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DUE PROCESS

Lochner v. New York 198 U.S. 45 (1905)

SETTING

The concept of due process is deeply rooted in Anglo-American jurisprudence. Its origins trace to Chapter 39 of the Magna Charta of 1215—originally the Articles of the Barons—sealed by King John at Runnymede, England. Chapter 39 of the Magna Charta provided:

> No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

Two fundamental principles reflected in Chapter 39 and associated with the concept of due process are that the actions of government be conducted according to the rule of law and that government is not above the law. James Madison sought to capture those principles in the Fifth Amendment to the Constitution, which prohibits the national government from depriving any person of life, liberty, or property "without due process of law." The Due Process Clause of the Fourteenth Amendment mirrors the language of the Fifth Amendment and prohibits states from denying any person of life, liberty, or property "without due process of law."

Notwithstanding the deep roots of due process in Anglo-American law and the appearance of the term in the Fifth and Fourteenth Amendments, the meaning and requirements of due process have never been clear. One consistent theory of due process—often referred to as the traditional view—is that governments must follow fair, reasonable, consistent procedures in carrying

vately is among the fundamental liberties that judges are to protect in the name of due process. By 1897, Justice Rufus Peckham was expressing that view on behalf of the Supreme Court of the United States:

> The "liberty" mentioned in [the Fourteenth Amendment] means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all of his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to successful conclusion the purposes above mentioned. *Allgeyer v. Louisiana*, 165 U.S. 578 (1897).

A fourth view, which underpinned the development of economic substantive due process, is the notion that any form of regulatory legislation must be "neutral" and serve a "public purpose." Many judges perceived state regulatory legislation—enacted pursuant to the "police power" or inherent power to protect the public health, safety, welfare or morals—as favoring one particular class or social group over others. Those judges were not shy about striking down regulatory statutes that they perceived to be biased in favor of one class or group, typically workers. In 1885, for example, the New York Court of Appeals struck down a state law that outlawed the manufacture of cigars in tenement houses. The law was an attempt to ban the notorious "sweating system" that required employees to perform tedious tasks for long hours under unhealthy conditions at low wages. According to the New York high court, the law interfered with the "profitable and free use" of property by cigar makers and deprived them of property and "some portion of ... personal liberty." Equally important, according to the court, the law was not neutral in its effect:

> What does this act attempt to do? In form, it makes it a crime for a cigarmaker in New York and Brooklyn, the only cities in the State having a population exceeding 500,000, to carry on a perfectly lawful trade in his own home.... [H]e will become a criminal for doing that which is perfectly lawful outside of the two cities named—everywhere else, so far as we are able to learn, in the whole world. *In re Jacobs*, 98 N.Y. 98 (1885).

The doctrine of economic substantive due process had profound consequences for efforts to regulate the industrial economy that emerged after the Civil War. Mechanization and creation of large-scale corporate organizations ushered in the era of factory work in an impersonal urban setting. Skilled craftsmen became assembly line workers doing routinized tasks. Formerly self-employed farmers and small business owners became employees whose relationship to their employers and work were defined by contract. Economic self-sufficiency gave way to labor market vulnerability.

Despite the lobbying efforts of workers, the United States lagged far behind other western industrial nations in adopting statutes regulating wages, hours and working conditions of employees. What little economic regulatory legislation existed in the United States before the 1930s was adopted by state

out their responsibilities. Under this theory, one of the primary functions of judicial review is to assure that lower courts use fair procedures in conducting trials and that the legislative and executive branches adhere to established processes in making and enforcing laws.

Another theory of due process has what commonly is called a substantive component. Under this theory, due process places fundamental substantive limits on laws that governments can make, because there are certain rights and relationships with which government has no authority to interfere. The phrase "economic substantive due process" refers to judge-made legal rules that limit the authority of government to regulate private property and economic relationships between owners of capital and the workers whose labor they purchase for a wage.

The origins of economic substantive due process trace to the middle of the nineteenth century. Many state judges deemed property rights and rights and obligations created by contracts as fixed and absolute. They began to fashion legal rules that would protect property and contractual rights from governmental regulation. Taken together, those rules reflected a variety of views about the relationship between government and the economy. First is the view that there are inherent limitations on the scope of legislative powers and that it is the obligation of judges to declare those limitations in particular cases. By 1875, that view had an adherent on the Supreme Court of the United States. In *Loan Association v. Topeka*, 20 Wallace 655, Justice Samuel Miller, the author of the majority opinion in the *Slaughter-House Cases*, wrote:

> It must be conceded that there are ... rights in every free government beyond the control of the State. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism.

A second view reflected in the doctrine of economic substantive due process is the idea that judges must look past processes and formalities in evaluating legislation to determine whether a law tramples on fundamental economic rights. By 1877, Justice John M. Harlan had adopted this second view. In *Mugler v. Kansas*, 123 U.S. 623, he wrote, albeit in dictum:

> [Not] every statute enacted ostensibly for the promotion of [public health, safety or morality] is to be accepted as a legitimate exertion of the police powers of the state.... The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty, indeed, are under a solemn duty, to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution.

The third view reflected in the doctrine of economic substantive due process is that the right of individuals to order their contractual relations pri-

legislatures, but business owners opposed economic regulations as infringements on their rights of property and contract. Workers themselves were deeply divided over issues such as the legitimacy of capitalism, government's role in economic regulation, and the rights of workers who were not White, Anglo-Saxon Protestants. Although states like Massachusetts, New York, Oregon, and Washington were pioneers in enacting legislation designed to protect workers and regulate the economy, their efforts collided with the doctrine of economic substantive due process. The clash was demonstrated in classic form in *Lochner v. New York*.

Throughout the 1880s, New York state bakers had struggled to unionize their industry. At the center of those efforts was a drive to reduce the typical sixteen- to eighteen-hour day that bakers worked to ten hours. Conditions in the bakeries were oppressive. According to one New York baker: "It is nothing unusual for a man to do his night's work and then have to work three or four hours with the day hands. Our trade is the worst paid trade in New York.... This means eight dollars for ninety hours of hard work. Is it any wonder there are so many coffins?"

On April 23, 1887, a mass meeting of bakers adopted a resolution supporting reduced work hours. The bakers' organizing efforts were only partially successful, however. Many bakeries remained nonunion. In order to bring them into line with those bound by collective bargaining agreements, the Baker's Progressive Union lobbied the New York legislature to pass a ten-hour work law for bakers.

The union argued that long hours spent in hot shops damaged bakers' health and jeopardized the production of wholesome bread. An 1892 study, conducted by the New York Commissioner of Labor Statistics with the aid of the organization of Journeymen Bakers, fed agitation for shorter hours. The study found that union bakers in New York City worked an average of ten-and-one-half hours daily, including Sundays, while bakers working in non-union shops averaged twelve-and-one-half hours. The bakers' lobbying campaign was fruitful: New York's 1897 Labor Law provided that no employee could be "required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day on the last day of the week." Violation of the law was a misdemeanor.

Compliance with the 1897 statute was poor, as was its enforcement. The Master Bakers' Association, a bakery owners' organization, urged outright noncompliance. In the year it was passed, the ten-hour day provision of the Labor Law was implemented in only 312 of 855 baking establishments inspected by state officials. Among those refusing to comply with the law was Utica bakery owner Joseph Lochner. He was arrested when one of his employees complained to the Factory Inspection Department that Lochner violated the Labor Law by permitting Amam Schmitter, another employee, to work more than 60 hours during the week of April 19–April 26, 1901, at Lochner's nonunion bakery.

Lochner, who had been convicted of a similar offense in 1899 and fined $20, demurred to the charge. His demurrer was overruled. He was tried and convicted in the County Court of Oneida County and fined $50. His conviction was affirmed by a divided Appellate Division and the New York Court of Appeals.

On behalf of Lochner, the Master Bakers' Association petitioned the Supreme Court of the United States for a writ of error.

HIGHLIGHTS OF SUPREME COURT ARGUMENTS

BRIEF FOR LOCHNER

◆ The New York labor law is not a reasonable exercise of the state's police power. The contention that flour dust is unhealthful is disputed by medical authorities. Furthermore, modern baking factories are models of cleanliness and healthfulness. Proper enforcement of the state's health laws will protect bakers working in unsanitary conditions.

◆ The police powers of the state were never intended by the people adopting state and federal constitutions to be so paternal as to take away the treasured freedoms of the individual and his right to pursue life, liberty and happiness. State and federal courts consistently have upheld personal liberties against attempted police power regulations.

◆ The New York law was not intended as a health provision. It is purely a labor law. It reflects the success of almost a decade of lobbying by bakers for ten hour days. It prohibits absolutely the employment of bakers for more than 60 hours per week without regard to loss of property or other emergencies that might arise, the desire of employees to contract for overtime work, or the willingness of employers to pay for extra work in emergencies.

◆ The New York law is distinguishable from other hours limitations laws that had been upheld the by the Court. *Holden v. Hardy*, 169 U.S. 366 (1898), for example, which upheld a Utah law limiting working hours of miners, was justified because working in underground mines has always been recognized as hazardous and unhealthful. The baking trade is not.

BRIEF FOR NEW YORK

◆ The New York law must be recognized as a valid exercise of the state's police power. The police power is necessarily elastic, so as to meet the new and changing conditions of civilization. New York has become a great commercial and manufacturing state. Police power regulations must meet modern conditions, including urban crowding, specialization of labor, and the growth of the factory. Review of the entire statute, of which limitations on hours of labor in bakeries and confectionery establishments is only a small element, eliminates any doubt about its purpose as a public health regulation.

◆ If there are differences of opinion about the wisdom of particular police power enactments, those differences should be resolved by legislatures, not courts.

SUPREME COURT DECISION: 5–4

PECKHAM, J.

... The statute necessarily interferes with the right of contract between the employer and employees, concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution. *Allgeyer v. Louisiana*, 165 U.S. 578 [(1897)]. Under that provision no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each state in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated, and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the 14th Amendment was not designed to interfere....

The state, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection. If the contract be one which the state, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the 14th Amendment.... Therefore, when the state, by its legislature, in the assumed exercise of its police powers, has passed an act which seriously limits the right to labor or the right of contract in regard to their means of livelihood between persons who are *sui juris* [possessing full social and civil rights] (both employer and employee), it becomes of great importance to determine which shall prevail,—the right of the individual to labor for such time as he may choose, or the right of the state to prevent the individual from laboring, or from entering into any contract to labor, beyond a certain time prescribed by the state.

This court has recognized the existence and upheld the exercise of the police powers of the states in many cases which might fairly be considered as border ones, and it has, in the course of its determination of questions regarding the asserted invalidity of such statutes, on the ground of their violation of the rights secured by the Federal Constitution, been guided by rules of a very liberal nature, the application of which has resulted, in numerous instances, in upholding the validity of state statutes thus assailed....

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the state.... In every case that comes before this court, therefore, where legislation of this character is concerned, and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable, and appropriate exercise of the police power of the state, or is it an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into

those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the state it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police power of the state? and that question must be answered by the court.

The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare, of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

It is a question of which of two powers or rights shall prevail,—the power of the state to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates, though but in a remote degree, to the public health, does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor....

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris*, as employer or employee, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go....

[The] interference on the part of the legislatures of the several states with the ordinary trades and occupations of the people seems to be on the increase....

It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed under what is

claimed to be the police power for the purpose of protecting the public health or welfare, are, in reality, passed from other motives. We are justified in saying so when, from the character of the law and the subject upon which it legislates, it is apparent that the public health or welfare bears but the most remote relation to the law. The purpose of a statute must be determined from the natural and legal effect of the language employed; and whether it is or is not repugnant to the Constitution of the United States must be determined from the natural effect of such statutes when put into operation, and not from their proclaimed purpose....

It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to, and no such substantial effect upon, the health of the employee, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employees (all being men, *Sui juris*), in a private business, not dangerous in any degree to morals, or in any real and substantial degree to the health of the employees. Under such circumstances the freedom of master and employee to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution....

Reversed.

HOLMES, J., DISSENTING

... This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract.... The 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics [or the Conditions Essential to Human Happiness Specified and the First of Them Developed* (New York: D. Appleton, 1888)].... [A] Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar, or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word "liberty," in the 14th Amendment, is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as

they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

HARLAN, WHITE, AND DAY, J.J., DISSENTING

Granting ... that there is a liberty of contract which cannot be violated even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the state may reasonably prescribe for the common good and the well-being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for the rule is universal that a legislative enactment, Federal or state, is never to be disregarded or held invalid unless it be, beyond question, plainly and palpably in excess of legislative power.... If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. If the end which the legislature seeks to accomplish be one to which its power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere....

Let these principles be applied to the present case....

It is plain that this statute was enacted in order to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employees in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation it is not the province of the court to inquire. Under our systems of government the courts are not concerned with the wisdom or policy of legislation. So that, in determining the question of power to interfere with liberty of contract, the court may inquire whether the means devised by the state are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. But when this inquiry is entered upon I find it impossible, in view of common experience, to say that there is here no real or substantial relation between the means employed by the state and the end sought to be accomplished by its legislation.... Therefore I submit that this court will transcend its functions if it assumes to annul the statute of New York....