Supplementary Material

Chapter 7: The Republican Era—Individual Rights/Personal Freedom and Public Morality

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Murphy v. People of State of California, 225 U.S. 623 (1912)

J.L. Murphy operated a billiard table and poolroom in South Pasadena, California. In 1908, Pasadena passed a law prohibiting persons from operating billiard or pool tables for hire, unless they owned a hotel and the tables were limited to guests. When Murphy refused to obey the statute, he was arrested, convicted, and fined. After exhausting his appeals in the California judicial system, Murphy appealed to the Supreme Court of the United States.

Most state courts that considered whether elected officials could prohibit pool halls and related activities concluded that such measures were constitutional. In Tanner v. Village of Albion *(1843), a New York court sustained a local ordinance banning bowling alleys. The unanimous opinion asserted, "[e]stablishments of this kind in populous communities are, at best, and even when used without hire, very noisy, and have a tendency to collect idle people together and detain them from their business." Some state courts maintained that regulation had some limit, that persons had a constitutional right to play pool in private. The Supreme Court of Arkansas in* Stevens & Woods v. State *(AR 1840) asserted that elected officials*

> *cannot prohibit any one from making or purchasing a billiard table, because it is an article of property, and, under the Constitution, any one may lawfully acquire, possess and protect it as such; but the Legislature may, by law, so regulate or restrict the use of such tables as to prevent any injury to the public morals or public interest.*

The Supreme Court of the United States unanimously held that the Constitution did not protect the right to operate a pool hall. Justice Lamar's opinion for the court asserted that "the keeping of a billiard hall has a harmful tendency." What basis might he have for reaching this conclusion? Suppose California in 1908 had also prohibited miniature golf courses. How would the Supreme Court have ruled in those cases? How should the Supreme Court have ruled?

JUSTICE LAMAR delivered the opinion of the court:

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The 14th Amendment protects the citizen in his right to engage in any lawful business, but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is inherently vicious and harmful. But, between the useful business which may be regulated and the vicious business which can be prohibited lie many nonuseful occupations which may or may not be harmful to the public, according to local conditions, or the manner in which they are conducted.

Playing at billiards is a lawful amusement; and keeping a billiard hall is not, as held by the supreme court of California on plaintiff's application for habeas corpus, a nuisance *per se*. But it may become such; and the regulation or prohibition need not be postponed until the evil has become flagrant.

That the keeping of a billiard hall has a harmful tendency is a fact requiring no proof, and incapable of being controverted by the testimony of the plaintiff that his business was lawfully

conducted, free from gaming or anything which could affect the morality of the community or of his patrons. The fact that there had been no disorder or open violation of the law does not prevent the municipal authorities from taking legislative notice of the idleness and other evils which result from the maintenance of a resort where it is the business of one to stimulate others to play beyond what is proper for legitimate recreation.

. . .

There is no merit in the contention that he was denied the equal protection of the law because, while he was prevented from so doing, the owners of a certain class of hotels were permitted to keep a room in which guests might play at the game. If, as argued, there is no reasonable basis for making a distinction between hotels with twenty-five rooms and those with twenty-four rooms or less, the plaintiff in error is not in position to complain, because, not being the owner of one of the smaller sort, he does not suffer from the alleged discrimination.

There is no contention that these provisions permitting hotels to maintain a room in which their regular and registered guests might play were evasively inserted, as a means of permitting the proprietors to keep tables for hire. Neither is it claimed that the ordinance is being unequally enforced. On the contrary, the city trustees are bound to revoke the permit granted to hotels in case it should be made to appear that the proprietor suffered his rooms to be used for playing billiards by other than regular guests. If he allowed the tables to be used for hire, he would be guilty of a violation of the ordinance, and, of course, be subject to prosecution and punishment in the same way, and to the same extent, as the defendant.