

Utica, New York
1899

New York authorities fine an immigrant baker named Joseph Lochner for letting one of his employees work more than 60 hours in one week. Indeed, New York's Bakeshop Act made it illegal for bakeries to employ workers for more than 10 hours a day or 60 hours a week. The New York state legislature had passed the law after it was revealed that these bakeries were often horrifying places to work. They weren't Paneras, ok? Bakeshops, today more commonly known as "bakeries," back then were often hot, dark, filthy places with no ventilation. Before the Bakeshop Act, a typical baker worked 74 hours a week and would be exposed to all kinds of dangerous stuff.¹

That all said, Lochner technically wasn't making his bakers work 10 hours a day nor 60 hours a week. You see, while most bakeries hired workers to work separate shifts during the day, Lochner only had one crew at his bakery. One crew was often all smaller bakeries could afford. They would arrive in the evening to prepare the bread dough, sleep for several hours in a dorm located at the bakery, and then wake up early in the morning to bake the loaves of bread. Lochner actually paid his bakers to sleep. Indeed, he counted their time sleeping in the dorm as "working hours."

Regardless, the Oneida County Court fined Lochner \$25 anyway for breaking the Bakeshop Act. That's about \$850 in today's money. Two years later, and apparently Lochner hadn't learned his lesson, because he still had at least one baker working more than 60 hours a week. Local authorities arrested him. Eventually Lochner got a trial, where he, interestingly enough, refused to plead guilty or not guilty. He didn't even try to defend his actions. The Oneida County Court fined him \$50 this time, or around \$1700 in today's money, and after Lochner refused to pay the fine, they sent him to jail.²

Lochner appealed to the Appellate Division of the New York Supreme Court, where he finally had a lawyer, William Mackie, who offered a defense. Mackie argued that the Bakeshop Act interfered with the right to pursue a lawful profession and the right to simply earn a living. The Appellate Division of the New York Supreme Court disagreed, upholding the Bakeshop Act, so Lochner appealed again, this time to the New York Court of Appeals. It agreed with the lower courts, and so Lochner appealed yet again to the Supreme Court. By now, Lochner was done with Mackie and had found a new lawyer to help him out named Henry Weismann. Weismann was an interesting choice, to say the least. First of all, he'd never passed the bar exam, so many questioned if he was even qualified to argue before the Court. Second, Weismann was kind of a traitor to bakers. At one point, he had been a lobbyist for the Journeyman Bakers Union and was even the editor of their newsletter. In fact, he was a big reason why the 60-hour work week for bakers happened in the first place! And yet, by 1905, he was firmly on the side of Lochner and bakery owners. He had changed his mind after opening his own bakery, and

¹ <https://www.britannica.com/event/Lochner-v-New-York>

² <https://tile.loc.gov/storage-services/service/ll/usrep/usrep198/usrep198045/usrep198045.pdf>

through that experience became very vocal about his regret for helping get the Bakeshop Act passed.

Weisman argued that the Bakeshop Act went against the Constitution's protection of "liberty of contract," which was protected in the 14th Amendment's Due Process Clause. In other words, he argued the law hurt a person's freedom to contract their own labor.³ The Court heard oral arguments in February 1905. So...uh....DID the Bakeshop Act go against the Due Process Clause of the 14th Amendment? Well, since I'm making this video I'll go ahead and tell you the answer to that question.

Apparently it did. On April 17, 1905, the Court announced it had sided with *Lochner*, stating that the Bakeshop Act was unconstitutional. It was a close one, though. 5 to 4. Justice Rufus Peckham wrote the majority opinion, stating that the Bakeshop Act hurt the right of contract between employers and employees, and therefore went against the Due Process Clause of the 14th Amendment. Peckham wrote, "The right to purchase or to sell labor is part of the liberty protected by this amendment unless there are circumstances which exclude the right."⁴ In addition, the Court argued that limiting how many hours workers could work was not a police power the state of New York had. New York could only have such a police power if it could prove that a maximum-hours law had a close connection to public health. The Court concluded it had not.

Justice John Marshall Harlan wrote a dissent, joined by justices Edward White, William Day, and Oliver Wendell Holmes, Jr. Harlan argued that *Lochner* and bakery owners should be the ones proving that working conditions were safe, not the government. As he saw it, there was a close connection to public health, so New York could regulate hours employees worked.

Holmes' dissent is one of the most famous dissents in Supreme Court history. In it, he criticized the Court's majority for favoring cutthroat, laissez-faire capitalism over human rights. He wrote, "The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not." Holmes added that American laws restricting a person's freedom of contract was nothing new.

Lochner v. New York, believe it or not, has never officially been overturned⁵, and remains one of the most controversial Supreme Court decisions of all time. The case marked a shift in how the Court began to interpret laws that regulated working conditions. After this, the Court increasingly struck down both state and federal laws that regulated labor. More broadly speaking, this case marked the beginning of a period that lasted more than three decades in which the Court generally erred more on the side of individual freedom instead of government power. In fact, historians today even call this period the "*Lochner* Era." Crazy enough, the *Lochner* Era

³ <https://constitutioncenter.org/blog/lochner-v-new-york-fundamental-rights-and-economic-liberty>

⁴ <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/lochner.html>

⁵ <https://constitutioncenter.org/blog/lochner-v-new-york-fundamental-rights-and-economic-liberty>

overlapped with the Progressive Era, a time when reformers themselves worked overtime to get rid of social and economic injustice. These reformers viewed the Lochner decision as one that simply just favored employers over employees.

I'll see you for the next Supreme Court case, jury!

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Check out cool primary sources here:

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