1. What happens in the Lochner era?

- 1905 to 1937, the Supreme Court overturns some 200 federal and state economic regulations of markets as *abridgments of liberty* (in particular, liberty of contract).

- It rejects minimum wage laws (*Adkins v. Children's Hospital*, 1923); federal and state laws against "yellow dog contracts" (*Adair*, 1908, *Coppage*, 1915); price regulation (*Williams v. Standard Oil*, 1929); and restraints on competition that limit entry into an industry or type of work (*Adams v. Tanner*, 1917).

2. What is the basis of court decisions?

- Court decisions are based on a doctrine called *economic due process*, which imposes high hurdles on state regulation of market choices.

- Three main ideas:
  
  - Strong protection for economic liberty, including liberty to “purchase and sell labor.”
  
  - Economic liberty can be restricted or regulated, but only in the name of “police powers” (for the "safety, health, morals, and general welfare of the public").
  
  - And because liberty is important, restrictions/regulations must be narrowly tailored to achieving their purpose.

3. NY law may be a labor law, and what’s wrong with that?

- New York regulation might be understood as a *labor law*, designed to police terms of labor contracts to ensure fairness, or non-exploitation.

- *Paternalism objection* to labor law: workers are not “wards of the state.”

- Reply to paternalism objection: labor laws are not paternalistic, but responsive to concerns about constraints that substantially limit the choices of workers (*Holden v. Hardy*: miners are “practically constrained”)

- *Property objection* to labor law (see *Coppage*, on yellow dog contracts)
  
  - Unequal bargaining power does constrain choices, but those constraints are “natural and necessary.”
Laws that remove benefits flowing from unequal bargaining power—e.g., the ability to pay very low wages or get agreement to a yellow dog contract—are in effect confiscations of property.

Underlying assumption is that any restriction of benefit is tantamount to theft of property, because ownership includes right to full benefit.

Given that assumption, highly constrained agreements may be voluntary: “A person’s choice among differing degrees of unpalatable alternatives is not rendered nonvoluntary by the fact that others voluntarily chose and acted within their rights in a way that did not provide him with a more palatable alternative” (Nozick).

4. NY law may be a health law, and what’s wrong with that?

- If health law, it advances a legitimate purpose.

- But is not narrowly tailored to achieving that purpose: lack of narrow tailoring creates suspicion that it is labor law, dressed up as a health law.

5. What happens with West Coast Hotel?

- Partly an argument about the economic position of women.

- More broadly, it presents an argument about bargaining power and freedom: Want economic results to reflect choices, not constraints. But with large inequalities of bargaining power, workers are led, because of "fear of discharge[,] to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down rules and the laborers are practically constrained to obey them."

- But isn’t equality theft? Mill: owning something entitles you not to all the benefits you can get others to pay, but to whatever you can get for that thing “in a fair market.” Correcting market outcomes does not take what rightfully belongs to people who would otherwise do better, but prevents people in weaker bargaining position from being deprived of what is rightfully theirs, viz. what they would get under fair conditions.