late due process.[122] Likewise, an act that allowed an injured employee, though guilty of contributory negligence, an election of remedies between restricted recovery under a compensation law or full compensatory damages under the Employers' Liability Act, did not deprive an employer of his property without due process of law.[123] A variety of other statutory schemes have also been upheld.[124]

Even the imposition upon coal mine operators of the liability of compensating *former* employees who terminated work in the industry before passage of the law for black lung disabilities was sustained by the Court as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor.[125] Legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations, but it must take account of the realities previously existing, *i.e.,* that the danger may not have been known or appreciated, or that actions might have been taken in reliance upon the current state of the law. Consequently, legislation imposing liability on the basis of deterrence or of blameworthiness might not have passed muster.

Collective Bargaining.—During the *Lochner* era, liberty of contract, as translated into what one Justice labeled the *Allgeyer-Lochner-*

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[122] Nor does it violate due process to deprive an employee or his dependents of the higher damages that, in some cases, might be rendered under these doctrines. New York Central R.R. v. White, 243 U.S. 188 (1917); Mountain Timber Co. v. Washington, 243 U.S. 219 (1917).

[123] *Arizona Employers' Liability Cases*, 250 U.S. 400 (1919).

[124] Chicago, B. & Q. R.R. v. McGuire, 219 U.S. 549 (1911) (prohibiting contracts limiting liability for injuries and stipulating that acceptance of benefits under such contracts shall not constitute satisfaction of a claim); Alaska Packers Ass'n v. Industrial Accident Comm'n,, 294 U.S. 532 (1935) (forbidding contracts exempting employers hired-in-state from liability for injuries outside the state); Thornton v. Duffy, 254 U.S. 361 (1920) (required contribution to a state insurance fund by an employer even though employer had obtained protection from an insurance company under previous statutory scheme); Booth Fisheries v. Industrial Comm'n, 271 U.S. 208 (1926) (finding of fact of an industrial commission conclusive if supported by any evidence regardless of its preponderance, right to come under a workmen's compensation statute is optional with employer); Staten Island Ry. v. Phoenix Co., 281 U.S. 98 (1930) (wrongdoer is obliged to indemnify employer or the insurance carrier of the employer in the amount which the latter were required to contribute into special compensation funds); Sheehan Co. v. Shuler, 265 U.S. 371 (1924) (where an injured employee dies without dependents, employer or carrier required to make payments into special funds to be used for vocational rehabilitation or disability compensation of injured workers of other establishments); New York State Rys. v. Shuler, 265 U.S. 379 (1924) (same holding as above case); New York Cent. R.R. v. Bianc, 250 U.S. 596 (1919) (attorneys are not deprived of property or their liberty of contract by restriction imposed by the state on the fees they may charge in cases arising under the workmen's compensation law); Yeiser v. Dysart, 267 U.S. 540 (1925) (compensation need not be based exclusively on loss of earning power, and award authorized for injuries resulting in disfigurement of the face or head, independent of compensation for inability to work).

[125] Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 14–20 (1976). *But see* id. at 38 (Justice Powell concurring).