AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 7: The Republican Era—Individual Rights/Property/Due Process

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Allgeyer v. State of Louisiana, 165 U.S. 578 (1897)

By the late 1870s there was a division among the justices, and within the political system, over how much federal courts should supervise state regulation of property and economic activity. During the years immediately following passage of the Fourteenth Amendment, some justices were cautious about uprooting traditional divisions between national and state power. The social turmoil of the 1880s and 1890s, however, strengthened the determination of national conservatives to impose federal judicial restraints on the behavior of state legislatures. During these years a dramatic increase occurred in labor and farmer unrest. These concerns were economic change simultaneously led reformers to call for innovative "social legislation" (aimed at mitigating some of the consequences of rapid industrialization) and led conservatives to call for more aggressive judicial protections for property rights and market liberty.

Pursuing a policy of economic nationalism, Republicans in 1875 dramatically expanded the jurisdiction of the federal judiciary so as to ensure that a greater number of important economic disputes could be heard in reliably conservative federal courts rather than in unreliable state courts. In 1891 Republicans passed the Evarts Act, which expanded and fortified the federal judiciary by creating a new intermediate layer of federal appellate courts known as the U.S. Courts of Appeal.

Twelve appointments were made to the U.S. Supreme Court in the twenty years after Munn v. Illinois *(1877) was decided. . Nine of the twelve were made by Republican presidents, who were committed to a program of national economic development. The conservative Democrat Grover Cleveland made the other three appointments.. (No presidents during this period were committed to Populist or Progressive reform.) By the last decade of the twentieth century, these justices, in the spirit of the* Slaughter-House *(1873) dissenters, were using the due process clause of the Fourteenth Amendment more aggressively to supervise state legislation. In the fifteen years after 1873, fewer than seventy cases were decided under the Fourteenth Amendment; in the thirty years from 1888 to 1918, well over seven hundred were decided. Little reason existed at the beginning of the twentieth century to think this trend had crested. After the Populist Williams Jennings Bryant was trounced in the 1896 presidential election, conservatives seemed firmly in control of national institutions.*

Allgeyer v. Louisiana *has come to represent the late-nineteenth century court's commitment to the judicial protection of property and free markets—what some have misleadingly referred to as the era of "laissez-faire constitutionalism." The laissez-faire label is misleadingly because the even the most conservative justices on the court regularly sustained many economic regulations. At issue in* Allgeyer *was a law that prohibited Louisianans from entering into marine insurance contracts by mail with companies that operated outside the state and did not comply with all Louisiana laws governing marine insurance. Allgeyer & Co. was prosecuted for entering into an insurance contract with a New York firm. The opinion was written by recently appointed conservative Democrat Rufus W. Peckham. His opinion emphasized that the word "liberty" in the due process clause of the Fourteenth Amendment included the "liberty of contract," or the right of individuals to enter into agreement with one another without illegitimate government interference. This principle of economic liberty was later invoked when judicial majorities struck down labor laws that extended such protections as maximum hours and minimum wages to workers in their contractual relations with their employers.*

While some later applications of the freedom of contract were controversial, Allgeyer *was handed down by a unanimous court comprised of some justices who supported other forms of state economic regulation. As you read the decision, consider whether the justices were declaring a general right to enter into contracts or whether they were focused more specifically on whether Louisiana was inappropriately attempting to regulate an activity that occurred outside the state.*

JUSTICE PECKHAM, after stating the facts, delivered the opinion of the Court.

There is no doubt of the power of the state to prohibit foreign insurance companies from doing business within its limits. The state can impose such conditions as it pleases upon the doing of any business by those companies within its borders, and unless the conditions be complied with the prohibition may be absolute. . . .

In the case before us the contract was made beyond the territory of the state of Louisiana, and the only thing that the facts show was done within that state was the mailing of a letter of notification, as above mentioned, which was done after the principal contract had been made.

. . . We have, then, a contract which it is conceded was made outside and beyond the limits of the jurisdiction of the state of Louisiana, being made and to be performed within the state of New York, where the premiums were to be paid, and losses, if any, adjusted. The letter of notification did not constitute a contract made or entered into within the state of Louisiana. It was but the performance of an act rendered necessary by the provisions of the contract already made between the parties outside of the state. It was a mere notification that the contract already in existence would attach to that particular property. In any event, the contract was made in New York, outside of the jurisdiction of Louisiana, even though the policy was not to attach to the particular property until the notification was sent.

It is natural that the state court should have remarked that there is in this "statute an apparent interference with the liberty of defendants in restricting their rights to place insurance on property of their own whenever and in what company they desired." Such interference is not only apparent, but it is real, and we do not think that it is justified for the purpose of upholding what the state says is its policy with regard to foreign insurance companies which had not complied with the laws of the state for doing business within its limits. In this case the company did no business within the state, and the contracts were not therein made.

The supreme court of Louisiana says that the act of writing within that state the letter of notification was an act therein done to effect an insurance on property then in the state, in a marine insurance company which had not complied with its laws, and such act was therefore prohibited by the statute. As so construed, we think the statute is a violation of the fourteenth amendment of the federal constitution, in that it deprives the defendants of their liberty without due process of law. The statute which forbids such act does not become due process of law, because it is inconsistent with the provisions of the constitution of the Union. The "liberty" mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

It was said by Mr. Justice Bradley, in Butchers' Union Slaughterhouse Co. v. Crescent City Live-Stock Landing Co., . . . in the course of his concurring opinion in that case, that "the right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.' This right is a large ingredient in the civil liberty of the citizen." Again, . . .the learned justice said: "I hold that the liberty of pursuit-the right to follow any of the ordinary callings of life-is one of the privileges of a citizen of the United States." And again . . . : "But if it does not abridge the privileges and immunities of a citizen of the United States to prohibit him from pursuing his chosen calling, and giving to others the exclusive right of pursuing it, it certainly does deprive him (to a certain extent) of his liberty; for it takes from him the freedom of adopting and following the pursuit which he prefers, which, as already intimated, is a material part of the liberty of the citizen." It is true that these remarks were made in regard to questions of monopoly, but they well describe the rights which are covered by the word "liberty," as contained in the fourteenth amendment. . . .

Has not a citizen of a state, under the provisions of the federal constitution above mentioned, a right to contract outside of the state for insurance on his property,—a right of which state legislation cannot deprive him? We are not alluding to acts done within the state by an insurance company or its agents doing business therein, which are in violation of the state statutes. . . . When we speak of the liberty to contract for insurance or to do an act to effectuate such a contract already existing, we refer to and have in mind the facts of this case, where the contract was made outside the state, and as such was a valid and proper contract. The act done within the limits of the state, under the circumstances of this case and for the purpose therein mentioned, we hold a proper act,—one which the defendants were at liberty to perform, and which the state legislature had no right to prevent, at least with reference to the federal constitution. . . . This does not interfere in any way with the acknowledged right of the state to enact such legislation in the legitimate exercise of its police or other powers as to it may seem proper. In the exercise of such right, however, care must be taken not to infringe upon those other rights of the citizen which are protected by the federal constitution.

In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, must be embraced the right to make all proper contracts in relation thereto; and although it may be conceded that this right to contract in relation to persons or property or to do business within the jurisdiction of the state may be regulated, and sometimes prohibited, when the contracts or business conflict with the policy of the state as contained in its statutes, yet the power does not and cannot extend to prohibiting a citizen from making contracts of the nature involved in this case outside of the limits and jurisdiction of the state, and which are also to be performed outside of such jurisdiction; . . . . As the contract was valid in the place where made and where it was to be performed, the party to the contract, upon whom is devolved the right or duty to send the notification in order that the insurance provided for by the contract may attach to the property specified in the shipment mentioned in the notice, must have the liberty to do that act and to give that notification within the limits of the state, any prohibition of the state statute to the contrary notwithstanding. The giving of the notice is a mere collateral matter. It is not the contract itself, but is an act performed pursuant to a valid contract, which the state had no right or jurisdiction to prevent its citizen from making outside the limits of the state. . . .

For these reasons we think the statute in question was a violation of the federal constitution, and afforded no justification for the judgment awarded by that court against the plaintiffs in error. That judgment must therefore be reversed, and the case remanded to the supreme court of Louisiana for further proceedings not inconsistent with his opinion.