

Lochner v. New York

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The Gilded Age in America was the best of times, it was the worst of times—truly a tale of two cities. One bore the fruits and architectural wonders of the industrial revolution, with sprouting skyscrapers and the elite air of America's first billionaires. The other bore much different fruits: those of industrialization—squalor, urban sprawl, and abhorrent labor conditions justified by liberty of contract. Notions of freedom and equality so hard-fought in the preceding decades and established by the 14th amendment were now out of date, manipulated to encompass antiquated definitions of economic autonomy and succumbing to the greed of the wealthy industrial class and its permeating ideals of Social Darwinism. Politics were not immune to the influence of America's new bourgeoisie class, often coalescing to form earmark legislation beneficial only to a handful of formidable businessmen and their puppet politicians. Given the political and economic environments, liberty of contract's landmark ruling was based on little to no legitimate constitutional basis. Therefore, the ruling in *Lochner v. New York* arose in congruence with a financially guided Supreme Court that misconstrued the aim of the 14th amendment. The justices' involvement with political machines and their far-reaching interpretation of the "due process" clause consequently relegated wage laborers as the new American slave power.

Before delving into the logic and circumstances surrounding *Lochner v. New York* (1905), it is important to note that the Supreme Court decision handed down in this case and the ensuing *Lochner* era of laissez-faire economics took place in a period of rising discontent from labor. Unions like the American Federation of Labor and the Knights of Labor were gaining momentum in the republic with their rhetoric specifically aimed at wage laborers, promising the abolition of the wage system (Foner, 125). Their presence in the American political landscape and their call for labor reform were, therefore, not out of the ordinary in this era characterized by hands-off government policies. Laws like the Sherman Antitrust Act of 1890, which prevented monopolies, undoubtedly meddled in the economy (May, np). It comes as no surprise that other policies aimed at

regulating further economic actions would be passed, with New York's infamous Bakeshop Act being one of these. A joint effort by Henry Weissman of the AFL and journalist Edward Marshall, the Bakeshop Act of 1895 limited the toil of bakers to ten hours per day and 60 hours per week. As expected, this act drew support from rising progressives like Reverend William S. Rainsford and the Society for Ethical Culture's founder Felix Adler. Even business magnates backed the reform and agreed that it would "preserve the existing social order" and stymie agitation in the working class (Kens, 1990, 55). After unanimously passing the New York State Legislature, the Bakeshop Act seemingly had full support from both the public and politicians. However, disgruntlement loomed when baker John Lochner of Utica, New York was accused of violating the 60 hours provision. After making its way through the appeal process to the Supreme Court, Justice Rufus Peckham delivered the majority opinion overturning Lochner's charges. Peckham argued that although states have policing powers to regulate the health, safety, and morals of citizens under the Tenth Amendment, baking did not constitute a public health problem (Kens, 2005, np). Instead, the Bakeshop Act "necessarily interfered with the right of contract between the employer and the employee", violating liberty of contract (Kens, 2005, np). This conclusion, although not fully supported by all justices, developed from the previously alluded moral and intellectual misconstructions arising from the justices' involvement with political machines and other uninformed decision-making.

Along with corporate tycoons who reveled in gluttony from their exponentially-expanding wealth, politicians themselves had reason to celebrate in the explosion of inequality and class divide in America. Steamrolling legislation through state legislators and even Congress in return for financial assistance became a profitable endeavor for politicians with ties to business moguls. Thus, the political machines were born and infiltrated the many crevices of industrial American government (Kens, 1990, 30). Some even defied gravity while slithering their way to the top; such was the case of the Supreme Court. Justice Rufus Peckham, deliverer of the majority opinion, had been sullied by business interests since his days as a novice lawyer (Kens, 2005, np). In his private practice in Albany, NY, Peckham represented mostly corporate clients, developing deep professional ties with who he

represented. Justice Melville Fuller—who assented in the majority opinion—was also criticized during his Senate confirmation hearing for his deeply embedded relationships to big corporations (“Melville W. Fuller”, np). This is a problem because their sympathies towards their former clients and professional links had enormous clout in swaying them to favor rulings that benefited the corporations. *Lochner v. New York*’s ruling on the right to labor freely is an exemplar of this in such a manner that allowing for unlimited hours profited the employers the most because it supposedly increased capital (Kens, 1990, 56). These ties to business magnates also inevitably linked them to the political machines controlling Washington and beyond. Peckham’s nomination to the highest court was secured only by the manipulation of the Democratic Party machine of Tammany Hall and by the push to veto the two nominations before Peckham. (Kens, 2005, np). Justice Joseph McKenna’s nomination was also only assured through the puppetry of Boss Platt’s Republican Party machine (“Joseph McKenna”, np). Associations with the business industrialists of the Gilded Age therefore clouded the justices’ abilities to objectively come to an agreement regarding the validity of the Bakeshop Act that would improve conditions for the people, instead relying on their special interests. This morally unjust reasoning coupled with a misconstruction of the 14th amendment were fertile grounds for the blowing defeat to labor that *Lochner v. New York* perpetuated.

The 14th amendment states that “No State shall... abridge the privileges or immunities of citizens... without due process of law” (U.S. Const. amen. XIV, sec. 1). Historically, this amendment in the Constitution was designed to grant all persons born in the United States citizenship, effectively voiding Article I, Section 2 of the U.S. Constitution and granting all formerly enslaved African-Americans with equal rights. Nevertheless, a mere two years after its ratification, its original meaning and effect were twisted to fit the narrative of business elites. In the *Slaughterhouse Cases* of 1870 that argued against the unification of all of Louisiana’s slaughterhouses, lawyer John A. Campbell warped the meaning of “privileges or immunities” in the 14th amendment to encompass the “right to labor freely” in any pursuit (Benedict, np). Although the *Slaughterhouse Cases* were dismissed on the grounds of Louisiana’s policing powers, the novel interpretation of the 14th amendment presented by

Campbell to the Supreme Court was forever planted in the minds of employers seeking a legal justification for their laborers’ slave-like toil in the workplace. This misconceived version of the 14th amendment was subsequently evoked in later hearings on labor. Social Darwinism and the faith entrusted in the “invisible hand” of economics accompanied this misinterpretation of the 14th amendment to create a legal protection of liberty of contract and the belief that it is within an American’s unalienable rights “to labor as much or as little as he chooses” (Foner, 120) under his/her privileges or immunities. Liberty of Contract henceforth first found its legal justification in *Allegeyer v. Louisiana* (1897) when the Supreme Court ruled that a Louisiana provision requiring all corporations to pay fees to the state was unconstitutional for depriving a person of the right to make contracts. Therefore, the “liberty of contract” principle educed as a foundation for laissez-faire government and the *Lochner v. New York* decision stemmed from a convolution of a simple phrase—broadly and vaguely worded in order to assure that no other human being is made a second-class citizen—instead exploited to fatten the wallets of business magnates.

The decision by the Supreme Court in *Allegeyer v. Louisiana* (1897) and its subsequent advocacy for liberty of contract was an overreach because the Court was symbolically overstepping its boundaries as a body of judicial review and stepping into the judicial activism that so characterized the *Lochner* era (Bernstein, np). Substantive Due Process, born out of the due process clause in the 14th amendment, was used by the Court to assume the power to examine the content of legislation and the means to enforce it—a dramatic shift from its power to find laws constitutional or not (Hoffer, np). Aside from overstepping its powers as a governmental body and again misinterpreting the 14th amendment, the Supreme Court furthermore ignored the use of history as its basis for holdings (Chemerinsky, 902). It is historically accurate to claim that the 14th amendment was meant to provide African-Americans citizenship. Guaranteeing former slaves rights was its aim, as it came along with the 13th and 15th amendments and was a direct result of the Civil War. Naively ignoring Court precedent that emphasizes the use of history as a basis for rulings proves that the ruling in *Lochner v. New York* was recklessly composed without regard to the actual meaning of the 14th amendment.

Additionally, considering the Court's increasing reliance on "liberty of contract", the Supreme Court never bothered to define what it constituted as a contract. Legal definitions delineate a contract as a mutual assent to a valid offer and acceptance (Kim, np). This being the case, simply bringing a dispute to court is a display of disagreement and voids any notion of a contract. Justice Day best put these fallacies in perspective in the *Lochner v. New York* dissent saying, "Nothing is better settled by the repeated decisions of this court than that the right of contract is not absolute and unyielding" (Bair, 5).

As disheartening as *Lochner v. New York* and the ensuing *Lochner* era were for the proletariat quite literally left in the dust by industrialization, the rise of labor unions and progressive influence not long after advanced the idea that "social and moral considerations" were to be of paramount importance when determining wages (Foner, 144). Populists, the AFL, the American Economic Association and countless others successfully allied to bring about the rise of the Progressive State. Reforms and regulations in the form of the Clayton Act of 1914 or the Federal Reserve Board were just some of the first manifestations of the burgeoning moral agent that was the federal government. Liberty of Contract was to be defeated in 1908 by the ruling of *Muller v. Oregon*, asserting that interminable hours at work were detrimental to one's health, therefore constituting a public health problem, allowing states to regulate such toil. Justice Louis D. Brandeis would argue this case, successfully ensuring that humane laboring conditions be a principle of freedom, because, as he said, "If we desire respect for the law, we must first make the law respectable."

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