

Lochner v. New York

Mr. Justice Harlan (with whom Mr. Justice White and Mr. Justice Day concurred) dissenting:

While this court has not attempted to mark the precise boundaries of what is called the police power of the state, the existence of the power has been uniformly recognized, equally by the Federal and State courts.

All the cases agree that this power extends at least to the protection of the lives, the health, and the safety of the public against the injurious exercise by any citizen of his own rights.

In *Patterson v. Kentucky*, [97 U.S. 501](#), 24 L. ed. 1115, after referring to the general principle that rights given by the Constitution cannot be impaired by state legislation of any kind, this court said: 'It [this court] has, nevertheless, with marked distinctness and uniformity, recognized the necessity, growing out of the fundamental conditions of civil society, of upholding state police regulations which were enacted in good faith, and had appropriate and direct connection with that protection to life, health, and property which each state owes to her citizens.' So in *Barbier v. Connolly*, [113 U.S. 27](#), 28 L. ed. 923, 5 Sup. Ct. Rep. 357: 'But neither the [14th] Amendment, -broad and comprehensive as it is,-nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people.'

Speaking generally, the state, in the exercise of its powers, may not unduly interfere with the right of the citizen to enter into contracts that may be necessary and essential in the enjoyment of the inherent rights belonging to everyone, among which rights is the right '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.' This was declared in *Allgeyer v. Louisiana*, [165 U.S. 578, 589](#), 41 S. L. ed. 832, 835, 17 Sup. Ct. Rep. 427, 431. But in the same case it was conceded that the right to contract in relation to persons and property, or to do business, within a state, may be 'regulated, and sometimes prohibited, when the contracts or business conflict with the policy of the state as contained in its statutes.' (p. 591, L. ed. p. 836, Sup. Ct. Rep. p. 432.)

So, as said in *Holden v. Hardy*, [169 U.S. 366, 391](#), 42 S. L. ed. 780, 790, 18 Sup. Ct. Rep. 383, 388: 'This right of contract, however, is itself subject to certain limitations which the state may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental, to the health of employees as to demand special precautions for their well-being and protection, or the safety of adjacent property. While this court has held, notably in the cases *Davidson v. New Orleans*, [96 U.S. 97](#), 24 L. ed. 616, and *Yick Wo. v. Hopkins*, [118 U.S. 356](#), 30 L. ed. 220, 6 Sup. Ct. Rep. 1064, that the police power cannot be put forward as an excuse for oppressive and unjust legislation, it may be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances; and a large discretion 'is

necessarily vested in the legislature to determine, not only what the interests of the public required, but what measures are necessary for the protection of such interests.' *Lawton v. Steele*, [152 U.S. 133, 136](#), 38 S. L. ed. 385, 388, 14 Sup. Ct. Rep. 499, 501.' Referring to the limitations placed by the state upon the hours of workmen, the court in the same case said (p. 395, L. ed. p. 792, Sup. Ct. Rep. p. 389): 'These employments, when too long pursued, the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts.'

Subsequently, in *Gundling v. Chicago*, [177 U.S. 183, 188](#), 44 S. L. ed. 725, 728, 20 Sup. Ct. Rep. 633, 635, this court said: 'Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and [\[198 U.S. 45, 67\]](#) to what particular trade, business, or occupation they shall apply, are questions for the state to determine, and their determination comes within the proper exercise of the police power by the state, and, unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the state to pass, and they form no subject for Federal interference. As stated in *Crowley v. Christensen*, [137 U.S. 86](#), 34 L. ed. 620, 11 Sup. Ct. Rep. 13, 'the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community.'

In *St. Louis I. M. & S. R. Co. v. Paul*, [173 U.S. 404, 409](#), 43 S. L. ed. 746, 748, 19 Sup. Ct. Rep. 419, and in *Knoxville Iron Co. v. Harbison*, [183 U.S. 13, 21](#), 22 S., 46 L. ed. 55, 61, 22 Sup. Ct. Rep. 1, it was distinctly adjudged that the right of contract was not 'absolute, but may be subjected to the restraints demanded by the safety and welfare of the state.' Those cases illustrate the extent to which the state may restrict or interfere with the exercise of the right of contracting.

The authorities on the same line are so numerous that further citations are unnecessary.

I take it to be firmly established that what is called the liberty of contract may, within certain limits, be subjected to regulations designed and calculated to promote the general welfare, or to guard the public health, the public morals, or the public safety. 'The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import.' this court has recently said, 'an absolute right in each person to be at all times and in all circumstances wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.' *Jacobson v. Massachusetts*, [197 U.S. 11](#), 25 Sup. Ct. Rep. 358, 49 L. ed. [\[198 U.S. 45, 68\]](#) Granting, then, 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. In *Jacobson v. Massachusetts*, [197 U.S. 11](#), 25 Sup. Ct. Rep. 358, 49 L. ed. --, we said that the

power of the courts to review legislative action in respect of a matter affecting the general welfare exists only 'when that which the legislature has done comes within the rule that, if 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 those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law,' citing *Mugler v. Kansas*, [123 U.S. 623, 661](#), 31 S. L. ed. 205, 210, 8 Sup. Ct. Rep. 273; *Minnesota v. Barber*, [136 U.S. 313, 320](#), 34 S. L. ed. 455, 458, 3 Inters. Com. Rep. 185, 10 Sup. Ct. Rep. 862; *Atkin v. Kansas*, [191 U.S. 207, 223](#), 48 S. L. ed. 148, 158, 24 Sup. Ct. Rep. 124. 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. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon those who assert it to be unconstitutional. *M'Culloch v. Maryland*, 4 Wheat. 316, 421, 4 L. ed. 579, 605.

Let these principles be applied to the present case. By the statute in question it is provided that 'no employee shall be required, or permitted, to work in a biscuit, bread, or cake [\[198 U.S. 45, 69\]](#) 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; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.'

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. *Mugler v. Kansas*, [123 U.S. 623, 661](#), 31 S. L. ed. 205, 210, 8 Sup. Ct. Rep. 273. Nor can I say that the statute has no appropriate or direct connection with that protection to health which each state owes to her citizens (*Patterson v. Kentucky*, [97 U.S. 501](#), 24 L. ed. 1115); or that it is not promotive of the health of the employees in question (*Holden v. Hardy*, [169 U.S. 366, 391](#), 42 S. L. ed. 780, 790, 18 Sup. Ct. Rep. 383; *Lawton v. Steele*, [152 U.S. 133, 139](#), 38 S. L. ed. 385, 389, 14 Sup. Ct. Rep. 499); [\[198 U.S. 45, 70\]](#) or that the regulation prescribed by the state is utterly unreasonable and extravagant or wholly arbitrary (*Gundling v. Chicago*, [177 U.S. 183, 188](#), 44 S. L. ed. 725, 728, 20 Sup. Ct. Rep. 633). Still less can I say that the statute is, beyond question,

a plain, palpable invasion of rights secured by the fundamental law. *Jacobson v. Massachusetts*, [196 U.S. 11](#), ante, p. 358, 25 Sup. Ct. Rep. 358. Therefore I submit that this court will transcend its functions if it assumes to annul the statute of New York. It must be remembered that this statute does not apply to all kinds of business. It applies only to work in bakery and confectionery establishments, in which, as all know, the air constantly breathed by workmen is not as pure and healthful as that to be found in some other establishments or out of doors.

Professor Hirt in his treatise on the 'Diseases of the Workers' has said: 'The labor of the bakers is among the hardest and most laborious imaginable, because it has to be performed under conditions injurious to the health of those engaged in it. It is hard, very hard, work, not only because it requires a great deal of physical exertion in an overheated workshop and during unreasonably long hours, but more so because of the erratic demands of the public, compelling the baker to perform the greater part of his work at night, thus depriving him of an opportunity to enjoy the necessary rest and sleep,-a fact which is highly injurious to his health.' Another writer says: 'The constant inhaling of flour dust causes inflammation of the lungs and of the bronchial tubes. The eyes also suffer through this dust, which is responsible for the many cases of running eyes among the bakers. The long hours of toil to which all bakers are subjected produce rheumatism, cramps, and swollen legs. The intense heat in the workshops induces the workers to resort to cooling drinks, which, together with their habit of exposing the greater part of their bodies to the change in the atmosphere, is another source of a number of diseases of various organs. Nearly all bakers are palefaced and of more delicate health than the workers of other crafts, which is chiefly due to their hard work and their irregular and unnatural mode of living, whereby the power of resistance against disease is [\[198 U.S. 45, 71\]](#) greatly diminished. The average age of a baker is below that of other workmen; they seldom live over their fiftieth year, most of them dying between the ages of forty and fifty. During periods of epidemic diseases the bakers are generally the first to succumb to the disease, and the number swept away during such periods far exceeds the number of other crafts in comparison to the men employed in the respective industries. When, in 1720, the plague visited the city of Marseilles, France, every baker in the city succumbed to the epidemic, which caused considerable excitement in the neighboring cities and resulted in measures for the sanitary protection of the bakers.'

In the Eighteenth Annual Report by the New York Bureau of Statistics of Labor it is stated that among the occupations involving exposure to conditions that interfere with nutrition is that of a baker. (p. 52.) In that Report it is also stated that, 'from a social point of view, production will be increased by any change in industrial organization which diminishes the number of idlers, paupers, and criminals. Shorter hours of work, by allowing higher standards of comfort and purer family life, promise to enhance the industrial efficiency of the wage-working class,-improved health, longer life, more content and greater intelligence and inventiveness.' (p. 82.)

Statistics show that the average daily working time among workingmen in different countries is, in Australia, eight hours; in Great Britain, nine; in the United States, nine and three-quarters; in Denmark, nine and three-quarters; in Norway, ten; Sweden, France, and Switzerland, ten and one-half; Germany, ten and one-quarter; Belgium, Italy, and Austria, eleven; and in Russia, twelve hours.

We judicially know that the question of the number of hours during which a workman should continuously labor has been, for a long period, and is yet, a subject of serious consideration among civilized peoples, and by those having special knowledge of the laws of health. Suppose the statute prohibited labor in bakery and confectionery establishments in excess of eighteen hours each day. No one, I take it, could dispute the power of the state to enact such a statute. But the statute [198 U.S. 45, 72] before us does not embrace extreme or exceptional cases. It may be said to occupy a middle ground in respect of the hours of labor. What is the true ground for the state to take between legitimate protection, by legislation, of the public health and liberty of contract is not a question easily solved, nor one in respect of which there is or can be absolute certainty. There are very few, if any, questions in political economy about which entire certainty may be predicated. One writer on relation of the state to labor has well said: 'The manner, occasion, and degree in which the state may interfere with the industrial freedom of its citizens is one of the most debatable and difficult questions of social science.' Jevons, 33.

We also judicially know that the number of hours that should constitute a day's labor in particular occupations involving the physical strength and safety of workmen has been the subject of enactments by Congress and by nearly all of the states. Many, if not most, of those enactments fix eight hours as the proper basis of a day's labor.

I do not stop to consider whether any particular view of this economic question presents the sounder theory. What the precise facts are it may be difficult to say. It is enough for the determination of this case, and it is enough for this court to know, that the question is one about which there is room for debate and for an honest difference of opinion. There are many reasons of a weighty, substantial character, based upon the experience of mankind, in support of the theory that, all things considered, more than ten hours' steady work each day, from week to week, in a bakery or confectionery establishment, may endanger the health and shorten the lives of the workmen, thereby diminishing their physical and mental capacity to serve the state and to provide for those dependent upon them.

If such reasons exist that ought to be the end of this case, for the state is not amenable to the judiciary, in respect of its legislative enactments, unless such enactments are plainly, palpably, beyond all question, inconsistent with the Constitu- [198 U.S. 45, 73] tion of the United States. We are not to presume that the state of New York 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. We cannot say that the state has acted without reason, nor ought we to proceed upon the theory that its action is a mere sham. Our duty, I submit, is to sustain the statute as not being in conflict with the Federal Constitution, for the reason-and such is an all-sufficient reason-it is not shown to be plainly and palpably inconsistent with that instrument. Let the state alone in the management of its purely domestic affairs, so long as it does not appear beyond all question that it has violated the Federal Constitution. This view necessarily results from the principle that the health and safety of the people of a state are primarily for the state to guard and protect.

I take leave to say that the New York statute, in the particulars here involved, cannot be held to be in conflict with the 14th Amendment, without enlarging the scope of the amendment far beyond its original purpose, and without bringing under the supervision of this court matters which have been supposed to belong exclusively to the legislative departments of the several

states when exerting their conceded power to guard the health and safety of their citizens by such regulations as they in their wisdom deem best. Health laws of every description constitute, said Chief Justice Marshall, a part of that mass of legislation which 'embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves.' *Gibbons v. Ogden*, 9 Wheat. 1, 203, 6 L. ed. 23, 71. A decision that the New York statute is void under the 14th Amendment will, in my opinion, involve consequences of a far-reaching and mischievous character; for such a decision would seriously cripple the inherent power of the states to care for the lives, health, and wellbeing of their citizens. Those are matters which can be best controlled by the states. [198 U.S. 45, 74] The preservation of the just powers of the states is quite as vital as the preservation of the powers of the general government.

When this court had before it the question of the constitutionality of a statute of Kansas making it a criminal offense for a contractor for public work to permit or require his employees to perform labor upon such work in excess of eight hours each day, it was contended that the statute was in derogation of the liberty both of employees and employer. It was further contended that the Kansas statute was mischievous in its tendencies. This court, while disposing of the question only as it affected public work, held that the Kansas statute was not void under the 14th Amendment. But it took occasion to say what may well be here repeated: 'The responsibility therefor rests upon legislators, not upon the courts. No evils arising from such legislation could be more far reaching than those that might come to our system of government if the judiciary, abandoning the sphere assigned to it by the fundamental law, should enter the domain of legislation, and upon grounds merely of justice or reason or wisdom annul statutes that had received the sanction of the people's representatives. We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true-indeed, the public interests imperatively demand-that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably beyond all question in violation of the fundamental law of the Constitution.' *Atkin v. Kansas*, [191 U.S. 207, 223](#), 48 S. L. ed. 148, 158, 24 Sup. Ct. Rep. 124, 128.

The judgment, in my opinion, should be affirmed.