

## Lochner v. New York (1905)

### Background

**Directions:** Read the [background for Lochner v. New York](#) and answer the questions below.

1. How did population growth in the late nineteenth century impact the development of the bread baking business?
2. What was challenging about baking during this time?
3. What is muckraking?
4. What was the effect of the muckraking report "Bread and Filth Cooked Together?"

### Primary Source Analysis

**Directions:** Read the article below. Highlight or star information about the working and sanitary conditions in New York bakeries.

**BREAD AND FILTH  
COOKED TOGETHER**

**Horrible Conditions Existing in New  
York and Brooklyn Bakeries.**

**VERMIN AND DIRT ABOUND**

Unclean Men Mix the Dough and Sleep  
in the Same Rooms.

**A STARTLING EVENING JOURNEY**

Here Is Matter for the Board of Health  
to Ponder Over.

**DREADFUL HOURS OF LABOR**

A Grind That Makes Ambition for Per-  
sonal Cleanliness Impossible.

**THE LABOR MEN IN REVOLT**

They Ask "The Press" to Follow Up  
Its Good Work Among the Tene-  
ments with a Battle Against  
These Enemies of Health  
and Decency.

"First of all, it is the desire of The Press to call this matter to the attention of the sanitary authorities of New York and Brooklyn...most of the bake shops in New York and Brooklyn are located below the surface of the street in cellars, that they are damp and thoroughly unwholesome, that they are infested with insects and that not only is the health of the men who work in them endangered...by the health of the consumers as well. It is also charged that the men are worked to the last limits of human endurance, that they are regularly kept before the bench and the oven twelve and fourteen hours a day. Not only are the hours long, but the pay is ridiculously low, and the amount of work demanded is so great that when a day's task is completed the men have neither the strength nor the ambition to clean the shops. Many of them "board in"—that is, sleep and eat in the same building in which they do their work—and go direct from their beds to the mixing bench without washing or otherwise cleansing their person.

The danger is not an imaginary one. It is not simply the danger of eating bread mixed and baked amid dirty surroundings. The latest advances of hygienic science have shown that in the dirt that accumulates in workshops lurk the germs of disease. If your bread contains any of these germs, you are of course in real and immediate danger.

Here is a story told by a journeyman baker who was employed some months ago, which will show how disease may be spread by baker bosses who are careless of cleanliness through wicked and indefensible greed. For the present the name of his employer is withheld.

His bakery was kept busy turning out pumpernickel, a kind of black bread with which most New Yorkers are more or less familiar. Like most other bakers, this boss allows the grocery keepers who buy of him to return their unsold or stale bread at a discount.

This man used to put it into great tubs, where he would allow it to remain until he could make use of it by pulverizing it and mixing it with the new pumpernickel dough. It mattered not to him how green and rotten this stale bread became. Sometimes the old bread, when thus worked in with the new, was infested with worms, and besides it being an imposition upon purchasers to make use of such material, it was not pleasant work to perform.

A child of the boss had been sick with diphtheria, and half a tierce tub not at that time in use had been pressed into service for the washing of the cloths bound round the sick child. When the surplus sale of pumpernickel came the in which the child had been bathed in the spare tub was promptly emptied out, the tub was rinsed once in cold water and the old pumpernickel was dumped in its place, afterward to be mixed with the new dough and baked and sold to unsuspecting customers.

I finally lost my position in this way: The surplus of old pumpernickel was so large that I did not dare to work it at all in, afraid that the product would be so bad that it would be returned, and I would be discharged, thus losing my chance to make \$8 a week, with the almost certainty that I would not be able to get another. So I smuggled as much pumpernickel as I dared to the manure pile back of the stable attached to the bake shop. But I did not succeed in covering it sufficiently, and was discovered and obliged to take a pitchfork and take it out again, wash it by placing it under the faucet of the sink, and mix it in all the same. This was in Brooklyn, and the story is true as gospel.”

**Source:** “Bread and Filth Cooked Together.” *New York Press*. September 30, 1894. (Modified Excerpt)

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## Questions

1. Which quote from the article resonated with you the most? Why?
2. What was the author’s purpose in writing this article?
3. Who is the intended audience for this article?

### Facts of the Case

Joseph Lochner owned a small bakery in Utica, New York. In April 1901, Lochner was arrested and charged with violating the Bakeshop Act. One of his employees, Aman Schmitter, worked more than 60 hours in one week. The state trial court fined him \$50 and sentenced him to 50 days in jail. Lochner appealed. Both state appeals courts upheld the law, citing a need to protect worker safety and public health. Lochner appealed his case to the Supreme Court.

### Issue

Does a state law regulating maximum work hours violate the **Due Process Clause** of the **Fourteenth Amendment**?

## Supreme Court Majority Opinion: *Lochner v. New York* (Excerpts)

**Majority Opinion: Justice Rufus W. Peckham, joined by Chief Justice Melville W. Fuller, Justice Henry B. Brown, Justice David J. Brewer, and Justice Joseph McKenna**

The statute necessarily interferes with the right of contract between the employer and employee concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the **Fourteenth Amendment** of the Federal Constitution.

There is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker. ...Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act.

It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employees...in a private business, not dangerous in any degree to morals or in any real and substantial degree to the health of the employees. Under such circumstances, the freedom of master and employee to contract with each other in relation to their employment...cannot be prohibited or interfered with without violating the Federal Constitution.

**Source:** *Lochner v. New York* (1905).

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### Vocabulary

- **Due Process Clause** – a provision in both the Fifth (applies to federal government) and Fourteenth Amendments (applies to states) that guarantees individuals protection of the right to notice and being heard when they may be deprived of life, liberty, or property; protections against equal protection violation, and the protection of fundamental rights.
- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all persons “equal protection of the laws.”

### Discussion Questions

1. Explain the legal argument made by Justices Peckham, Fuller, Brown, Brewer, and McKenna in the majority opinion.
2. The Fourteenth Amendment was ratified in 1868 to guarantee “equal protection of the laws” for all individual citizens, including formerly enslaved people, of the United States. How did the *Lochner* decision change how this amendment was used?

## Supreme Court Dissenting Opinions: *Lochner v. New York* (Excerpts)

A dissenting opinion is a formal written expression by a justice who has a different point of view on major or minor issues in a case that rejects the result reached by the majority. In *Lochner v. New York*, there were two different dissents.

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### #1: Justice John Marshall Harlan, joined by Justices Edward D. White and Justice William R. Day

It is plain that this **statute** [the Bakeshop Act of 1895] was enacted in order to protect the physical wellbeing of those who work in bakery and confectionery establishments...the statute must be taken as expressing the belief of the people of New York that, as a general rule, and in the case of the average man, labor in excess of sixty hours during a week in such establishments may endanger the health of those who thus labor. Whether or not this be wise legislation it is not the **province** of the court to inquire. Under our systems of government, the courts are not concerned with the wisdom or policy of legislation.

...I take leave to say that the New York statute...cannot be held to be in conflict with the **Fourteenth Amendment** without enlarging the scope of the Amendment far beyond its original purpose and without bringing under the supervision of this court matters which have been supposed to belong exclusively to the legislative departments of the several States when exerting their conceded power to guard the health and safety of their citizens...

### #2: Justice Oliver Wendell Holmes

This case is decided upon an economic theory which a large part of the country does not entertain.... But a constitution is not intended to embody a particular economic theory, whether of **paternalism** and the organic relation of the citizen to the State or of *laissez faire*.

Source: *Lochner v. New York* (1905).

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### Vocabulary

- **Statute** – law
- **Province** – major territorial division
- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all persons “equal protection of the laws.”
- **Paternalism** – relating to or characterized by the restriction of the freedom and responsibilities of subordinates or dependents in their supposed interest
- **Laissez faire** – an economic theory where there is minimal government interference in the economy

### Discussion Questions

1. Why did Justices Harlan, White, and Day disagree with the majority opinion in *Lochner*?
2. Why did Justice Holmes disagree with the majority opinion in *Lochner*?