Supreme Court of the United States

NEBBIA
v.
PEOPLE OF STATE OF NEW YORK.
No. 531.

Argued Dec. 4, 5, 1933.
Decided March 5, 1934.

Leo Nebbia was convicted for violating an order of the New York Milk Control Board fixing the selling price of milk, and the conviction having been affirmed by the Court of Appeals of New York (262 N.Y. 259, 186 N.E. 694), he appeals.

Affirmed.

Mr. Justice McREYNOLDS, Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER, dissenting.

* * *

Appeal from the County Court of Monroe County, New York.

Mr. Arthur E. Sutherland, Jr., of Rochester, N.Y., for appellant.

Mr. Henry S. Manley, of Albany, N.Y., for appellee.

Mr. Justice ROBERTS delivered the opinion of the Court.

The Legislature of New York established by chapter 158 of the Laws of 1933, a Milk Control Board with power, among other things to fix minimum and maximum * * * retail prices to be charged by * * * stores to consumers for consumption off the premises where sold. Agriculture and Markets Law N.Y. (Consol. Laws, c. 69) s 312. The board fixed nine cents as the price to be charged by a store for a quart of milk. Nebbia, the proprietor of a grocery store in Rochester, sold two quarts and a 5-cent loaf of bread for 18 cents; and was convicted for violating the board's order. At his trial he asserted the statute and order contravene the equal protection clause and the due process clause of the Fourteenth Amendment, and renewed the contention in successive appeals to the county court and Court of Appeals. Both overruled his claim and affirmed the conviction.

The question for decision is whether the Federal Constitution prohibits a state from so fixing the selling price of milk. We first inquire as to the occasion for the legislation and its history.

During 1932 the prices received by farmers for milk were much below the cost of production. The decline in prices during 1931 and 1932 was much greater than that of prices generally. The situation of the families of dairy producers had become desperate and called for state aid similar to that afforded the unemployed, if conditions should not improve.

On March 10, 1932, the senate and assembly resolved, That a joint Legislative committee is hereby

created * * * to investigate the causes of the decline of the price of milk to producers and the resultant effect of the low prices upon the dairy industry and the future supply of milk to the cities of the State; to investigate the cost of distribution of milk and its relation to prices paid to milk producers, to the end that the consumer may be assured of an adequate supply of milk at a reasonable price, both to producer and consumer. The committee organized May 6, 1932, and its activities lasted nearly a year. It held 13 public hearings at which 254 witnesses testified and 2,350 typewritten pages of testimony were taken. Numerous exhibits were submitted. Under its direction an extensive research program was prosecuted by experts and official bodies and employees of the state and municipalities, which resulted in the assembling of much pertinent information. Detailed reports were received from over 100 distributors of milk, and these were collated and the information obtained analyzed. As a result of the study of this material a report covering 473 closely printed pages, embracing the conclusions and recommendations of the committee, was presented to the Legislature April 10, 1933. This document included detailed findings with copious references to the supporting evidence; appendices outlining the nature and results of prior investigations of the milk industry of the state, briefs upon the legal questions involved, and forms of bills recommended for passage. The conscientious effort and thoroughness exhibited by the report lend weight to the committee's conclusions.

In part those conclusions are:

Milk is an essential item of diet. It cannot long be stored. It is an excellent medium for growth of bacteria. These facts necessitate safeguards in its production and handling for human consumption which greatly increase ***517** the cost of the business. Failure of producers to receive a reasonable return for their labor and investment over an extended period threaten a relaxation of vigilance against contamination.

The production and distribution of milk is a paramount industry of the state, and largely affects the health and prosperity of its people. Dairying yields fully one-half of the total income from all farm products. Dairy farm investment amounts to approximately $1,000,000,000. Curtailment or destruction of the dairy industry would cause a serious economic loss to the people of the state.

In addition to the general price decline, other causes for the low price of milk include a periodic increase in the number of cows and in milk production, the prevalence of unfair and destructive trade practices in the distribution of milk, leading to a demoralization of prices in the metropolitan area and other markets, and the failure of transportation and distribution charges to be reduced in proportion to the reduction in retail prices for milk and cream.

The fluid milk industry is affected by factors of instability peculiar to itself which call for special methods of control. Under the best practicable adjustment of supply to demand the industry must carry a surplus of about 20 per cent., because milk, an essential food, must be available as demanded by consumers every day in the year, and demand and supply vary from day to day and according to the reason; but milk is perishable and cannot be stored. Close adjustment of supply to demand is hindered by several factors difficult to control. Thus surplus milk presents a serious problem, as the prices which can be realized for it for other uses are much less than those obtainable for milk sold for consumption in fluid form or as cream. A satisfactory stabilization of prices for fluid milk requires that the burden of surplus milk be shared equally by all producers and all distributors in the milk shed. So long as the surplus burden is unequally distributed the pressure to market surplus milk in fluid form will be a serious disturbing factor. The fact that the larger distributors find it necessary to carry large quantities of surplus milk, while the smaller distributors do not, leads to price-cutting and other forms of destructive competition. Smaller distributors, who take no responsibility for the surplus, by purchasing their milk at the blended prices (i.e., an average between the

price paid the producer for milk for sale as fluid milk, and the lower surplus milk price paid by the larger organizations) can undersell the larger distributors. Indulgence in this price-cutting often compels the larger dealer to cut the price to his own and the producer's detriment.

Various remedies were suggested, amongst them united action by producers, the fixing of minimum prices for milk and cream by state authority, and the imposition of certain graded taxes on milk dealers proportioned so as to equalize the cost of milk and cream to all dealers and so remove the cause of price-cutting.

The Legislature adopted chapter 158 as a method of correcting the evils, which the report of the committee showed could not be expected to right themselves through the ordinary play of the forces of supply and demand, owing to the peculiar and uncontrollable factors affecting the industry. The provisions of the statute are summarized in the margin.[FN2]

FN2 Chapter 158 of the Laws of 1933 added a new article (numbered 25) to the Agriculture and Markets Law. The reasons for the enactment are set forth in the first section (section 300). So far as material they are: That unhealthful, unfair, unjust, destructive, demoralizing, and uneconomic trade practices exist in the production, sale, and distribution of milk and milk products, whereby the dairy industry in the state and the constant supply of pure milk to inhabitants of the state are imperiled; these conditions are a menace to the public health, welfare and reasonable comfort; the production and distribution of milk is a paramount industry upon which the prosperity of the state in a great measure depends; existing economic conditions have largely destroyed the purchasing power of milk producers for industrial products, have broken down the orderly production and marketing of milk, and have seriously impaired the agricultural assets supporting the credit structure of the state and its local governmental subdivisions. The danger to public health and welfare consequent upon these conditions is declared to be immediate and to require public supervision and control of the industry to enforce proper standards of production, sanitation and marketing.

The law then (section 301) defines the terms used; declaring, inter alia, that milk dealer means any person who purchases or handles milk within the state, for sale in the state, or sells milk within the state except when consumed on the premises where sold; and includes within the definition of store a grocery store.

By section 302 a state Milk Control Board is established; and by section 303 general power is conferred upon that body to supervise and regulate the entire milk industry of the state, subject to existing provisions of the public health law, the public service law, the state sanitary code, and local health ordinances and regulations; to act as arbitrator or mediator in controversies arising between producers and dealers, or groups within those classes, and to exercise certain special powers to which reference will be made.

The board is authorized to promulgate orders and rules which are to have the force of law (section 304); to make investigations (section 305); to enter and inspect premises in which any branch of the industry is conducted, and examine the books, papers and records of any person concerned in the industry (section 306); to license all milk dealers and suspend or revoke licenses for specified causes, its action in these respects being subject to review by certiorari (section 308), and to require licensees to keep records (section 309) and to make reports (section 310).

A violation of any provision of article 25 or of any lawful order of the board is made a misdemeanor (section 307).

By section 312 it is enacted (a): The board shall ascertain by such investigations and proofs as the emergency permits, what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk * * * and be most in the public interest. The board shall take into consideration all conditions affecting the milk industry including the amount necessary to yield a reasonable return to the producer and to the milk dealer. (b) After such investigation the board shall by official order fix minimum and maximum wholesale and retail prices to be charged by milk dealers to consumers, by milk dealers to stores for consumption on the premises or for resale to consumers, and by stores to consumers for consumption off the premises where sold. It is declared (c) that the intent of the law is that the benefit of any advance in price granted to dealers shall be passed on to the producer, and if the board, after due hearing, finds this has not been done, the dealer's license may be revoked, and the dealer may be subjected to the penalties mentioned in the Act. The board may (d) after investigation fix the prices to be paid by dealers to producers for the various grades and classes of milk.

Subsection (e), s 312, on which the prosecution in the present case is founded, is quoted in the text.

Alterations may be made in existing orders after hearing of the interested parties section 312(f) and orders made are subject to review on certiorari. The board (section 319) is to continue with all the powers and duties specified until March 31, 1934, at which date it is to be deemed abolished. The Act contains further provisions not material to the present controversy.

Section 312(e) on which the prosecution in the present case is founded, provides: After the board shall have fixed prices to be charged or paid for milk in any form * * * it shall be unlawful for a milk dealer to sell or buy or offer to sell or buy milk at any price less or more than such price, * * * and no method or device shall be lawful whereby milk is bought or sold * * * at a price less or more than such price * * * whether by any discount, or rebate, or free service, or advertising allowance, or a combined price for such milk together with another commodity or commodities, or service or services, which is less or more than the aggregate of the prices for the milk and the price or prices for such other commodity or commodities, or service or services, when sold or offered for sale separately or otherwise. * * *

[1] First. The appellant urges that the order of the Milk Control Board denies him the equal protection of the laws. It is shown that the order requires him, if he purchases his supply from a dealer, to pay 8 cents per quart and 5 cents per pint, and to resell at not less than 9 and 6, whereas the same dealer may buy his supply from a farmer at lower prices and deliver milk to consumers at 10 cents the quart and 6 cents the pint. We think the contention that the discrimination deprives the appellant of equal protection is not well founded. For aught that appears, the appellant purchased his supply of milk from a farmer as do distributors, or could have procured it from a farmer if he so desired. There is therefore no showing that the order placed him at a disadvantage, or in fact affected him adversely, and this alone is fatal to the claim of denial of equal protection. But if it were shown that the appellant is compelled to buy from a distributor, the difference in the retail price he is required to charge his customers, from that prescribed for sales by distributors is not on its face arbitrary or unreasonable, for there are obvious distinctions between the two sorts of merchants which may well justify a difference of treatment, if the Legislature possesses the power to control the prices to be charged for fluid milk. Compare American Sugar Refining Co. v. Louisiana, 179 U.S. 89, 21 S.Ct. 43, 45 L.Ed. 102; Brown-Forman Co. v. Kentucky, 217 U.S. 563, 30 S.Ct. 578, 54 L.Ed. 883; State Board of

Tax Commissioners v. Jackson, 283 U.S. 527, 51 S.Ct. 540, 75 L.Ed. 1248, 73 A.L.R. 1464.

Second. The more serious question is whether, in the light of the conditions disclosed, the enforcement of section 312(e) denied the appellant the due process secured to him by the Fourteenth Amendment.

Save the conduct of railroads, no business has been so thoroughly regimented and regulated by the State of New York as the milk industry. Legislation controlling it in the interest of the public health was adopted in 1862Document1zzB00331934124797 and subsequent statutes,Document1zzB00441934124797 have been carried into the general codification known as the Agriculture and Markets Law.Document1zzB00551934124797 A perusal of these statutes discloses that the milk industry has been progressively subjected to a larger measure of control.[FN6] The producer or dairy farmer is in certain circumstances liable to have his herd quarantined against bovine tuberculosis; is limited in the importation of dairy cattle to those free from Bang's disease; is subject to rules governing the care and feeding of his cows and the care of the milk produced, the condition and surroundings of his barns and buildings used for production of milk, the utensils used, and the persons employed in milking (sections 46, 47, 55, 72-88). Proprietors of milk gathering stations or processing plants are subject to regulation (section 54), and persons in charge must operate under license and give bond to comply with the law and regulations; must keep records, pay promptly for milk purchased, abstain from false or misleading statements and from combinations to fix prices (sections 57, 57-a, 252). In addition there is a large volume of legislation intended to promote cleanliness and fair trade practices, affecting all who are engaged in the industry.Document1zzB00771934124797The challenged amendment of 1933 carried regulation much farther than the prior enactments. Appellant insists that it went beyond the limits fixed by the Constitution.

FN6 Many of these regulations have been unsuccessfully challenged on constitutional grounds.

Document1zzF21934124797Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights[FN8] nor contract rights[FN9] are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest. As Chief Justice Marshall said, speaking specifically of inspection laws, such laws form a portion of that immense mass of legislation which embraces everything within the territory of a state, * * * all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, * * * are component parts of this mass.'[FN10]

FN8 Munn v. Illinois, 94 U.S. 113, 124, 125, 24 L.Ed. 77; Orient Ins. Co. v. Daggs, 172 U.S. 557, 556, 19 S.Ct. 281, 43 L.Ed. 552; Northern Securities Co. v. United States, 193 U.S. 197, 351, 24 S.Ct. 436, 48 L.Ed. 679; and see the cases cited in notes 16-23, infra.

FN9 Allgeyer v. Louisiana, 165 U.S. 578, 591, 17 S.Ct. 427, 41 L.Ed. 832; Atlantic Coast Line R. Co. v. Riverside Mills, 219 U.S. 186, 202, 31 S.Ct. 164, 55 L.Ed. 167, 31 L.R.A.(N.S.) 7; Chicago, B. & Q.R. Co. v. McGuire, 219 U.S. 549, 567, 31 S.Ct. 259, 55 L.Ed. 328; Stephenson v. Binford, 287 U.S. 251, 274, 53 S.Ct. 181, 77 L.Ed. 288, 87 A.L.R. 721.

FN10 Gibbons v. Ogden, 9 Wheat. 1, 203, 6 L.Ed. 23.

Justice Barbour said for this court: * * * it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conductive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. ***524** That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive.'[FN11]

FN11 City of New York v. Miln, 11 Pet. 102, 139, 9 L.Ed. 648.

And Chief Justice Taney said upon the same subject: But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the constitution of the United States.'[FN12]

FN12 License Cases, 5 How. 504, 583, 12 L.Ed. 256.

Document1zzF31934124797Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. Touching the matters committed to it by the Constitution the United States possesses the power, Document1zzB013131934124797as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.

Document1zzF41934124797Document1zzF51934124797The Fifth Amendment, in the field of federal activity,[FN14] and the Fourteenth, as respects state action,[FN15] do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.

FN14 Addyston Pipe & Steel Co. v. United States, 175 U.S. 211, 228, 229, 20 S.Ct. 96, 44 L.Ed. 136.

FN15 Barbier v. Connolly, 113 U.S. 27, 31, 5 S.Ct. 357, 28 L.Ed. 923; Chicago, B. & Q.R. Co. v. Illinois ex rel. Drainage Com'rs, 200 U.S. 561, 592, 26 S.Ct. 341 -50 L.Ed. 596, 4 Ann.Cas. 1175.

The reports of our decisions abound with cases in which the citizen, individual or corporate, has vainly invoked the Fourteenth Amendment in resistance to necessary and appropriate exertion of the police power.

The court has repeatedly sustained curtailment of enjoyment of private property, in the public interest. The owner's rights may be subordinated to the needs of other private owners whose pursuits are vital to the paramount interests of the community.Document1zzB016161934124797The state may control the use of property in various ways; may prohibit advertising bill boards except of a prescribed size and location, Document1zzB017171934124797 or their use for certain kinds of advertising; Document1zzB018181934124797 may in certain circumstances authorize encroachments by party walls in cities;Document1zzB019191934124797 may fix the height of buildings, the character of materials, and methods of construction, the adjoining area which must be left open, and may exclude from residential sections offensive trades, industries and structures likely injuriously to affect the public health or safety;Document1zzB020201934124797 or may establish zones within which certain types of buildings or businesses are permitted and others excluded.Document1zzB021211934124797And although the Fourteenth Amendment extends protection to aliens as well as citizens, Document1zzB022221934124797 a state may for adequate reasons of policy exclude aliens altogether from the use and occupancy of land.

Laws passed for the suppression of immorality, in the interest of health, to secure fair trade practices, and to safeguard the interests of depositors in banks, have been found consistent with due process.Document1zzB024241934124797These measures not only affected the use of private property, but also interfered with the right of private contract. Other instances are numerous where valid regulation has restricted the right of contract, while less directly affecting property rights.Document1zzB025251934124797

The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; Document1zzB026261934124797and the right to conduct a business, or to pursue a calling, may be conditioned. Regulation of a business to prevent waste of the state's resources may be justified. Document1zzB028281934124797 And statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency.Document1zzB029291934124797

Legislation concerning sales of goods, and incidentally affecting prices, has repeatedly been held valid. In this class fall laws forbidding unfair competition by the charging of lower prices in one locality than those exacted in another,Document1zzB030301934124797 by giving trade inducements to purchasers, Document1zzB031311934124797and by other forms of price discrimination.Document1zzB032321934124797 The public policy with respect to free competition has engendered state and federal statutes prohibiting monopolies, Document1zzB033331934124797which have been upheld. On the other hand, where the policy of the state dictated that a monopoly should be granted, statutes having that effect have been held inoffensive to the constitutional guarantees.Document1zzB034341934124797 Moreover, the state or a municipality may itself enter into business in competition with private proprietors, and thus effectively although indirectly control the prices charged by them. Document1zzB035351934124797

The milk industry in New York has been the subject of long-standing and drastic regulation in the

public interest. The legislative investigation of 1932 was persuasive of the fact that for this and other reasons unrestricted competition aggravated existing evils and the normal law of supply and demand was insufficient to correct maladjustments detrimental to the community. The inquiry disclosed destructive and demoralizing competitive conditions and unfair trade practices which resulted in retail price cutting and reduced the income of the farmer below the cost of production. We do not understand the appellant to deny that in these circumstances the Legislature might reasonably consider further regulation and control desirable for protection of the industry and the consuming public. That body believed conditions could be improved by preventing destructive price-cutting by stores which, due to the flood of surplus milk, were able to buy at much lower prices than the larger distributors and to sell without incurring the delivery costs of the latter. In the order of which complaint is made the Milk Control Board fixed a price of 10 cents per quart for sales by a distributor to a consumer, and 9 cents by a store to a consumer, thus recognizing the lower costs of the store, and endeavoring to establish a differential which would be just to both. In the light of the facts the order appears not to be unreasonable or arbitrary, or without relation to the purpose to prevent ruthless competition from destroying the wholesale price structure on which the farmer depends for his livelihood, and the community for an assured supply of milk.

Document1zzF71934124797Document1zzF81934124797But we are told that because the law essays to control prices it denies due process. Notwithstanding the admitted power to correct existing economic ills by appropriate regulation of business, even though an indirect result may be a restriction of the freedom of contract or a modification of charges for services or the price of commodities, the appellant urges that direct fixation of prices is a type of regulation absolutely forbidden. His position is that the Fourteenth Amendment requires us to hold the challenged statute void for this reason alone. The argument runs that the public control of rates or prices is per se unreasonable and unconstitutional, save as applied to businesses affected with a public interest; that a business so affected is one in which property is devoted to an enterprise of a sort which the public itself might appropriately undertake, or one whose owner relies on a public grant or franchise for the right to conduct the business, or in which he is bound to serve all who apply; in short, such as is commonly called a public utility; or a business in its nature a monopoly. The milk industry, it is said, possesses none of these characteristics, and, therefore, not being affected with a public interest, its charges may not be controlled by the state. Upon the soundness of this contention the appellant's case against the statute depends.

We may as well say at once that the dairy industry is not, in the accepted sense of the phrase, a public utility. We think the appellant is also right in asserting that there is in this case no suggestion of any monopoly or monopolistic practice. It goes without saying that those engaged in the business are in no way dependent upon public grants or franchises for the privilege of conducting their activities. But if, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the state from correcting existing maladjustments by legislation touching prices? We think there is no such principle. The due process clause makes no mention of sales or of prices any more than it speaks of business or contracts or buildings or other incidents of property. The thought seems nevertheless to have persisted that there is something peculiarly sacrosanct about the price one may charge for what he makes or sells, and that, however able to regulate other elements of manufacture or trade, with incidental effect upon price, the state is incapable of directly controlling the price itself. This view was negatived many years ago. Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77

> [The Court discussed at length the argument that only businesses “affected with a public interest” can be regulated by the state.]

The touchstone of public interest in any business, its practices and charges, clearly is not the enjoyment

of any franchise from the state, Munn v. Illinois, supra. Nor is it the enjoyment of a monopoly; for in ***535**Brass v. North Dakota, 153 U.S. 391, 14 S.Ct. 857, 38 L.Ed. 757, a similar control of prices of grain elevators was upheld in spite of overwhelming and uncontradicted proof that about six hundred grain elevators existed along the line of the Great Northern Railroad, in North Dakota; that at the very station where the defendant's elevator was located two others operated; and that the business was keenly competitive throughout the state.

* * *

Many other decisions show that the private character of a business does not necessarily remove it from the realm of regulation of charges or prices. The usury laws fix the price which may be exacted for the use of money, although no business more essentially private in character can be imagined than that of loaning one's personal funds. Griffith v. Connecticut, 218 U.S. 563, 31 S.Ct. 132, 54 L.Ed. 1151. Insurance agents' compensation may be regulated, though their contracts are private, because the business of insurance is considered one properly subject to public control. O'Gorman & Young v. Hartford Ins. Co., 282 U.S. 251, 51 S.Ct. 130, 75 L.Ed. 324, 72 A.L.R. 1163. Statutes prescribing in the public interest the amounts to be charged by attorneys for prosecuting certain claims, a matter ordinarily one of personal and private nature, are not a deprivation of due process. . . .

Document1zzF91934124797It is clear that there is no closed class or category of businesses affected with a public interest, and the function of courts in the application of the Fifth and Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 535, 43 S.Ct. 630, 67 L.Ed. 1103, 27 A.L.R. 1280. The phrase affected with a public interest can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good. In several of the decisions of this court wherein the expressions affected with a public interest, and clothed with a public use, have been brought forward as the criteria of the validity of price control, it has been admitted that they are not susceptible of definition and form an unsatisfactory test of the constitutionality of legislation directed at business practices or prices. These decisions must rest, finally, upon the basis that the requirements of due process were not met because the laws were found arbitrary in their operation and effect.Document1zzB039391934124797But there can be no doubt that upon proper occasion and by appropriate measures the state may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells.

Document1zzF101934124797Document1zzF111934124797Document1zzF121934124797So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court functus officio. Whether the free operation of the normal laws of competition is a wise and wholesome rule for trade and commerce is an economic question which this court need not consider or determine. Northern Securities Co. v. United States, 193 U.S. 197, 337, 338, 24 S.Ct. 436, 457, 48 L.Ed. 679. And it is equally clear that if the legislative policy be to curb unrestrained and harmful competition by measures which are not arbitrary or discriminatory it does not lie with the courts to determine that the rule is unwise. With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. The course of decision in this court exhibits a firm

adherence to these principles. Times without number we have said that the Legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.Document1zzB040401934124797

The lawmaking bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies. The consequent interference with private property and freedom of contract has not availed with the courts to set these enactments aside as denying due process.Document1zzB041411934124797 Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained.Document1zzB042421934124797 If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests,Document1zzB043431934124797 produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public. And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the Legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty.

Tested by these considerations we find no basis in the due process clause of the Fourteenth Amendment for condemning the provisions of the Agriculture and Markets Law here drawn into question.

The judgment is affirmed.

Separate opinion of Mr. Justice McREYNOLDS.

[*Editorial comment by Linzer (PL):* McReynolds, the most reactionary of the "Four Horsemen" who consistently opposed social legislation, argued at length (undoubtedly correctly) that earlier cases did not support the majority's holding. (Nebbia was clearly a radical change in direction.) Among the economic liberty/freedom of contract cases he cited were some that are still regarded as important roadmarks in the development of individual liberties, while others struck down what seem today to be routine regulations of business.]

Adams v. Tanner, 244 U.S. 590, 37 S.Ct. 662, 664, 61 L.Ed. 1336, L.R.A. 1917F. 1163, Ann. Cas. 1917D, 973, condemned a Washington initiative measure which undertook to destroy the business of private employment agencies because it unduly restricted individual liberty. [*PL:*In fact, it regulated how large a fee could be charged for helping to find someone a job.] We there said: The fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

Buchanan v. Warley, 245 U.S. 60, 38 S.Ct. 16, 18, 62 L.Ed. 149, L.R.A. 1918A, 210, Ann. Cas. 1918A, 1201, held ineffective an ordinance which forbade negroes to reside in a city block where most of the houses were occupied by whites. It is equally well established that the police power, broad as it is,

cannot justify the passage of a law or ordinance which runs counter to the limitations of the federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases. Southern Ry. Co. v. Virginia, 290 U.S. 190, 54 S.Ct. 148, 150, 78 L.Ed.260 (December 4, 1933): The claim that the questioned statute was enacted under the police power of the state, and therefore is not subject to the standards applicable to legislation under other powers, conflicts with the firmly established rule that every state power is limited by the inhibitions of the Fourteenth Amendment.

[*PL:* Understand that this case, a very important advance for civil rights, was decided not under the Equal Protection Clause, but as a restriction of freedom of contract.]

Adkins v. Children's Hospital, 261 U.S. 525, 545, 43 S.Ct. 394, 396, 67 L.Ed. 785, 24 A.L.R. 1238: That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause **(**Fifth Amendment) is settled by the decisions of this court and is no longer open to question. [*PL:*This case struck down a minimum wage law for women.]

Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, 29 A.L.R. 1446, held invalid a state enactment (1919), which forbade the teaching in schools of any language other than English. While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Schlesinger v. Wisconsin, 270 U.S. 230, 240, 46 S.Ct. 260, 261, 70 L.Ed. 557: The state is forbidden to deny due process of law or the equal protection of the laws for any purpose whatsoever.

Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357, overthrew a Minnesota statute designed to protect the public against obvious evils incident to the business of regularly publishing malicious, scandalous and defamatory matters, because of conflict with the Fourteenth Amendment. [*PL:*In fact, this case did involve the First Amendment; we will read it soon. But it could be viewed as involving a restriction on the conduct of business.]

* * *

If she relied upon the existence of emergency, the burden was upon the state to establish it by competent evidence. None was presented at the trial. If necessary for appellant to show absence of the asserted conditions, the little grocer was helpless from the beginning-the practical difficulties were too great for the average man.

What circumstances give force to an emergency statute? In how much of the state must they obtain? Everywhere, or will a single county suffice? How many farmers must have been impoverished or threatened violence to create a crisis of sufficient gravity? If three days after this act became effective another very grievous murrain had descended and half of the cattle had died, would the emergency then have ended, also the prescribed rates? If prices for agricultural products become high can consumers claim a crisis exists and demand that the Legislature fix less ones? Or are producers alone to be considered, consumers neglected? To these questions we have no answers. When emergency gives potency, its subsidence must disempower; but no test for its presence or absence has been offered. How is an accused to know when some new rule of conduct arrived, when it will disappear?

It is argued that the report of the Legislative Committee, dated April 10, 1933, disclosed the essential facts. May one be convicted of crime upon such findings? Are federal rights subject to extinction by reports of committees? Heretofore, they have not been.

* * *

The exigency is of the kind which inevitably arises when one set of men continue to produce more than all others can buy. The distressing result to the producer followed his ill-advised but voluntary efforts. Similar situations occur in almost every business. If here we have an emergency sufficient to empower the Legislature to fix sales prices, then whenever there is too much or too little of an essential thing-whether of milk or grain or pork or coal or shoes or clothes-constitutional provisions may be declared inoperative and the anarchy and despotism prefigured in Milligan's Case are at the door. The futility of such legislation in the circumstances is pointed out below.

* * *

Of the assailed statute the Court of Appeals says: It first declares that milk has been selling too cheaply in the state of New York, and has thus created a temporary emergency; this emergency is remedied by making the sale of milk at a low price a crime; the question of what is a low price is determined by the majority vote of three ****524** officials. Also: With the wisdom of the legislation we have naught to do. It may be vain to hope by laws to oppose the general course of trade. Maybe, because of this conclusion, it said nothing concerning the possibility of obtaining increase of prices to producers-the thing definitely aimed at-through the means adopted.

But plainly, I think, this Court must have regard to the wisdom of the enactment. At least, we must inquire concerning its purpose and decide whether the means proposed have reasonable relation to something within legislative power-whether the end is legitimate, and the means appropriate. If a statute to prevent conflagrations, should require householders to pour oil on their roofs as a means of curbing the spread of fire when discovered in the neighborhood, we could hardly uphold it. Here, we find direct interference with guaranteed rights defended upon the ground that the purpose was to promote the public welfare by increasing milk prices at the farm. Unless we can affirm that the end proposed is proper and the means adopted have reasonable relation to it, this action is unjustifiable.

The court below has not definitely affirmed this necessary relation; it has not attempted to indicate how higher charges at stores to impoverished customers when the out put is excessive and sale prices by producers are unrestrained, can possibly increase receipts at the farm. The Legislative Committee pointed out as the obvious cause of decreased consumption, notwithstanding low prices, the consumers' reduced buying power. Higher store prices will not enlarge this power; nor will they decrease production. Low prices will bring less cows only after several years. The prime causes of the difficulties will remain. Nothing indicates early decreased output. Demand at low prices being wholly insufficient, the proposed plan is to raise and fix higher minimum prices at stores and thereby aid the producer whose output and prices remain unrestrained! It is not true as stated that the State seeks to protect the producer by fixing a minimum price for his milk. She carefully refrained from doing this; but did undertake to fix the price after the milk had passed to other owners. Assuming that the views and facts reported by the Legislative Committee are correct, it appears to me wholly unreasonable to expect this legislation to accomplish the proposed end-increase of prices at the farm. We deal only with Order No. 5 as did the court below. It is not merely unwise; it is arbitrary and unduly oppressive. Better prices may follow but it is beyond reason to expect them as the consequent of that order. The Legislative Committee reported: It is recognized that the dairy industry of the State cannot be placed upon a profitable basis without a decided rise in the general level of

commodity prices.

Not only does the statute interfere arbitrarily with the rights of the little grocer to conduct his business according to standards long accepted-complete destruction may follow; but it takes away the liberty of 12,000,000 consumers to buy a necessity of life in an open market. It imposes direct and arbitrary burdens upon those already seriously impoverished with the alleged immediate design of affording special benefits to others. To him ***558** with less than 9 cents it says: You cannot procure a quart of milk from the grocer although he is anxious to accept what you can pay and the demands of your household are urgent! A superabundance; but no child can purchase from a willing storekeeper below the figure appointed by three men at headquarters! And this is true although the storekeeper himself may have bought from a willing producer at half that rate and must sell quickly or lose his stock through deterioration. The fanciful scheme is to protect the farmer against undue exactions by prescribing the price at which milk disposed of by him at will may be resold!

The statement by the court below that, Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract * * * with the natural law of supply and demand, is obviously correct. But another, that statutes aiming to * * * stimulate the production of a vital food product by fixing living standards of prices for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view, conflicts with views of constitutional rights accepted since the beginning. An end although apparently desirable cannot justify inhibited means. Moreover, the challenged act was not designed to stimulate production-there was too much milk for the demand and no prospect of less for several years. Also standards of prices' at which the producer might sell were not prescribed. The Legislature cannot lawfully destroy guaranteed rights of one man with the prime purpose of enriching another, even if for the moment, ****525** this may seem advantageous to the public. And the adoption of any concept of jurisprudence which permits facile disregard of the Constitution as long interpreted and respected will inevitably lead to its destruction. Then, all rights will be subject ***559** to the caprice of the hour; government by stable laws will pass.

The somewhat misty suggestion below that condemnation of the challenged legislation would amount to holding that the due process clause has left milk producers unprotected from oppression, I assume, was not intended as a material contribution to the discussion upon the merits of the cause. Grave concern for embarrassed farmers is everywhere; but this should neither obscure the rights of others nor obstruct judicial appraisement of measures proposed for relief. The ultimate welfare of the producer, like that of every other class, requires dominance of the Constitution. And zealously to uphold this in all its parts is the highest duty intrusted to the courts.

The judgment of the court below should be reversed.

Mr. Justice VAN DEVANTER, Mr. Justice SUTHERLAND, and Mr. Justice BUTLER authorize me to say that they concur in this opinion.

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291 U.S. 502, 2 P.U.R.(NS) 337, 54 S.Ct. 505, 89 A.L.R. 1469, 78 L.Ed. 940
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