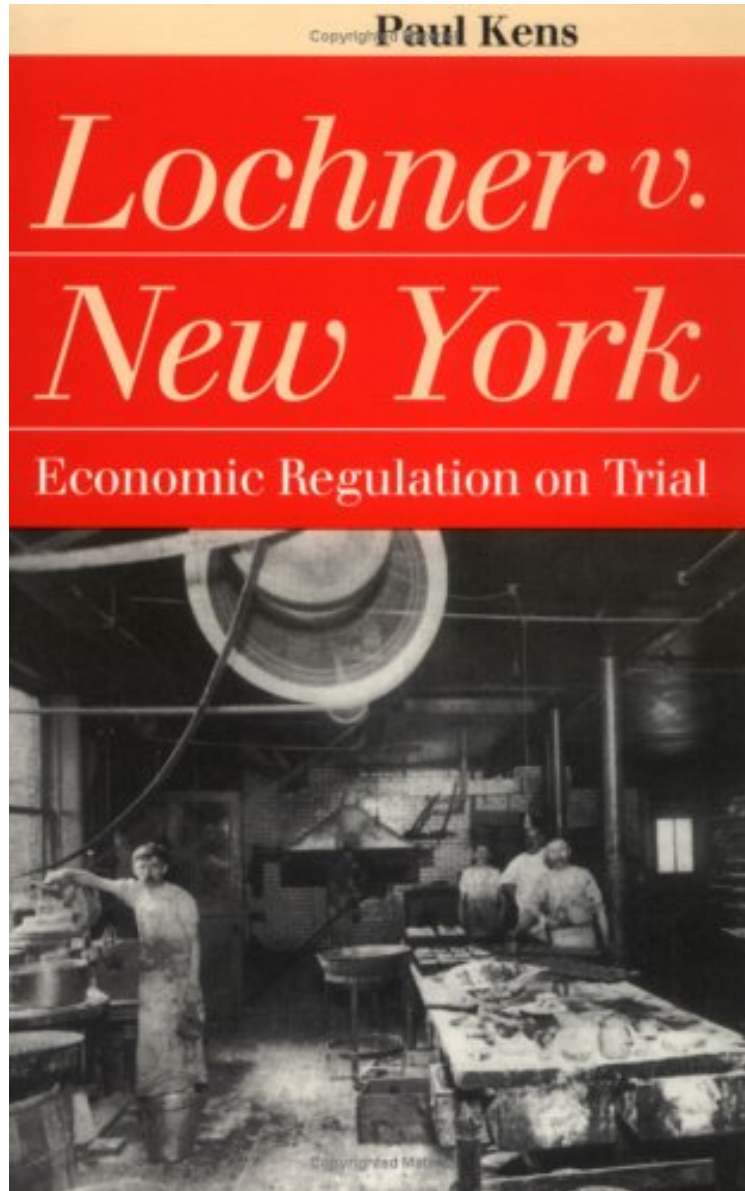


[Download pdf] Lochner v. New York: Economic Regulation on Trial

Lochner v. New York: Economic Regulation on Trial

Paul Kens

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Paul Kens : Lochner v. New York: Economic Regulation on Trial before purchasing it in order to gage whether or not it would be worth my time, and all praised Lochner v. New York: Economic Regulation on Trial:

1 of 1 people found the following review helpful. Thorough, engaging, still relevantBy Ricardo MioOn 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 owners right to contract 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 courts 5-4 ruling and its aftermath. What'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, they'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: negative state and police power. But the keys to the decision were the first two: the substantive due process clause, and the liberty of contract clause. The Court'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 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 property both protected by the Fourteenth Amendment 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, it was as if Field had laid a page of the *UNITED STATES SUPREME COURT REPORTS* over *SOCIAL STATICS* and traced Herbert Spencer's first principle. Not everyone on the High Court was buying into the liberty of contract/substantive due process clauses, most notably Justice Oliver Wendell Holmes. Holmes' dissent in *Lochner v. New York* was brief and pointed: The Fourteenth Amendment does not enact Mr. Herbert Spencer's *Social Statics*. In other words, there was nothing natural about laissez-faire. It was just an economic theory, and a constitution is not intended to embody a particular economic theory, Holmes said. 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. The *Lochner* decision ushered in what has become known as the *Lochner* era in which the Court struck down a number of state economic regulations 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. 8 of 8 people found the following review helpful. Perfect. By Jack Lechelt 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. 0 of 1

people found the following review helpful. States can't regulate their own economy. Ok, the ...By Paul M ConlinStates can't regulate their own economy. Ok, the Feds will instead. And you're OK with this because why, now?

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 judicial 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.

"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." 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. Kens's balanced and judicious treatment should contribute greatly to the current dialogue over economic due process and judicial protection of property rights." James W. Ely, Jr., author of *The Guardian of Every Right: A Constitutional History of Property Rights* From the Back Cover "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." --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. Kens's balanced and judicious treatment should contribute greatly to the current dialogue over economic due process and judicial protection of property rights." --James W. Ely, Jr., author of *The Guardian of Every Right: A Constitutional History of Property Rights* About the Author Paul Kens is associate professor of political science and history at Southwest Texas State University and the author of *Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age* and *Judicial Power and Reform Politics: The Anatomy of *Lochner v. New York**.