

LOCHNER v. NEW YORK (1905)

PRECEDENTS

Allgeyer v. Louisiana (1897): liberty of contract

Held that “liberty of contract” is part of the “liberty” protected by the DP Clause of the 14th Amendment.

“The liberty mentioned in [the DP Clause]... is deemed to embrace the right of the citizen to be free in the enjoyment of all 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 a successful conclusion the purposes above mentioned.”

Holden v. Hardy (1898): police powers

Upheld a Utah statute limiting the employment of “hard rock” miners to 8 hours per day, except in cases of emergency.

“[The] right of contract... is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers... This power is inherent in all governments... [and] may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances.”

Jacobson v. Massachusetts (1905): police powers

Upheld a compulsory vaccination law as a proper exercise of the state’s police powers regarding health.

A State law that infringes a liberty protected by the DP Clause in order to protect the public health, the public morals, or the public safety is constitutionally permissible only if it has a real or substantial relation to those objects. [See *Mugler v. Kansas* 1887]

BACKGROUND TO *LOCHNER*

New York “Labor Law” (1897)

“No employee shall 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, unless for the purpose of making a shorter work day on the last day of the week.”

Facts of the Case

Lochner owned a small bakery in Utica and was convicted in 1901 of violating the NY “labor law”. Lochner appealed to the NY State Supreme Court, and lost. He then appealed to the US Supreme Court.

Issue: Is it constitutionally permissible for a State to limit the employment of bakers to 10 hours per day, 60 hours per week?

PECKHAM’S OPINION

Allgeyer: The DP Clause prohibits State violation of the right to liberty of contract.

Holden: No right is absolute. In particular, every right to liberty is circumscribed by the States’ “reasonable and proper” use of “police powers”, i.e., the power to promote the “safety, health, morals, and general welfare of the public”.

Question: Is NY’s “Labor Law” justified as a “reasonable and proper” use of the State’s police power limiting the right to liberty of contract protected by the DP Clause?

General Question: What are the circumstances under which a State is permitted to infringe a Constitutional right?

Freedom of speech: *Schenck, Gobitis, Barnette*

Jacobson: A State’s use of its police powers in the promotion of some end is “reasonable and proper” only if the means have a real and substantial relation to the end.

NY Statute cannot be justified as a “labor law”.

The State’s police power does not extend to purely economic ends. Rather, it extends merely to the promotion of health, safety, morals, or general welfare.

NY Statute cannot be justified as a “health law”

Limiting the hours of the work week for bakers does not bear a “real and substantial” relationship to the end of protecting their health.

“To the common understanding the trade of a baker has never been regarded as an unhealthy one.”

Justification of the “real and substantial” test

Slippery Slope Argument: If you think that a State’s use of its police powers is “proper and reasonable” when the means bear a merely possible relation to the promotion of health, then “no trade, no occupation, no mode of earning one’s living, could escape this all-pervading power, . . . although such limitation might seriously cripple the ability of the laborer to support himself and his family.”

“Bad Faith” and Judicial Review

When there is evidence indicating that a State acted in bad faith in passing legislation that infringes a constitutional right, the courts should not defer to the State’s description of its motives.

“It is impossible for us to shut our eyes to the fact that many of the laws of this character, while passed . . . for the purpose of protecting the public health or welfare, are, in reality, passed from other motives.”

HARLAN’S DISSENT

Harlan accepted Peckham’s general principle: that the NY Statute is consistent with the DP Clause only if it has a “real and substantial relation to the protection of health”.

Harlan disagreed with Peckham on the facts: he cited medical treatises, historical narratives, and labor statistics “in support of the theory that . . . more than 10 hours’ steady work each day . . . in a bakery . . . may endanger the health and shorten the lives of the workmen.”

Harlan also disagreed with Peckham on the proper reach of judicial review: judges should presume that State legislatures act in good faith, unless there are particularly weighty reasons for thinking otherwise.

“We are not to presume that the state of NY has acted in bad faith. Nor can we assume that its legislature acted without due deliberation, or that it did not determine this question upon the fullest attainable information and for the common good.”

HOLMES'S DISSENT

Holmes charged that Peckham's opinion presupposes the truth of "laissez faire" economics, according to which economic well-being requires the absence of government intervention in the market-place. But "a Constitution is not intended to embody a particular economic theory", and hence Peckham's opinion should be rejected.

Holmes also cited numerous permissible State infringements of the right to liberty of contract (incl. Sunday laws, usury laws, and the prohibition of lotteries), presumably in support of the claim that the general regulation of the hours of work is no different.

Finally, Holmes made some sweeping remarks in support of a "pragmatic" theory of constitutional interpretation, according to which each case needs to be decided on its own merits independently of any general covering principle.

"General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise."