

South Dakota Newspapers
"We the People"
February 22, 2023

The Supreme Court Delivers Landmark Victory for Farmers

David Adler

In 1877, in *Munn v. Illinois*, the U.S. Supreme Court delivered a landmark ruling that, to this day, ranks as one of the most important victories ever rendered for farmers in American legal history. The decision rewarded Midwestern farmers for their broad and sustained political activism in a long campaign to protect their economic interests in a confrontation with the "all powerful railroads."

In a 7-2 opinion for the majority, Chief Justice Morrison R. Waite, upheld an Illinois statute, one of several "Granger laws" enacted by Midwestern legislatures, that regulated the rates that grain operators could charge grain producers. Farmers agonized, groaned and complained about the enormous power of the railroads to establish rates for farmers, who viewed them as arbitrary, unfair and potentially lethal to their futures. Farmers were outraged that it cost as much to ship wheat from Minnesota to Wisconsin as it did to England.

Farmers organized politically to counter the power of the railroads. In the late 1860s, the newly minted Patrons of Husbandry, known as the Grange, created the first social movement since the Civil War. This early version of the Progressive Movement successfully pressured the Illinois Legislature to enact statutory limits on the rates that railroads could charge.

The railroads attacked the regulations as a violation of laissez-faire economics and the 14th Amendment's Due Process Clause, which protects life, liberty, and property. The Supreme Court sought a path between the exercise of the state police power and the 14th Amendment. On one hand, the future of farmers, and the importance of farming to the public good, could not be left to the conscience of railroads. On the other, the asserted interests of farmers could not be permitted to derail an industry that was critical to the development of the United States.

Chief Justice Waite revived an English law doctrine introduced in the 17th Century by Lord Chief Justice Matthew Hale, which permitted regulation of private property "clothed with a public purpose." Waite altered the ancient language, preferring businesses "affected with a public interest," thus drawing a line between those state regulations that would violate the due process clause and those that would not. Waite stated that a business affected with a public interest or "devoted to a public use" was subject to rate regulation.

This test, the Chief Justice observed, did not mean that states could impose arbitrary rates, but the problem that he faced was that of developing criteria to create classifications. He could not, for example, simply apply a "commonsense criterion" to any business important to the public, for that would apply to most businesses, which would be anathema in a capitalist economy. Still, even the most conservative judges would acknowledge that there were many businesses whose prices could not be allowed to run wild.

The judicial solution lay in permitting rate regulations of businesses under the public interest principle, without specifying what that principle meant. Yes, you read that sentence correctly! Public service industries, light railroads, and electric power

companies fell into that category, as did traditionally regulated occupations such as taxicabs, hotels, and fire insurance companies. The great problem that the Court could not more adequately resolve was the fundamental dilemma of the regulation of private property within a capitalist economic system.

That is why Chief Justice Waite was left to say that when one devotes "property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has created. For protection against "abuses by the legislatures," Waite wrote, "the people must resort to the polls, not to the courts."

Waite's affirmation of the 19th Century's understanding of judicial restraint, as justification for upholding state legislation in the face of 14th Amendment due process concerns, collided with Justice Stephen Field's famous dissent, which called for judicial activism in the name of protecting private property. Field, a champion of conservatism, dismissed Waite's standard. It would mean, he said, "that all property and all business in the state are at the mercy of the Legislature." Such a standard, he said, would eviscerate property "rights."

Consequently, Justice Field argued that the 14th Amendment Due Process Clause imposes a substantive limitation on the state's police power, a position that would become known as "substantive due process." Field asserted substantive due process as a means of protecting property rights, a position that would be associated with those who advocate for conservatism. In the years since, substantive due process would be invoked by other Justices, those viewed as liberals, to protect personal rights, including the rights to privacy and autonomy, among others. Justice Field could

not have imagined what an important door he was opening
when he invoked substantive due process.

---30---