Michigan Law Review

Volume 33 | Issue 5

1935

CONSTITUTIONAL LAW-VALIDITY OF STATE ANTI-INJUNCTION LEGISLATION

CONSTITUTIONAL LAW — VALIDITY OF STATE ANTI-INJUNCTION LEGISLATION — The development of organized labor in the United States has created difficult legal and social problems with which the courts and the legislatures are required to deal. The courts were the first to deal with these problems and, rightly or wrongly,[1] attempted to apply to them the existing rules of law. For instance, the rules of property law have been applied. Where organized labor interfered with the carrying of the mail, it was said that the federal government had a property right in the mails.[2] Where the carrying on of a business was interfered with, it was held that the right to conduct a lawful business was property.[3] The practice of the courts in trying to settle the labor problems by calling different interests, especially those of the employer, "property" interests with which organized labor cannot legally interfere has been severely criticized.[4] Also the courts have applied the laws of nuisance. Where organized labor interfered with the interests of the neutral public, a public nuisance was found which could be enjoined.[5] The doctrine of *Lumley v. Gye*,[6] prohibiting the inducement of breach of contract, has been applied very effectively

[1] It is argued that the problems presented by the labor disputes are social and should be dealt with only by legislation. See FRANKFURTER AND GREENE, THE LABOR INJUNCTION 199-205 (1930).

[2] In re Debs, 158 U. S. 564, 15 Sup. Ct. 900 (1894), at p. 583, states: "It is said that equity only interferes for the protection of property, and that the government has no property interest. A sufficient reply is that the United States have a property in the mails. . . ."

[3] Taft, C. J., in Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921), at p. 327, states, "Plaintiffs' business is a property right . . . and free access for employees, owner and customers to his place of business is incident to such right." See also Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 Sup. Ct. 172 (1921).

[4] Holmes, J., dissenting in Truax v. Corrigan, at p. 342, says: "The dangers of a delusive exactness in the application of the Fourteenth Amendment have been adverted to before now. . . . Delusive exactness is a source of fallacy throughout the law. By calling a business 'property' you make it seem like land, and lead up to the conclusion that a statute cannot substantially cut down the advantages of ownership existing before the statute was passed."

[5] In In re Debs, 158 U. S. 564, 15 Sup. Ct. 900 (1894), in granting an injunction against the obstruction of the mails by railroad strikers, it is said, at p. 587, "Indeed, the obstruction of a highway is a public nuisance. . . . 'it is now settled, that a court of equity may take jurisdiction in cases of public nuisance, by an information filed by the Attorney General.' "

[6] 2 El. and Bl. 216, 118 Eng. Rep. 749 (1853).

where a so-called "yellow dog" contract exists between the employer and his employees.[7] The rules prohibiting unfair competition and intimidation have been freely applied.[8] In dealing with the constitutionality of the state anti-injunction statutes, it is important that these general rules followed by courts of equity in granting labor injunctions, in the absence of statute, be kept in mind.

The application of existing law, in the form of injunctions, in labor disputes has created one of the principal grievances of organized labor.[9] The injunction, as used in the labor cases, without doubt does cause some hardship and unfairness.[10] The widespread opposition to labor injunctions soon resulted in federal and state legislation favoring organized labor. The important federal acts were the Clayton Act [11] and the recent Norris-La Guardia Act.[12] Each of these acts was immediately followed by similar state legislation. At least nine states passed statutes based upon the provisions of the Clayton Act,[13] while at least eight states have already passed statutes based upon the provisions of the Norris-La Guardia Act.[14] One of the principal purposes of these statutes is to limit the jurisdiction of the equity courts in granting injunctions in labor disputes. There are constitutional limitations, however, on the power of the federal Congress and of the state legislatures, and the constitutionality of these statutes has been often questioned in the courts. It is the constitutionality of the anti-injunction feature [15] of

[7] Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229, 38 Sup. Ct. 65 (1917).

[8] For a general discussion of the application of these rules in labor injunctions see WALSH, A TREATISE ON EQUITY 241-242 (1930).

[9] See Witte, "Social Consequences of Injunctions in Labor Disputes," 24 ILL. L. REV. 772 (1930). It is here argued that injunctions are often ineffective in labor disputes. However, the mere fact that all organized labor is so strongly opposed to injunctions creates social problems which should be remedied if possible by legislation.

[10] Witte, "The Federal Anti-Injunction Act," 16 MINN. L. REV. 638 at 651 (1932). Also FRANKFURTER AND GREENE, THE LABOR INJUNCTION 199-202 (1930).

[11] U. S. C. tit. 29, sec. 52. Section 20 of the Clayton Act dealt with labor problems. It was passed in 1914.

[12] U. S. C. tit. 29, 1934 Supp., sec's. 101-115. This act was passed in 1932.

[13] Kansas Rev. Stat. Ann. (1923), sec. 60-1107; Mason's Minnesota Stat. (1927), sec's. 4255-4258; Rev. Stat. of Utah (1933), sec. 49-2 (6 & 7); Rev. Code Arizona (1928), sec. 4286; North Dakota Comp. L. Ann. (Supp. 1913-1925), sec. 7214a2; 3 Oregon Code Ann. (1930), sec. 49-901 to 49-905; 3 Washington Comp. Stat. (Rem. 1922), sec. 7612; Cahill Illinois Rev. Stat. (1933), c. 22-58; Comp. Stat. New Jersey (Supp. 1925-1930), sec. 107-131a, p. 894.

[14] Colorado Sess. L. (1933), c. 59; Idaho Sess. L. (1933), c. 215, p. 439; Indiana Acts 1933, c. 12, p. 28; Maine Laws (1933), c. 261; Laws of Minnesota (1933), c. 416, p. 777; Oregon Laws (1933), c. 355; Wisconsin Stat. 1931, sec. 268. 22-30; Wyoming Rev. Stat. (1934 Supp.), sec. 63-203.

[15] There is no attempt here to deal with the so-called "yellow dog" contract feature of these statutes. For discussion of this feature of the statutes, see 18 MINN. L.

these statutes, with respect to the equal protection clause of the federal Constitution, with which this discussion deals.[16]

The leading case dealing with the constitutionality of the state anti-injunction acts was *Truax v. Corrigan*.[17] The case was a typical example of an employer seeking by injunction to prevent union laborers from picketing the place of business of the employer. The Arizona statute was one of those which copied the provisions of the Clayton Act and permitted peaceful and lawful picketing. It prohibited interference by injunction in disputes "between an employer and employees" in any case "growing out of a dispute concerning terms or conditions of employment," except in certain specified cases. The Arizona Supreme Court felt that the acts of the employees were peaceful and lawful picketing which could not be enjoined due to the anti-injunction statute,[18] but the United States Supreme Court reversed the decision. As a basis for discussing later cases, it is well to analyze this decision. The question which split the Court was whether the Arizona statute, by depriving the employer of the injunction, was opposed to the equal protection clause,[19] or whether the statute was a valid exercise of the police power of the state. The whole Court agreed that a different rule would be applied in the granting of injunctions in those labor cases specified in the statute, than in other situations, if the statute were enforced.[20] The dissenting justices argued strongly for the proposition that the employer-employee relation furnished a reasonable basis for classification.[21] Taft, C. J., who wrote the majority opinion, with much

REV. 184 (1934); also, Simpson, "Constitutional Rights and the Industrial Struggle," 30 W. VA. L. Q. 125 at 139-144 (1924).

[16] "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws"— Fourteenth Amendment to federal Constitution.

[17] Truax v. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124 (1921).

[18] Truax v. Corrigan, 20 Ariz. 7, 176 Pac. 570 (1918). The state court felt the act was a valid exercise of the police power.

[19] Although the majority of the court in Truax v. Corrigan felt the statute, as broadly interpreted by the Arizona Supreme Court, deprived the employer of his business, which was property, without due process of law, certainly the denial of equal protection was the principal basis of the decision. It is said that the reference to due process was only dictum. See 31 YALE L. J. 408 at 411 (1922).

[20] Taft, C. J., in speaking of the interpretation of the Arizona statute in Truax v. Corrigan, at p. 331 states: "The necessary effect of these provisions . . . is that the plaintiffs in error would have had the right to an injunction against such a campaign as that conducted by the defendants in error, if it had been directed against the plaintiffs' business and property in any kind of a controversy which was not a dispute between employer and former employees."

[21] Pitney, J., dissenting in Truax v. Corrigan, at p. 352 argues:

> "But were there actual discrimination, granting immunity from injunction to laboring men who resort to unlawful conduct in the way of picketing, boycotting and the like, seriously interfering with the employer's business, while denying the like immunity to other classes who may resort to similar unlawful and harmful

fervor held it could not be a reasonable basis for classification in meeting the requirements of the equal protection clause.[22] The effect of the decision is to declare any state anti-injunction statute unconstitutional if two things are true: first, if the statute prohibits injunctions where by the accepted rules of the equity courts in the jurisdiction injunctions would otherwise be granted; second, if the statute only applies to one class of disputes such as those "between employer and employee," leaving the law as to other cases unaffected. Thus, if the rule of the case were carried through, the anti-injunction statutes which apply to cases of organized labor only would all be invalid, unless the statute were only declaratory of the existing law of the jurisdiction.

The discussion of three recent cases will show the status of the state anti-injunction statutes at the present time. The Massachusetts Supreme Court, in *In re Opinion of the Justices*, was recently called upon for an opinion as to the constitutionality of an anti-injunction statute, similar to the Norris-La Guardia Act, which was then pending in the Massachusetts legislature. The court held that the proposed act would be unconstitutional. The court stated that the act would prevent injunctions only in those cases defined as "labor disputes" in the act, and, following *Truax v. Corrigan*, the equal protection clause of the federal Constitution would be violated.[23] Two years later the same problem was presented to the New Hampshire Supreme Court in a similar fashion. That court felt the legislation was violative of the equal protection clause and under the doctrines of that state and *Truax v. Corri-*

conduct but with what the legislature probably regarded as a slighter claim to indulgence, I can not agree that this demonstrates the classification to be so arbitrary and unreasonable as to render the act a denial of the equal protection of the laws."

Likewise Brandeis, J., dissenting, at p. 355 states:

"Nor will such changes in the law governing the contest between employer and employee be held to be violative of the equal protection clause, merely because the liberty or property of individuals in other relations to each other (for instance, as competitors in trade or as vendor and purchaser) would not, under similar circumstances, be subject to like abridgement. . . . That the relation of employer and employee affords a constitutional basis for legislation applicable only to persons standing in that relation has been repeatedly held by this court."

[22] Taft, C. J., in writing the majority opinion in Truax v. Corrigan, at pp. 336, 339, argues:

"To sustain the distinction here between the ex-employees and other tort feasors in the matter of remedies against them, it is contended that the legislature may establish a class for such ex-employees for special legislative treatment. . . . Classification must be reasonable. . . . It is really a little difficult to say, if such classification can be sustained, why special legislative treatment of assaults upon an employer or his employees by ex-employees may not be sustained with equal reason."

[23] In re Opinion of the Justices, 275 Mass. 580, 176 N. E. 649 (1931).

gan was unconstitutional.[24] In the most recent case of the problem the Illinois Supreme Court held valid the anti-injunction statute passed in that state.[25] The statute involved was similar to the Arizona statute dealt with in *Truax v. Corrigan*, both being based substantially on the labor provision in the Clayton Act. The court seems to have felt that its decision was in accord with the majority in *Truax v. Corrigan*. The court states that the Arizona statute was held unconstitutional because it prohibited granting injunctions against illegal acts while the Illinois statute only prohibited enjoining legal acts.[26] An attempt to sustain the view is made by referring to the fact that the United States Supreme Court has held section 20 of the Clayton Act valid, the latter only embracing a larger number of peaceable activities than does the Illinois act.[27] The court concludes that the statute is a valid exercise of the police power with no discussion of the equal protection clause which furnished the principal basis for the decision in *Truax v. Corrigan*. It is admitted that the statute applies only to a specified class. Thus the decision can be in accord with *Truax v. Corrigan* only if the act is declaratory of the existing law of the jurisdiction, but the court seems to admit that the act does change the prior law of Illinois.[28] It is submitted that the case is correct in holding the Illinois anti-injunction statute to be a valid exercise of the police power of the state, but the decision follows the view of the dissenting justices rather than the majority opinion in *Truax v. Corrigan*.

[24] In re Opinion of the Justices, (N. H. 1933) 166 Atl. 640 at 645 [4, 5] (1933): "it is our opinion that an act denying to employers of labor any part of the full right accorded to others to resort to the courts for relief would be unconstitutional. . . . For like reasons the Federal Supreme Court has held similar provisions in a state statute to be invalid under the Federal Constitution." The court cited Truax v. Corrigan.

[25] Fenske Bros. v. Upholsterers' International Union, (Ill. 1934) 193 N. E. 112.

[26] It is submitted that the reasoning of the court does not meet the objection raised in Truax v. Corrigan. If the acts which may not be enjoined under the Illinois statute are made legal, only acts done in a "case involving or growing out of a dispute concerning terms or conditions of employment" are so legalized. If the same acts are illegal in cases not covered by the statute, the employer could have them enjoined. Thus there is still a denial of equal protection of the laws. For a discussion of the constitutionality of the Illinois statute involved in this case, see 22 ILL. L. REV. 888 (1928).

[27] If this is the view of the Illinois court, it is of little weight in meeting the objection that the statute is a denial of equal protection of the laws. The Clayton Act is a federal act and the federal Congress is not bound by the equal protection clause. See 22 ILL. L. REV. 888 at 893 (1928).

[28] The Illinois court states: "we have given sanction to the doctrine that, when the object of a strike is unlawful any act in furtherance thereof is also unlawful, and that, when the acts of strikers, although unaccompanied by violence or threats, are such an annoyance to others as to amount to coercion or intimidation, they are unlawful." (Ill. 1934) 193 N. E. 112 at 117. Compare with the statement of Taft, C. J., in Truax v. Corrigan, quoted supra, n. 20.

The validity of the ordinary state anti-injunction act, it seems, must depend on whether the courts follow the opinion of the majority or the view of the dissenting justices in *Truax v. Corrigan* on the question of the employer-employee relation furnishing a sound basis for classification in prohibiting the giving of injunctive relief. It was generally felt at the time *Truax v. Corrigan* was decided that the view of the dissenting justices was the sound view.[29] Certainly the Supreme Court of the United States, before that decision, had held police regulations valid under the equal protection clause which applied only to certain classes of citizens. It had held that the state legislatures in the exercise of the police power might pass laws regulating the property and liberty of individuals.[30] Also that such a statute would not be declared a violation of the equal protection clause of the Fourteenth Amendment, although it applied only to special classes, if a reasonable basis for the classification could be found.[31] Possibly the fact that *Truax v. Corrigan*

[29] Articles, written at the time of the decision of Truax v. Corrigan, to this effect may be found in the following Law Reviews: 10 CAL. L. REV. 237 (1922); 22 COL. L. REV. 252 (1922); 7 CORN. L. Q. 251 (1922); 20 MICH. L. REV. 657 (1922); 28 W. VA. L. Q. 144 (1922); and 31 YALE L. J. 408 (1922).

[30] Barbier v. Connolly, 113 U. S. 27, 5 Sup. Ct. 357 (1884); Noble State Bank v. Haskell, 219 U. S. 104, 31 Sup. Ct. 186 (1910); Bunting v. State of Oregon, 243 U. S. 426, 37 Sup. Ct. 435 (1916).

[31] The United States Supreme Court has always held that if there is a probable justification for selecting a particular class on which the law operates, the classification is good. Holmes, J., speaking of classification under the equal protection clause, said: "The only question is whether we can say on our judicial knowledge that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law." Dominion Hotel v. Arizona, 249 U. S. 265 at 268, 39 Sup. Ct. 273 at 274 (1919). See also Noble State Bank v. Haskell, 219 U. S. 104, 31 Sup. Ct. 186 (1910); Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 31 Sup. Ct. 337 (1911).

There were numerous cases where the United States Supreme Court had held the employer-employee relation a valid basis for classification prior to Truax v. Corrigan. Missouri Pacific Ry. v. Mackey, 127 U. S. 205, 8 Sup. Ct. 1161 (1888), holding valid a statute abolishing the fellow-servant rule with respect to railroad employees; Holden v. Hardy, 169 U. S. 366, 18 Sup. Ct. 383 (1898), holding valid a statute limiting the hours of workmen in mines; Knoxville Iron Co. v. Harbison, 183 U. S. 13, 22 Sup. Ct. 1 (1901), holding valid a statute requiring redemption in cash of store orders issued by employers in payment of wages due employees; McLean v. Arkansas, 211 U. S. 539, 29 Sup. Ct. 206 (1909), holding valid a statute requiring coal to be screened before measuring, by mines employing more than ten men for the payment of wages; Missouri Pacific Ry. v. Castle, 224 U. S. 541, 32 Sup. Ct. 606 (1912), holding valid a statute abolishing the employer's defense of contributory negligence in railroad cases; Miller v. Wilson, 236 U. S. 373, 35 Sup. Ct. 342 (1914), holding valid a statute limiting the hours of employment of women in certain occupations; New York Central Ry. v. White, 243 U. S. 188, 37 Sup. Ct. 247 (1916), holding valid a statute providing for workmen's compensation by the employer; Arizona Employers' Liability Cases, 250 U. S. 400, 39 Sup. Ct. 553 (1919), holding valid a statute providing for compulsory em-

was a five-to-four decision, with the presence of a very strong dissenting opinion, can detract somewhat from the controlling force of the opinion.[32] Possibly the present Supreme Court of the United States can be expected to take a more liberal attitude toward the constitutionality of industrial legislation than did the Court in that case.[33] Although the present Court has not dealt with the constitutionality of the recent federal Norris-La Guardia Act, a number of lower federal courts have held it valid.[34] The legislatures of at least fifteen states [35] have felt that the granting of injunctions in labor disputes creates social evils to such a degree that their granting should be prohibited. It seems that such a large body of social legislation should be held constitutional if possible under a sound interpretation of the Fourteenth Amendment.[36] It is hoped that the courts, in passing upon the constitutionality of these state anti-injunction acts, will see fit to adopt the view of the dissenting justices in *Truax v. Corrigan* to the effect that the employer-employee relation is a reasonable basis of classification for legislative purposes in exercising the police power of the state.

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ployer's liability in specified industries; Middleton v. Texas Power & Light Co., 249 U. S. 152, 39 Sup. Ct. 227 (1919), holding valid a statute providing for discrimination against any employer who refused to operate under the terms of an employer's liability act.

[32] There were four dissenting justices in that case. Holmes, Brandeis, and Pitney wrote three separate dissenting opinions and Clarke concurred in the opinion of Pitney.

[33] See Cousens, "The Constitutional Background of Unemployment Insurance," 20 VA. L. REV. 497-522 (1934). This article is an attempt to justify the constitutionality of compulsory unemployment insurance legislation.

[34] Levering & Garrigue Co. v. Morrin, (C. C. A. 2d, 1934) 71 F. (2d) 284; Cinderella Theatre v. Sign Writers Union, (D. C. E. D. Mich. 1934) 6 F. Supp. 164; United States v. Weirton Steel Co., (D. C. Del. 1934) 7 F. Supp. 255; Knapp-Monarch Co. v. Anderson, (D. C. E. D. Ill. 1934) 7 F. Supp. 332; Miller Parlor Furniture Co. v. Furniture Workers, 2 U. S. LAW WEEK 9 (Sept. 25, 1934). These cases deal only with the due process feature of the Norris-La Guardia Act. Of course the same act might be a denial of equal protection if passed by a state legislature.

[35] See supra, notes 13 and 14.

[36] Holmes, J., in Truax v. Corrigan, at page 344 states: "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires."