

a particular outcome if substantive predicates are found.<sup>806</sup> In an even more recent case, the Court limited the application of this test to those circumstances where the restraint on freedom imposed by the state creates an “atypical and significant hardship.”<sup>807</sup>

***Proceedings in Which Procedural Due Process Need Not Be Observed.***—Although due notice and a reasonable opportunity to be heard are two fundamental protections found in almost all systems of law established by civilized countries,<sup>808</sup> there are certain proceedings in which the enjoyment of these two conditions has not been deemed to be constitutionally necessary. For instance, persons adversely affected by a law cannot challenge its validity on the ground that the legislative body that enacted it gave no notice of proposed legislation, held no hearings at which the person could have presented his arguments, and gave no consideration to particular points of view. “Where a rule of conduct applies to more than a few people it is impracticable that everyone should have a direct voice in its adoption. The Constitution does not require all public acts to be done in town meeting or an assembly of the whole. General statutes within the state power are passed that affect the person or property of individuals, sometimes to the point of ruin, without giving them a chance to be heard. Their rights are protected in the only way that they can be in a complex society, by their power, immediate or remote, over those who make the rule.”<sup>809</sup>

Similarly, when an administrative agency engages in a legislative function, as, for example, when it drafts regulations of general application affecting an unknown number of persons, it need not afford a hearing prior to promulgation.<sup>810</sup> On the other hand, if a regulation, sometimes denominated an “order,” is of limited application, that is, it affects an identifiable class of persons, the question whether notice and hearing is required and, if so, whether it must

---

<sup>806</sup> *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 459–63 (1989) (prison regulations listing categories of visitors who may be excluded, but not creating a right to have a visitor admitted, contain “substantive predicates” but lack mandatory language).

<sup>807</sup> *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (30-day solitary confinement not atypical “in relation to the ordinary incidents of prison life”); *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005) (assignment to SuperMax prison, with attendant loss of parole eligibility and with only annual status review, constitutes an “atypical and significant hardship”).

<sup>808</sup> *Twining v. New Jersey*, 211 U.S. 78, 110 (1908); *Jacob v. Roberts*, 223 U.S. 261, 265 (1912).

<sup>809</sup> *Bi-Metallic Investment Co. v. State Bd. of Equalization*, 239 U.S. 441, 445–46 (1915). See also *Bragg v. Weaver*, 251 U.S. 57, 58 (1919). Cf. *Logan v. Zimmerman Brush Co.*, 445 U.S. 422, 432–33 (1982).

<sup>810</sup> *United States v. Florida East Coast Ry.*, 410 U.S. 224 (1973).