of state legislation, whether dealing with procedural or substantive rights, were now subject to the scrutiny of the Court when questions of essential justice were raised.

What induced the Court to overcome its fears of increased judicial oversight and of upsetting the balance of powers between the Federal Government and the states was state remedial social legislation, enacted in the wake of industrial expansion, and the impact of such legislation on property rights. The added emphasis on the Due Process Clause also afforded the Court an opportunity to compensate for its earlier nullification of much of the privileges or immunities clause of the Amendment. Legal theories about the relationship between the government powers and private rights were available to demonstrate the impropriety of leaving to the state legislatures the same ample range of police power they had enjoyed prior to the Civil War. In the meantime, however, the *Slaughter-House Cases* and *Munn v. Illinois* had to be overruled at least in part.

About twenty years were required to complete this process, in the course of which two strands of reasoning were developed. The first was a view advanced by Justice Field in a dissent in *Munn v. Illinois*,[69] namely, that state police power is solely a power to prevent injury to the "peace, good order, morals, and health of the community." [70] This reasoning was adopted by the Court in *Mugler v. Kansas*,[71] where, despite upholding a state alcohol regulation, the Court held that "[i]t does not at all follow that every statute enacted ostensibly for the promotion of [public health, morals or safety] is to be accepted as a legitimate exertion of the police powers of the state." The second strand, which had been espoused by Justice Bradley in his dissent in the *Slaughter-House Cases*,[72] tentatively transformed ideas embodying the social compact and natural rights

[69] 94 U.S. 113, 141–48 (1877).

[70] "It is true that the legislation which secures to all protection in their rights, and the equal use and enjoyment of their property, embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community, comes within its scope; and every one must use and enjoy his property subject to the restrictions which such legislation imposes. What is termed the police power of the State, which, from the language often used respecting it, one would suppose to be an undefined and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects. The compensation which the owners of property, not having any special rights or privileges from the government in connection with it, may demand for its use, or for their own services in union with it, forms no element of consideration in prescribing regulations for that purpose." 94 U.S. at 145–46.

[71] 123 U.S. 623, 661 (1887).

[72] 83 U.S. (16 Wall.) 36, 113–14, 116, 122 (1873).