

**Lochner v. New York**

**ERROR TO THE COUNTY COURT OF ONEIDA COUNTY, STATE OF NEW YORK**

No. 292 Argued: February 23, 24, 1905 --- Decided: April 17, 1905

MR. JUSTICE PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the court.

The indictment, it will be seen, charges that the plaintiff in error violated the one hundred and tenth section of article 8, chapter 415, of the Laws of 1897, known as the labor law of the State of New York, in that he wrongfully and unlawfully required and permitted an employee working for him to work more than sixty hours in one week. There is nothing in any of the opinions delivered in this case, either in the Supreme Court or the Court of Appeals of the State, which construes the section, in using the word "required," as referring to any physical force being used to obtain the labor of an employee. It is assumed that the word means nothing more than the requirement arising from voluntary contract for such labor in excess of the number of hours specified in the statute. There is no pretense in any of the opinions that the statute was intended to meet a case of involuntary labor in any form.... The mandate of the statute that "no employee shall be required or permitted to work," is the substantial equivalent of an enactment that "no employee shall contract or agree to work," more than ten hours per day, and, as there is no provision for special emergencies, the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer's permitting, under any circumstances, more than ten hours' work to be done in his establishment. The employee may desire to earn the extra money which would arise from his working more than the prescribed [p53] time, but this statute forbids the employer from permitting the employee to earn it.

The statute necessarily interferes with the right of contract between the employer and employes 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 Fourteenth Amendment of the Federal Constitution.... 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 Fourteenth 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 Fourteenth Amendment. Contracts in violation of a statute, either of the Federal or state government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution as coming under the liberty of [p54] person or of free contract. 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* (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. Among the later cases where the state law has been upheld by this court is .. [a] Utah ...act limiting the employment of workmen in all underground mines or workings to eight hours per day "except in cases of emergency, where life or property is in imminent danger....A review of many of the cases on the subject, decided by this and other courts, is given in the opinion. It was held that the kind of employment, mining, smelting, etc., and the character of the employes in such kinds of labor, were such as to make it reasonable and proper for the State to interfere to prevent the employees from being constrained by the rules laid down by the proprietors in regard to labor. ...

The latest case decided by this court involving the police power is that of *Jacobson v. Massachusetts*, decided at this term and reported in 197 U.S. 11. It related to compulsory vaccination, and the law was held valid as a proper exercise of the police powers with reference to the public health. ...

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy, and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext -- become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. 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....

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 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 [p58] 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. ...

We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employee. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding, the trade of a baker has never been regarded as an unhealthy one. Very likely, physicians

would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the Government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? A printer, a tinsmith, a locksmith, a carpenter, a cabinetmaker, a dry goods clerk, a bank's, a lawyer's or a physician's clerk, or a clerk in almost any kind of business, would all come under the power of the legislature on this assumption. No trade, no occupation, no mode of earning one's living could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid although such limitation might seriously cripple the ability of the laborer to support himself and his family. In our large cities there are many buildings into which the sun penetrates for but a short time in each day, and these buildings are occupied by people carrying on the [p60] business of bankers, brokers, lawyers, real estate, and many other kinds of business, aided by many clerks, messengers, and other employes. Upon the assumption of the validity of this act under review, it is not possible to say that an act prohibiting lawyers' or bank clerks, or others from contracting to labor for their employers more than eight hours a day would be invalid. It might be said that it is unhealthy to work more than that number of hours in an apartment lighted by artificial light during the working hours of the day; that the occupation of the bank clerk, the lawyer's clerk, the real estate clerk, or the broker's clerk in such offices is therefore unhealthy, and the legislature, in its paternal wisdom, must therefore have the right to legislate on the subject of, and to limit the hours for, such labor, and, if it exercises that power and its validity be questioned, it is sufficient to say it has reference to the public health; it has reference to the health of the employees condemned to labor day after day in buildings where the sun never shines; it is a health law, and therefore it is valid, and cannot be questioned by the courts.

It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employees, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength [p61] of the State be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating

to the public health, or the health of the employees named, is not within that power, and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employees if the hours of labor are not curtailed. If this be not clearly the case, the individuals whose rights are thus made the subject of legislative interference are under the protection of the Federal Constitution regarding their liberty of contract as well as of person, and the legislature of the State has no power to limit their right as proposed in this statute. ...

It is further urged on the argument that restricting the hours of labor in the case of bakers was valid because it tended to cleanliness on the part of the workers, as a man was more apt to be cleanly when not overworked, and, if cleanly, then his "output" was also more likely to be so. What has already been said applies with equal force to this contention. We do not admit the reasoning to be sufficient to justify the claimed right of such interference. The State in that case would assume the position of a supervisor, or *pater familias*, over every act of the individual, and its right of governmental interference with his hours of labor, his hours of exercise, the character thereof, and the extent to which it shall be carried would be recognized and upheld. In our judgment, it is not possible, in fact, to discover the connection between the number of hours a baker may work in the bakery and the healthful quality of the bread made by the workman. The connection, if any exists, is too shadowy and thin to build any argument for the interference of the legislature. If the man works ten hours a day, it is all right, but if ten and a half or eleven, his health is in danger and his bread may be unhealthful, and, therefore, he shall not be permitted to do it. This, we think, is unreasonable, and entirely arbitrary. When assertions such as we have adverted to become necessary in order to give, if possible, a plausible foundation for the contention that the law is a "health law," [p63] it gives rise to at least a suspicion that there was some other motive dominating the legislature than the purpose to subserve the public health or welfare.

This 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.

...

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.

The judgment of the Court of Appeals of New York, as well as that of the Supreme Court and of the County Court of Oneida County, must be reversed, and the case remanded to [p65] the County Court for further proceedings not inconsistent with this opinion.

*Reversed.*

HOLMES, J., Dissenting Opinion

SUPREME COURT OF THE UNITED STATES

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MR. JUSTICE HOLMES dissenting.

I regret sincerely that I am unable to agree with the judgment [p75] in this case, and that I think it my duty to express my dissent.

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. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. The other day, we sustained the Massachusetts vaccination law. *Jacobson v. Massachusetts*, 197 U.S. 11. United States and state statutes and decisions cutting down the liberty to contract by way

of combination are familiar to this court..... The decision sustaining an eight hour law for miners is still recent. *Holden v. Hardy*, 169 U.S. 366. Some of these laws embody convictions or prejudices which judges are likely to share. Some may not. But 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*. [p76] 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 Fourteenth 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 instalment 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.