by the Legislature in relation thereto, which the paramount claims of the community do not demand, or which does not operate alike on all. Free government does not imply unrestrained liberty on the part of the citizen, but the privilege of being governed by laws which operate alike on all. It is not therefore, to be supposed, that in any country, however free, individual action cannot be restrained, or the mode, or manner of enjoying property, regulated.

... There is no motive, however, for this interference on the part of the Legislature with the lawful actions of individuals or the mode in which private property shall be enjoyed, unless such calling affects the public interest, or private property is employed in a manner which directly affects the body of the people.

Upon this principle, in this State, tavern keepers are licensed and required to enter into bond, with surety, that they will provide suitable food and lodgings for their guests, and stabling and provender for their horses; and the County Court is required, at least once a year to settle the rates of inn keepers. Upon the same principle, is founded the control which the Legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike roads and other kindred subjects. So, also, all quarantine and other sanitary regulations, all laws requiring houses to be built in cities of a certain material, to guard against fire, depend for their validity on the same principle.

... [T]hough there can be no general restraint of trade, yet to a certain extent it may be regulated, and by consequence to some extent restrained in a particular place, if such restraint be for the good of the inhabitants, as when for the prevention of nuisances, certain trades are confined to the suburbs of a city, or where it is for the advantage of the trade and improvement of the commodity.

The regulation in this case seems to combine all these qualities. Where a great number of persons are collected together in a town or city, a regular supply of wholesome bread is a matter of the utmost importance; and whatever doubts may have been thrown over the question by the theories of political economists, it would seem that experience has shown that this great end is better secured by licensing a sufficient number of bakers and by an assize of bread, than by leaving it to the voluntary acts of individuals. By this means a constant supply is obtained without that fluctuation in quantity which would be the inevitable result of throwing the trade entirely open, and the consequent rise in price, when from accident or design a sufficient supply was not produced. The interest of the city in always having an abundant supply will be a sufficient guaranty against any abuse of the right to regulate the weight, the consequence of which would be to drive the baker from the trade.

. . . The legislature having full power to pass such laws as is deemed necessary for the public good, their acts cannot be impeached on the ground, that they are unwise, or not in accordance with just and enlightened views of political economy, as understood at the present day. The laws against usury, and quarantine, and other sanitary regulations, are by many considered as most vexatious and improper restraints on trade and commerce, but so long as they remain in force, must be enforced by Courts of justice; arguments against their policy must be addressed to the legislative department of the government.

...



OXFORD
UNIVERSITY PRESS

Supplementary Material

Chapter 5: The Jacksonian Era – Individual Rights/Property/Due Process

The Mayor and Alderman of Mobile and Yuille, 3 Ala. 137 (1841)

Yuille was a baker in Mobile, Alabama. In 1826, Mobile passed a law requiring bakers to obtain licenses from the city and prescribing standards for making loaves of bread. Yuille sold a loaf of bread under the legally mandated weight. For this action, he was fined \$20. Yuille insisted the fine violated his property rights under the constitution of Alabama. The trial judge agreed and reversed the fine. Mobile authorities appealed that decision to the Supreme Court of Alabama.

The Alabama Supreme Court sustained the Mobile Bread Ordinance. Judge Ormond insisted that elected officials had broad discretion to determine what laws promoted the public good. Yuille is typically of Jacksonian judicial decisions sustaining state and local laws. The vast majority of due process attacks on legislation failed. They did so because justices determined that governing officials were promoting the public good. Compare Yuille to other cases during this era in which state judges declared laws unconstitutional. Would Judge Ormond have sustained the laws under constitutional attack in these cases or would he have found relevant constitutional differences? Would the judges who declared the laws unconstitutional in those cases have struck down the bread ordinance in Yuille?

JUDGE ORMOND

...
... Doubtless, under the form of government, which exists in this and the other States of this Union, the enjoyment of all the rights of property, and the utmost freedom of action which may consist with the public welfare, is guaranteed to every man, and no restraint can be lawfully imposed by the Legislature in relation thereto, which the paramount claims of the community do not demand, or which does not operate alike on all. Free government does not imply unrestrained liberty on the part of the citizen, but the privilege of being governed by laws which operate alike on all. It is not therefore, to be supposed, that in any country, however free, individual action cannot be restrained, or the mode, or manner of enjoying property, regulated.

... There is no motive, however, for this interference on the part of the Legislature with the lawful actions of individuals or the mode in which private property shall be enjoyed, unless such calling affects the public interest, or private property is employed in a manner which directly affects the body of the people.

Upon this principle, in this State, tavern keepers are licensed and required to enter into bond, with surety, that they will provide suitable food and lodgings for their guests, and stabling and provender for their horses; and the County Court is required, at least once a year to settle the rates of inn keepers. Upon the same principle, is founded the control which the Legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike roads and other kindred subjects. So, also, all quarantine and other sanitary regulations, all laws requiring houses to be built in cities of a certain material, to guard against fire, depend for their validity on the same principle.

... [T]hough there can be no general restraint of trade, yet to a certain extent it may be regulated, and by consequence to some extent restrained in a particular place, if such restraint be for the good of the inhabitants, as when for the prevention of nuisances, certain trades are confined to the suburbs of a city, or where it is for the advantage of the trade and improvement of the commodity.

The regulation in this case seems to combine all these qualities. Where a great number of persons are collected together in a town or city, a regular supply of wholesome bread is a matter of the utmost importance; and whatever doubts may have been thrown over the question by the theories of political economists, it would seem that experience has shown that this great end is better secured by licensing a sufficient number of bakers and by an assize of bread, than by leaving it to the voluntary acts of individuals. By this means a constant supply is obtained without that fluctuation in quantity which would be the inevitable result of throwing the trade entirely open, and the consequent rise in price, when from accident or design a sufficient supply was not produced. The interest of the city in always having an abundant supply will be a sufficient guaranty against any abuse of the right to regulate the weight, the consequence of which would be to drive the baker from the trade.

. . . The legislature having full power to pass such laws as is deemed necessary for the public good, their acts cannot be impeached on the ground, that they are unwise, or not in accordance with just and enlightened views of political economy, as understood at the present day. The laws against usury, and quarantine, and other sanitary regulations, are by many considered as most vexatious and improper restraints on trade and commerce, but so long as they remain in force, must be enforced by Courts of justice; arguments against their policy must be addressed to the legislative department of the government.

...



OXFORD
UNIVERSITY PRESS