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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Ritchie v. People, 155 Ill. 98 (1895)

William Ritchie operated a factory in Cook County, Illinois. In February 1894, a factory inspector accused Ritchie of violating a state law that forbade persons who manufactured clothing from employing any "female . . . in any factory or workshop more than eight hours in any one day or forty-eight hours in any one week. Ritchie admitted that he employed women for more than eight hours, but claimed that the state law violated both the Constitution of the United States and the Constitution of Illinois. The trial judge rejected this claim, convicted Ritchie, and fined him five dollars. Ritchie appealed to the Supreme Court of Illinois.

The Supreme Court of Illinois declared the state maximum hour law unconstitutional. Justice Magruder's opinion declared that the due process clause protected the right to contract. Consider Magruder's analysis of gender rights when reading this opinion. To what extent did Magruder hold that women have the same contract rights as men? To what extent could Illinois have made a constitutional gender distinction by rewriting the law? Much has been written on the terrible sweatshop conditions under which women in the clothing industry worked during the late nineteenth century. If you were on the Supreme Court of Illinois, would you sustain this law to alleviate these conditions or strike the law down as an unconstitutional violation of either the right to contract or the equal rights of women?

JUSTICE MAGRUDER

The main objection urged against the act, and that to which the discussion of counsel on both sides is chiefly directed, relates to the validity of section 5. It is contended by counsel for plaintiff in error that that section is unconstitutional as imposing unwarranted restrictions upon the right to contract. On the other hand, it is claimed by counsel for the people that the section is a sanitary provision, and justifiable as an exercise of the police power of the state. Does the provision in question restrict the right to contract? The words, "no female shall be employed," import action on the part of two persons. There must be a person who does the act of employing and a person who consents to the act of being employed. . . . The prohibition of the statute is therefore twofold: First, that no manufacturer or proprietor of a factory or workshop shall employ any female therein more than eight hours in one day; and, second, that no female shall consent to be so employed. It thus prohibits employer and employee from uniting their minds or agreeing upon any longer service during one day than eight hours. In other words, they are prohibited, the one from contracting to employ, and the other from contracting to be employed, otherwise than as directed. . . . It follows that section 5 does limit and restrict the right of the manufacturer and his employee to contract with each other in reference to the hours of labor.

Is the restriction thus imposed an infringement upon the constitutional rights of the manufacturer and the employee? Section 2 of article 2 of the constitution of Illinois provides that "no person shall be deprived of life, liberty or property, without due process of law." . . . The privilege of contracting is both a liberty and property right. . . . Liberty includes the right to acquire property, and that means and includes the right to make and enforce contracts. . . . The right to use, buy, and sell property and contract in respect thereto is protected by the constitution. Labor is property, and the laborer has the same right to sell his labor, and to contract with reference thereto, as has any other property owner. In

this country the legislature has no power to prevent persons who are sui juris from making their own contracts, nor can it interfere with the freedom of contract between the workman and the employer. The right to labor or employ labor, and make contracts in respect thereto upon such terms as may be agreed upon between the parties, is included in the constitutional guaranty above quoted. . . . The protection of property is one of the objects for which free governments are instituted among men. . . . The right to acquire, possess, and protect property includes the right to make reasonable contracts . . . and when an owner is deprived of one of the attributes of property, like the right to make contracts, he is deprived of his property, within the meaning of the constitution. . . . This right to contract, which is thus included in the fundamental rights of liberty and property, cannot be taken away "without due process of law." The words "due process of law" have been held to be synonymous with the words "law of the land." . . . The "law of the land" is the opposite of "arbitrary, unequal, and partial legislation." . . . The legislature has no right to deprive one class of persons of privileges allowed to other persons under like conditions. The man who is forbidden to acquire and enjoy property in the same manner in which the rest of the community is permitted to acquire and enjoy it is deprived of liberty in particulars of primary importance to his pursuit of happiness. If one man is denied the right to contract as he has hitherto done under the law, and as others are still allowed to do by the law, he is deprived of both liberty and property to the extent to which he is thus deprived of the right. In line with these principles, it has been held that it is not competent, under the constitution, for the legislature to single out owners and employers of a particular class, and provide that they shall bear burdens not imposed on other owners of property or employers of labor, and prohibit them from making contracts which other owners or employers are permitted to make. . . .

We are not unmindful that the right to contract may be subject to limitations growing out of the duties which the individual owes to society, to the public, or the government. These limitations are sometimes imposed by the obligation to so use one's own as not to injure another, by the character of property as affected with a public interest or devoted to a public use, by the demands of public policy or the necessity of protecting the public from fraud or injury, by the want of capacity, by the needs of the necessitous borrower as against the demands of the extortionate lender. But the power of the legislature to thus limit the right to contract must rest upon some reasonable basis, and cannot be arbitrarily exercised. . . .

Applying these principles to the consideration of section 5, we are led irresistibly to the conclusion that it is an unconstitutional and void enactment. . . . [We] are inclined to regard the act as one which is partial and discriminating in its character. If it be construed as applying only to manufacturers of clothing, wearing apparel, and articles of a similar nature, we can see no reasonable ground for prohibiting such manufacturers and their employees from contracting for more than eight hours of work in one day, while other manufacturers and their employees are not forbidden to so contract. If the act be construed as applying to manufacturers of all kinds of products, there is no good reason why the prohibition should be directed against manufacturers and their employees, and not against merchants, or builders, or contractors, or carriers, or farmers, or persons engaged in other branches of industry, and their employees therein. Women employed by manufacturers are forbidden by section 5 to make contracts to labor longer than eight hours in a day, while women employed as saleswomen in stores, or as domestic servants, or as bookkeepers, or stenographers, or typewriters, or in laundries or other occupations not embraced under the head of manufacturing, are at liberty to contract for as many hours of labor in a day as they choose. The manner in which the section thus discriminates against one class of employers and employees and in favor of all others places it in opposition to the constitutional guaranties hereinbefore discussed, and so renders it invalid.

But, aside from its partial and discriminating character, this enactment is a purely arbitrary restriction upon the fundamental rights of the citizen to control his or her own time and faculties. It substitutes the judgment of the legislature for the judgment of the employer and employee in a matter about which they are competent to agree with each other. It assumes to dictate to what extent the capacity to labor may be exercised by the employee, and takes away the right of private judgment as to the amount and duration of the labor to be put forth in a specified period. Where the legislature thus undertakes to impose an unreasonable and unnecessary burden upon any one citizen or class of citizens it

transcends the authority entrusted to it by the constitution, even though it imposes the same burden upon all other citizens or classes of citizens. General laws may be as tyrannical as partial laws. A distinguished writer [Thomas Cooley] upon constitutional limitations has said that general rules may sometimes be as obnoxious as special, if they operate to deprive individual citizens of vested rights, and that while every man has a right to require that his own controversies shall be judged by the same rules which are applied in the controversies of his neighbors, the whole community is also entitled, at all times, to demand the protection of the ancient principles which shield private rights against arbitrary interference, even though such interference may be under a rule impartial in its operation. . . . Liberty, as has already been stated, includes the right to make contracts, as well with reference to the amount and duration of labor to be performed as concerning any other lawful matter. Hence the right to make contracts is an inherent and inalienable one, and any attempt to unreasonably abridge it is opposed to the constitution. . . . If the service to be performed were unlawful, or against public policy, or the employment were such as might be unfit for certain persons; as, for example, females or infants, the ordinance might be upheld as a sanitary or police regulation, but we cannot conceive of any theory upon which a city could be justified in making it a misdemeanor for one of its citizens to contract with another for services to be rendered, because the contract is that he shall work more than a limited number of hours per day. . . .

But it is claimed on behalf of defendant in error that this section can be sustained as on exercise of the police power of the state. The police power of the state is that power which enables it to promote the health, comfort, safety, and welfare of society. It is very broad and far reaching, but is not without its limitations. Legislative acts passed in pursuance of it must not be in conflict with the constitution, and must have some relation to the ends sought to be accomplished; that is to say, to the comfort, welfare, or safety of society. Where the ostensible object of an enactment is to secure the public comfort, welfare, or safety, it must appear to be adapted to that end. It cannot invade the rights of persons and property under the guise of a mere police regulation, when it is not such in fact; and where such an act takes away the property of a citizen or interferes with his personal liberty, it is the province of the courts to determine whether it is really an appropriate measure for the promotion of the comfort, safety, and welfare of society. . . . There is nothing in the title of the act of 1893 to indicate that it is a sanitary measure. The first three sections contain provisions for keeping workshops in a cleanly state, and for inspection to ascertain whether they are so kept. But there is nothing in the nature of the employment contemplated by the act which is in itself unhealthy or unlawful or injurious to the public morals or welfare. . . . It is not the nature of the things done, but the sex of the persons doing them, which is made the basis of the claim that the act is a measure for the promotion of the public health. It is sought to sustain the act as an exercise of the police power upon the alleged ground that it is designed to protect woman on account of her sex and physique. It will not be denied that woman is entitled to the same rights, under the constitution, to make contracts with reference to her labor, as are secured thereby to men. The first section of the fourteenth amendment to the constitution of the United States provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law." It has been held that a woman is both a "citizen" and a "person" within the meaning of this section. . . . As a "citizen," woman has the right to acquire and possess property of every kind. As a "person," she has the right to claim the benefit of the constitutional provision that she shall not be deprived of life, liberty, or property without due process of law. Involved in these rights thus guaranteed to her is the right to make and enforce contracts. The law accords to her, as to every other citizen, the right to gain a livelihood by intelligence, honesty, and industry in the arts, the sciences, the professions, or other vocations. Before the law, her right to a choice of vocations cannot be said to be denied or abridged on account of sex. . . . As a general thing, it is the province of the legislature to determine what regulations are necessary to protect the public health and secure the public safety and welfare. But, inasmuch as sex is no bar, under the constitution and law, to the endowment of woman with the fundamental and inalienable rights of liberty and property, which include the right to make her own contracts, the mere fact of sex will not justify the legislature in putting forth the police power of the state for the purpose of limiting her exercise of those rights, unless the courts are able to see

that there is some fair, just, and reasonable connection between such limitation and the public health, safety, or welfare proposed to be secured by it. . . .

Counsel for the people refer to statements in the text-books recognizing the propriety of regulations which forbid women to engage in certain kinds of work altogether. . . . The question here is not whether a particular employment is a proper one for the use of female labor, but the question is whether, in an employment which is conceded to be lawful in itself, and suitable for woman to engage in, she shall be deprived of the right to determine for herself how many hours she can and may work during each day. There is no reasonable ground—at least none which has been made manifest to us in the arguments of counsel—for fixing upon eight hours in one day as the limit within which woman can work without injury to her physique, and beyond which, if she work, injury will necessarily follow. . . .

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