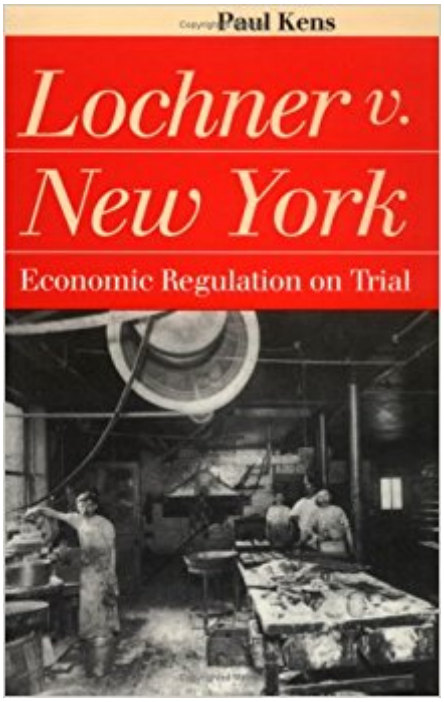
Lochner V. New York: Economic Regulation On Trial



Synopsis

Lochner v. New York (1905), which pitted a conservative activist judiciary against a reform-minded legislature, remains one of the most important and most frequently cited cases in Supreme Court history. In this concise and readable guide, Paul Kens shows us why the case remains such an important marker in the ideological battles between the free market and the regulatory state.The Supreme Court’s decision declared unconstitutional a New York State law limiting bakery workers to no more than ten hours per day or sixty hours per week. By evoking its "police power," the state hoped to eliminate the employers’ abuse of these workers. But the 5-4 majority opinion, authored by Justice Rufus Peckham and renounced by Justice Oliver Wendell Holmes, cited the state’s violation of due process and the "right of contract between employers and employees," which the majority believed was protected by the Fourteenth Amendment.Critics jumped on the decision as an example of conservative juidicial activism promoting laissez-faire capitalism at the expense of progressive reform. As series editors Peter Hoffer and N.E.H. Hull note in their preface, "the case also raised a host of significant questions regarding the impetus of state legislatures to enter the workplace and regulate hours, wages, and working conditions; of the role of courts as monitors of the constitutionality of state regulation of the economy; and of the place of economic and moral theories in judicial thinking."Kens, however, reminds us that these hotly contested ideas and principles emerged from a very real human drama involving workers, owners, legislators, lawyers, and judges. Within the crucible of an industrializing America, their story reflected the fierce competition between two powerful ideologies.

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Customer Reviews

"Kens has hit the mark. He treats complicated matters in ways that make them accessible to general readers and students and tells a terrific story. Teachers of constitutional and legal history will embrace this book."Ã¢â ¬â •Kermit Hall, author of The Magic Mirror: Law in American History "An outstanding volume that deserves a wide audience. Virtually all observers agree that Lochner is one of the most important decisions ever rendered by the Supreme Court. It continues to cast a long shadow over constitutional thought despite the political triumph of the New Deal and the rejection of the liberty of contract doctrine in the late 1930s. KensÃ¢â ¬â„¢s balanced and judicious treatment should contribute greatly to the current dialogue over economic due process and judicial protection of property rights."Ã¢â ¬â •James W. Ely, Jr., author of The Guardian of Every Right: A Constitutional History of Property Rights

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On the surface the case seems simple enough. The state of New York passed a law limiting bakery workers to no more than ten hours per day or sixty hours per week. A bakeshop owner, John Lochner, was fined for violating that law, took the matter to court and lost, and appealed the decision all the way up to the Supreme Court. In its majority opinion, the Court ruled the state law was an unconstitutional infringement on bakery ownersÃƒÂ¢Ã â ¬Ã â„¢ ÃƒÂ¢Ã â ¬Ã Å“right to contractÃƒÂ¢Ã â ¬Ã Â• as embodied in the Fourteenth Amendment. The case was Lochner v. New York (1905), one of the most important and most frequently cited cases in Supreme Court

history, and the subject of this marvelous and insightful book. The author, Paul Kens, a professor at Texas State University, does a bang up job in explaining the many issues that went into the courtÃƒÂ¢Ã â ¬Ã â„¢s 5-4 ruling and its aftermath.WhatÃƒÂ¢Ã â ¬Ã â„¢s notable is that the substantive due process clause, and the liberty of contract clause, on which the court based much of its opinion, is nowhere to be found in the Constitution. In fact, theyÃƒÂ¢Ã â ¬Ã â„¢re theories that were developed in the 19th century and adopted by the Court to justify what amounted to laissez-faire constitutionalism, and used to determine the outcome of a number of important Court decisions, of which Lochner v. New York is one of the most notorious.The author examines the two theories, as well as two legal principles that figured in the case: ÃƒÂ¢Ã â ¬Ã Å“negative stateÃƒÂ¢Ã â ¬Ã Â• and ÃƒÂ¢Ã â ¬Ã Å“police power.ÃƒÂ¢Ã â ¬Ã Â• But the keys to the decision were the first two: the substantive due process clause, and the liberty of contract clause.The CourtÃƒÂ¢Ã â ¬Ã â„¢s economic interpretation of the due process clause of the Fourteenth Amendment, restyled as "substantive due process," had its origin in a book by an English philosopher named Herbert Spencer. Published in the U.S. in 1865, the book is entitled SOCIAL STATICS. In it, Spencer blended social Darwinism with laissez-faire in an attempt to develop a universal moral law that amounted to something akin to societal survival of the fittest. Add the ideas of William Graham Sumner, the chair of political and social science at Yale, and you arrive at an explanation for poverty and a justification for inequality. In their view, the only way to reduce inequality would be to take from the fit and give to to the unfit. Not only would this neutralize the purpose of the laws of nature, it would violate the social Darwinist concept of liberty. At a time when socialism was on the rise, and labor was striking for more pay and better working conditions, and collectivism appeared to threaten the liberty of the individual, the Supreme Court looked for a doctrine to quell what they believed was a threat to individual liberty and therefore private enterprise. The Spencer-Sumner theory did the job nicely, and was used to retool the due process clause so that it protected business interests above all else. No thought was given to the welfare of workers; in this scenario, the government would allow them no comfort and no aid. Survival of the fittest.The other theory, of liberty of contract, was developed by Justice Stephen J. Field, which stretched the concept of property to include the potential for profit. Beginning with his dissent in the Slaughter-House Cases, Field melded the concepts of liberty and propertyÃƒÂ¢Ã â ¬Ã â •both protected by the Fourteenth AmendmentÃƒÂ¢Ã â ¬Ã â •to arrive at a concept not found in the Constitution but rather upon the idea of natural rights, at least a version of natural rights expounded by laissez-faire economists. According to the author, ÃƒÂ¢Ã â ¬Ã Å“it was as if Field had laid a page of the UNITED STATES SUPREME COURT REPORTS over SOCIAL STATICS and traced

Herbert SpencerÃƒÂ¢Ã â ¬Ã â„¢s first principle.ÃƒÂ¢Ã â ¬Ã Â•Not everyone on the High Court was buying into the liberty of contract/substantive due process clauses, most notably Justice Oliver Wendell Holmes. HolmesÃƒÂ¢Ã â ¬Ã â„¢ dissent in Lochner v. New York was brief and pointed: ÃƒÂ¢Ã â ¬Ã Å“The Fourteenth Amendment does not enact Mr. Herbert SpencerÃƒÂ¢Ã â ¬Ã â„¢s Social Statics.ÃƒÂ¢Ã â ¬Ã Â• In other words, there was nothing ÃƒÂ¢Ã â ¬Ã Å“naturalÃƒÂ¢Ã â ¬Ã Â• about laissez-faire. It was just an economic theory, and ÃƒÂ¢Ã â ¬Ã Å“a constitution is not intended to embody a particular economic theory,ÃƒÂ¢Ã â ¬Ã Â• Holmes said. ÃƒÂ¢Ã â ¬Ã Å“It is made for people of fundamentally different views, and the accident of our finding certain opinions natural and familiar or novel and shocking ought not to conclude our judgement upon the question whether statutes embodying them conflict with the Constitution of the United States. General principles do not decide concrete cases.ÃƒÂ¢Ã â ¬Ã Â•The Lochner decision ushered in what has become known as the Lochner eraÃƒÂ¢Ã â ¬Ã â •in which the Court struck down a number of state economic regulationsÃƒÂ¢Ã â ¬Ã â •and ended in 1937 with West Coast Hotel v. Parrish, which overturned an earlier Lochner-era decision.This book is well versed on the many issues surrounding Lochner v. New York, both before and after the Court's decision, as well as the disgusting state of bakeries in turn-of-the century New York, public health, sweatshops, tenement life, a variety of social movements, the early life of organized labor, and New York politics. While not long (187 pages), the book requires careful reading. Reading it is a great way to get lost some snowy weekend, as it did for me earlier this year. Five stars.

I haven't actually compiled a list of all the nonfiction books under 300 pages that I have read, but I do not doubt that Kens's "Lochner v. New York: Economic Regulation on Trial" was by far the greatest short nonfiction book I have ever read. In fewer than 200 pages Kens discusses New York machine politics, the Supreme Court, the court appeals process, the important political, legal, and economic personalities of the Industrial Revolution, judicial and legal theories, the Fourteenth Amendment, the due process clause, economic regulation in American history, and the specifics of the case at hand with a level of detail necessary to do justice to each topic in a lucid manner. I'm not a lawyer or legal scholar, so I'm not savvy enough to comment on the accuracy of Kens's book, but I think he does a fantastic job. The Industrial Revolution and the many good and bad effects of that powerful force can never be overstated, and the Lochner case, so it seems, brought many of the powerful arguments revolving around the Industrial Revolution to a pinpoint. Thankfully, over a century after that decision was announced to the nation (and not with much excitement at the time),

we have Kens to thank for understanding it all. The only complaint I have with this book is the lack of citations. There should be in-text parenthetical sourcing or footnotes. Kens notes that in an earlier, and I'm guessing more scholarly, treatment he has all the citations necessary, but that's still not acceptable for this version. Thankfully there is a fairly thorough bibliographic essay at the end.

States can't regulate their own economy. Ok, the Feds will instead. And you're OK with this because why, now?

"Lochner v. New York" is one of the best known and most despised US Supreme Court rulings. In Lochner, the Court voted 5 to 4 to invalidate a New York law that limited bakers' working hours to 10 a day or sixty a week. The Court found that it was a "labor legislation", and therefore unconstitutional. To this day, Lochner v. New York is remembered as one of the most extremist judicial activist opinions, and gave the name to an era of conservative judicial activism, which lasted well into the New Deal.Professor Paul Kens' "Lochner v. New York" (I shall henceforth refer to the decision as "Lochner" and to the book as "Lochner v. New York") is not the type of book I was looking for. I wanted a legal analysis of the infamous decision. Kens' book is less a legal analysis as a social, political and intellectual history, explaining the various trends that shaped the law, the case, and the decision.Too often, Social History can be merely a list of practices, or a description of conditions that are entirely predictable to anyone with even a slight familiarity with economic and social concepts (see respectively Eric Poner'sÃ Â Reconstruction: America's Unfinished Revolution, 1863-1877Ã Â and John Dower'sÃ Â Embracing Defeat: Japan in the Wake of World War II). "Lochner v. New York" on the other hand is revealing of the working conditions and social and economic situation of the baking industry, and Kens judicially uses statistics to chronicle its evolution from the mid 19th century to the early 20th.As Intellectual history, Kens offers an in depth look at the thought of various Lessez-faire and Social Darwinist ideologists, as well as their progressive opponents. Although Kens clearly has little sympathy for Social Darwinists, they come out quite well - Social Darwinist thought, while extremist, is not all that different from modern Libertarianism.Kos does a good job of describing the politics surrounding the Baking hour law's passing, and the ironies with which it abounded - including the fact that one of the Law's chief backers were later to argue its unconstitutionality before the Supreme Court.After contextualizing Lochner, Kens gets down to legal analysis. Essentially, the court applied the doctrine of "substantial due process" to declare the 10 hour law unconstitutional. The court used the 14th amendment requirement against deprivation of liberty to protect the "Sanctity of contract". The state must not

deprive a person of the right to work at whatever terms he sees fit, unless it is for reasons of public health or safety, or unless the person is in need of paternalistic protection, if he is a minor or (in Victorian America) a she. The vast majority of the Court, including Dissenter John Marshall Harlan, subscribed to this interpretation. Harlan only claimed that the Court should give the state the benefit of the doubt - if it claimed that the Law meant to protect bakers' health, then that is what it did. Only Oliver Wendell Holmes articulated a completely different vision: "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics" he famously wrote in his classic dissent. The sanctity of Contract was not in the constitution, and states should have no problem overruling it.Kos agrees with the dissenters. He convincingly (in my view), demonstrates that the framers of 14th amendment did not intend to protect the liberty of contract, and that laissez faire Capitalism was not an antebellum ideology (although he may underestimate the extent to which laissez faire was latent in pre Civil War America - most ideologies only take shape when challenged, as laissez faire was by the increasingly powerful state of the late 19th century). Ken clearly thinks that the Court should not enforce values that are not clearly articulated in the Constitution text or its history.Kens realizes that his position requires opposition not only to Lochner, but also to Liberal rulings such as Griswold v. Connecticut, which ensured the right of married individuals to use contraception. Kens argues that this also requires expansive, ideological reading of the Constitution and thus should be avoided.But the very purpose of a constitution is to check the majority's power against minorities. Because times change, the means of oppression can change also. The specific clauses of the US constitution - the ones that protect against abuses that were known at the time of framing - are mostly outdated. Think of the 3rd amendment's prohibition against the stationing of soldiers at private houses. It is the more general, opaque clauses of the constitution (like the prohibition against abridging the Freedom of Speech or inflicting "Cruel and unusual punishments") that can deter present day majorities from manhandling minorities and protect the little citizen from Big Brother.But can Lochner v. New York be distinguished from expansive Liberal rulings? Does adherence to Griswold force on us to accept Lochner?I think there are good pragmatic reasons to say no. First, we should acknowledge that the Court's decision is right in treating suspiciously governmental intervention in the freedom of contracts. But the Court erred, in my view, in seeing Lochner as essentially a question of Liberty. I think Lochner is actually a question of wealth redistribution.By regulating the terms in which bakeries and baker workers contract, New York improved the relative position of the workers vis a vis the owners. But government policy can most assuredly do that. The government is entitled to levy taxes in any form it wishes, whether progressively (taxing the rich more then the poor) or regressively (the other way around). It may levy tariffs on incoming goods, improving the

lots of US manufacturers and worsening those of exporters. It can supply welfare benefits for the poor. The competition between the various interests is the very essence of the democratic process and should be left (within reason), to the democratic process. The time for the Court to intervene is to prevent Government from abusing citizens, not to keep the spoils out of the hands of the winners in marketplace of ideas.

Pharmacology of Cell Regulation)