***Lochner v. New York***

**(1905)**

**WHAT WAS THIS CASE ABOUT?**

**The story.** In 1897 the legislature of the state of New York passed a law that regulated working conditions. One part of the law said that no employee in a bakery could be required, or allowed, to work more than 60 hours in one week. Why was such a law needed? The legislature thought that bakery workers and employers were not on an equal footing. Bosses could make workers agree to work long hours because the workers were afraid of losing their jobs. Even if workers wanted to work such long hours, the legislature thought that they should not be allowed to do so. Bakery work is very hard and very hot, and working long hours would hurt the workers’ health. Some people also thought that laws limiting the hours of labor would make workers’ family lives better. They reasoned that with shorter hours of labor, workers could spend more time with their families.

Some bakery owners were convicted of violating the law. One bakery owner named Lochner appealed his conviction. He said that the law was unconstitutional because it took away his liberty to make a contract about hours of labor with his employees. Lochner said that liberty of contract is promised by a clause in the 14th Amendment. The clause says that no state may “deprive any person of life, liberty, or property, without due process of law.” From *Dred Scott v. Sanford* you remember that nearly identical wording is found in the Fifth Amendment. The difference is that in the Fifth Amendment, the wording applies to federal laws, while in the 14th Amendment, it applies to state laws. In 1905 *Lochner v.* *New* *York* reached the Supreme Court.

**The question.** Is it a violation of the 14th Amendment for a state to limit the number of hours that employees may be required or permitted to work?

**The issues.** As the Court explained, state governments have a general power to make regulations that support the safety, health, morals, and general welfare of their citizens. This power is called the “police power” because one of the meanings of the work *police* is “regulation.” (Police need not always refer to law-enforcement officers.) New York’s 1897 law about work in bakeries is a good example of the use of the police power. As you saw earlier, the law was intended to protect workers’ health by limiting the time they could spend at hard, hot labor. Many people also saw it as protecting morals by allowing workers to spend more time at home with their families. We know that the Constitution puts limits on various powers of the federal government. The basic issue of this case, however, is how the Constitution might limit the police power of the state governments.

Where in the Constitution would one look to find such limits? Several limits on the states are contained in various amendments, but the most general limit is the “due process” clause of the 14th Amendment. Read the wording of the clause again very carefully:

“No State shall….deprive any person of life, liberty, or property, without

due process of law….”

In order to apply this clause to the New York bakery law, the Supreme Court had to make two judgments. One was deciding which freedoms are meant by the word *liberty*. Does the meaning include liberty of contract or not? The other was deciding just what is promised by the guarantee of “the process of law.” Does this phrase merely limit how laws may be made and enforced, or does it also limit what they say?

How do you think the bakery owner, Lochner, wanted the Court to make these two decisions?

**HOW WAS THE CASE DECIDED?**

In an opinion written by Justice Rufus Wheeler Peckham, the Court ruled that the New York law limiting the hours of labor in bakeries was unconstitutional.

**WHAT DID THE COURT SAY ABOUT GOVERNMENTAL POWERS?**

“This court,” said Justice Peckham, “has recognized the existence and upheld the exercise of the police power in many cases.” He argued, however, that the New York legislature had gone too far. The problem with the New York law was that its interference with liberty of contract was improper.

Justice Peckham did not mean that the Constitution forbids all interference with liberty of contract, no matter how slight, no matter how good the reasons for it. In fact, he stressed that the Court had approved a Utah law that was somewhat similar to the New York law. The Utah law said that nobody in an underground mine could work more than eight hours a day “except in cases of emergency, where life or property is in imminent danger.” Such uses of the police power, he said, were “fair, reasonable, and appropriate.” They regulate liberty without taking it away. By contrast, New York’s interference with liberty of contract was “unreasonable, unnecessary, and arbitrary [not decided by reason or principle].” He argued that New York’s law had nothing to do with safety, morals, or general welfare, and he said that the law was not really necessary to protect health.

**WHAT IMPLICATIONS DID THIS CASE HAVE FOR THE FUTURE?**

As new cases come up the members of the Supreme Court try to settle them by using the same principles that they have developed in earlier cases. What principles did this case test?

* To what extent does the word *liberty* in the 14th Amendment apply to liberty of contract?
* Does the 14th Amendment’s promise of “due process of law” limit not only how laws are made and enforced but also what they say? If they interfere with liberty—in this case, liberty of contract—the interference must be “fair, reasonable, and appropriate.” How might this interference be judged?

Even though the Court tries to use the same principles over and over, sometimes its members change their minds about controversial issues. An opinion expressed by only one justice today might become the opinion of the majority 10, 20, or 30 years later.

Four justices **dissented**, or disagreed with the ruling. The most interesting dissenting opinion was written by Justice Oliver Wendell Holmes. “This case,” he said, “is decided upon an economic theory which a large part of the country does not entertain,” the theory of **laissez-faire**. According to this theory a person has “liberty to do what he likes so long as he does not interfere with the liberty of others to do the same.” (The opposite theory is called **paternalism**, which says that at least in some cases, people may be kept from hurting themselves.) He went on to say that the decision was for the citizens and their legislators, not for judges. His only duty as a judge was to see if the theory was in the Constitution, and “a Constitution is not intended to embody a particular economic theory, whether of paternalism….or of laissez-faire.” He said that the members of the Court were acting as though the word liberty meant whatever opinions the justices happened to hold themselves.

Thousands of people agreed with Justice Holmes. State legislatures had begun to make more and more regulations to protect workers. They were angry that the Court had called such a law “unreasonable, unnecessary, and arbitrary.”

Over the years the membership of the Supreme Court changed. Some of the new members had views different from those held by the Court in 1905; others held the same views but later changed their minds. In the 1940s the Court began to reverse all the precedents it had set in cases like *Lochner v. New York*. By the 1960s this process of reversal was complete. As Justice Hugo Black said in a 1963 case called *Ferguson v. Skrupa*,

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| “The doctrine that prevailed in *Lochner*….that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws.” |

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| **BRAIN TEASERS** |

1. In your own words, write a definition of the words *laissez-faire* and *paternalism*. How did the opinion of the Court reflect laissez-faire and paternalism?
2. Justice Holmes said that choosing between laissez-faire and paternalism was a decision for the public and its legislators, not the decision of judges. You are a member of the public. Do you approve of the New York bakery law? Explain your answer.
3. What part of the Constitution was used in *Dred Scott v. Sandford* and in *Lochner v.* *New* *York*? What does this part of the Constitution state?