New York statute fixing fluid milk prices. "Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty." [153] Conceding that "the dairy industry is not, in the accepted sense of the phrase, a public utility," that is, a business "affected with a public interest," the Court in effect declared that price control is to be viewed merely as an exercise by the government of its police power, and as such is subject only to the restrictions that due process imposes on arbitrary interference with liberty and property. "The due process clause makes no mention of sales or of prices. . . ." [154]

Having thus concluded that it is no longer the nature of the business that determines the validity of a price regulation, the Court had little difficulty in upholding a state law prescribing the maximum commission that private employment agencies may charge. Rejecting contentions that the need for such protective legislation had not been shown, the Court, in *Olsen v. Nebraska ex rel. Western Reference and Bond Ass'n* [155] held that differences of opinion as to the wisdom, need, or appropriateness of the legislation "suggest a choice which should be left to the States;" and that there was "no necessity for the State to demonstrate before us that evils persist despite the competition" between public, charitable, and private employment agencies.[156]

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that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole." In his dissenting opinion in New State Ice Co. v. Liebmann, 285 U.S. 262, 302–03 (1932), Justice Brandeis had also observed: "The notion of a distinct category of business 'affected with a public interest' employing property 'devoted to a public use,' rests upon historical error. . . . In my opinion, the true principle is that the State's power extends to every regulation of any business reasonably required and appropriate for the public protection. I find in the due process clause no other limitation upon the character or the scope of regulation permissible."

[153] 291 U.S. at 502. Older decisions overturning price regulation were now viewed as resting upon this basis, *i.e.*, that due process was violated because the laws were arbitrary in their operation and effect.

[154] 291 U.S. at 531, 532. Justice McReynolds, dissenting, labeled the controls imposed by the challenged statute as a "fanciful scheme . . . to protect the farmer against undue exactions by prescribing the price at which milk disposed of by him at will may be resold!" 291 U.S. at 558. Intimating that the New York statute was as efficacious as a safety regulation that required "householders to pour oil on their roofs as a means of curbing the spread of fire when discovered in the neighborhood," Justice McReynolds insisted that "this Court must have regard to the wisdom of the enactment," and must "decide whether the means proposed have reasonable relation to something within legislative power." 291 U.S. at 556.

[155] 313 U.S. 236, 246 (1941).

[156] The older case of Ribnik v. McBride, 277 U.S. 350 (1928), which had invalidated similar legislation upon the now obsolete concept of a "business affected with a public interest," was expressly overruled. Adams v. Tanner, 244 U.S. 590 (1917),