AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era – Equality/Equality Under Law

**Jew Ho v. Williamson, 103 F. 10 (C.C.D. Ca. 1900)**

*In May 1900, on the recommendation of the board of health for the city of San Francisco the city board of supervisors quarantined a section of the city commonly known as Chinatown where several individuals were alleged to have died from bubonic plague. Jew Ho operated a grocery store in the quarantined district. He denied that there had ever been any cases of bubonic plague within the quarantined district. He also alleged that the quarantine order was being “enforced against persons of the Chinese race and nationality only” and that the quarantine lines had been gerrymandered to include buildings occupied by Chinese residents and to specifically exclude neighboring buildings that were not. He further charged that the city had not made any effort to quarantine the specific buildings where the cases were said to have been found or any specific individuals who had interaction with the victims but had simply thrown up a quarantine over a section of the city containing some 10,000 people.*

*Jew Ho filed suit in federal court seeking to have the quarantine lifted on the grounds that it was an arbitrary interference with his liberty in violation of his federal constitutional rights under the Fourteenth Amendment. The federal circuit court issued an order lifting the quarantine, holding that although the city had adequate police power to impose a quarantine to protect public health it had acted in an arbitrary and discriminatory manner in this instance.*

Judge [MORROW](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e).

. . . .

It is next contended that the acts of the defendants in establishing a quarantine district in San Francisco are authorized by the general police power of the state, entrusted to the city of San Francisco. The defendants rely upon a number of cases in support of this asserted jurisdiction and authority, -- among others, the case of *Mugler v. Kansas* (1887). . . . The court . . . said:

"Power to determine such question, so as to bind all, must exist somewhere; else, society will be at the mercy of the few, who, regarding only their own appetites or passions, may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please. Under our system that power is lodged with the legislative branch of the government. It belongs to that department to exert what are known as the 'police powers' of the state, and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."

But the court did not stop with this declaration. It went further, and explained that the legislative authority was subject to limitations, and that it was for the courts to determine whether such limitations were exceeded when such legislative acts were called in question. The court said:

"It does not at all follow that every statute enacted ostensibly for the promotion of these ends is to be accepted as a legitimate exertion of the police powers of the state. There are, of necessity, limits beyond which legislation cannot rightfully go. While every possible presumption is to be indulged in favor of the validity of a statute, the courts must obey the constitution, rather than the lawmaking department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury v Madison* (1803) ‘are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty -- indeed, are under a solemn duty – to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution."

. . . .

In the case of *In re Smith* (NY 1895), there was involved the quarantine of a house in which a person was charged with being exposed to the smallpox. There the court said:

"I think no one will dispute the right of the legislature to enact such measures as will protect all persons from the impending calamity of a pestilence, and to vest in local authorities such comprehensive powers as will enable them to act competently and effectively. That those powers would be conferred without regulating or controlling their exercise is not to be supposed, and the legislature has not relieved officials from the responsibility of showing that the exercise of their powers was justified by the facts of the case. The question here is not whether the legislature had the power to enact the provisions of section 24 of the health law, but whether the respondent has shown that a state of facts existed, warranting the exercise of the extraordinary authority conferred upon him. Like all enactments which may affect the liberty of the person, this one must be construed strictly, with the saving consideration, however, that, as the legislature contemplated an extraordinary and dangerous emergency for the exercise of the power conferred, some latitude of a reasonable discretion is to be allowed to the local authorities upon the facts of a case."

The case of *Lawton v. Steele* (1894) had relation to a regulation concerning the fisheries. The court said with respect to the police power of the state:

"The extent and limits of what is known as the 'police power' have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance. Under this power it has been held that the state may order the destruction of a house falling to decay, or otherwise endangering the lives of passers-by; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interment in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the state may interfere wherever the public interests demand it; and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. *Barbier v. Connolly* (1885); *Kidd v. Pearson* (1888). To justify the state in thus interposing its authority in behalf of the public, it must appear -- First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

. . . . These cases determine that this is a subject for judicial investigation, and the question therefore arises as to whether or not the quarantine established by the defendants in this case is reasonable, and whether it is necessary, under the circumstances of this case. . . . In the presence of a great calamity, the court will go to the greatest extent, and give the widest discretion, in construing the regulations that may be adopted by the board of health or the board of supervisors. But is the regulation in this case a reasonable one? Is it a proper regulation, directed to accomplish the purpose that appears to have been in view? That is a question for this court to determine.

. . . . The purpose of quarantine and health laws and regulations with respect to contagious and infectious diseases is directed primarily to preventing the spread of such diseases among the inhabitants of localities. . . . The object of all such rules and regulations is to confine the disease to the smallest possible number of people; and hence when a vessel in a harbor, a car on a railroad, or a house on land, is found occupied by persons afflicted with such a disease, the vessel, the car, or the house, as the case may be, is cut off from all communication with the inhabitants of adjoining houses or contiguous territory, that the spread of the disease may be arrested at once and confined to the least possible territory. This is a system of quarantine that is well recognized in all communities, and is provided by the laws of the various states and municipalities: That, when a contagious or infectious disease breaks out in a place, they quarantine the house or houses first; the purpose being to restrict the disease to the smallest number possible, and that it may not spread to other people in the same locality. It must necessarily follow that, if a large section or a large territory is quarantined, intercommunication of the people within that territory will rather tend to spread the disease than to restrict it. . . . The court cannot but see the practical question that is presented to it as to the ineffectiveness of this method of quarantine against such a disease as this. So, upon that ground, the court must hold that this quarantine is not a reasonable regulation to accomplish the purposes sought. It is not in harmony with the declared purpose of the board of health or of the board of supervisors.

But there is still another feature of this case that has been called to the attention of the court, and that is its discriminating character; that is to say, it is said that this quarantine discriminates against the Chinese population of this city, and in favor of the people of other races. . . . The evidence here is clear that this is made to operate against the Chinese population only, and the reason given for it is that the Chinese may communicate the disease from one to the other. That explanation, in the judgment of the court, is not sufficient. It is, in effect, a discrimination, and it is the discrimination that has been frequently called to the attention of the federal courts where matters of this character have arisen with respect to Chinese. *Yick Wo v. Hopkins* (1886). . . .

In the case at bar, assuming that the board of supervisors had just grounds for quarantining the district which has been described, it seems that the board of health, in executing the ordinance, left out certain persons, members of races other than Chinese. This is precisely the point noticed by the supreme court of the United States, namely, the administration of a law "with an evil eye and an unequal hand." . . . Therefore the court must hold that this ordinance is invalid and cannot be maintained, that it is contrary to the provisions of the Fourteenth Amendment of the Constitution of the United States and that the board of health has no authority or right to enforce any ordinance in this city that shall discriminate against any class of persons in favor of another.

. . . . [T]he court does not feel authorized to render a judicial opinion as to whether or not the plague exists or has existed in this city. Indeed, that is one of the questions that courts, under ordinary circumstances, are disposed to leave to boards of health to determine, upon such evidence as their professional skill deems satisfactory. If they believe, or if they have even a suspicion, that there is an infectious or contagious disease existing within the city, it is unquestionably the duty of such boards to act and protect the city against it, not to wait always until the matter shall be established to the satisfaction of all the physicians or all the persons who may examine into the question. It is the duty of the court to leave such question to be determined primarily by the authority competent for that purpose. So that in this case the court does not feel at liberty to decide this question, although, as I have said, personally the evidence in this case seems to be sufficient to establish the fact that the bubonic plague has not existed, and does not now exist, in San Francisco.

. . . .