

■ *Muller v. Oregon*

Date: February 24, 1908

Author: Justice David H. Brewer; U.S. Supreme Court

Genre: court opinion

Summary Overview

Muller v. Oregon (1908) holds an important place in the history of American liberalism as a case that exemplifies the era's approach to social reform, regulatory intervention, and government activism aimed at protecting workers, particularly women. The Supreme Court upheld Oregon's law limiting women's work hours, emphasizing the state's interest in safeguarding women's health and welfare—a reflection of progressive-era values.

The case of *Muller v. Oregon* arose when the owner of a laundry in Portland, Oregon, violated a state law limiting the number of hours a woman could work in his shop. The owner challenged the constitutionality of this protective legislation; the direction the Supreme Court was taking in cases of this sort at the time portended a victory for the laundry owner. However, the Court, presented with a mountain of evidence demonstrating the danger to women workers of industrial practices left unregulated, unanimously upheld Oregon's law. This victory for progressives supporting worker protections thus came at a cost, as the Court's decision upholding protective legislation could be taken as undermining women's independence and women's rights.

In the broader context of American liberalism, *Muller v. Oregon* illustrates the shift toward government action to regulate economic and social conditions, a hallmark of early twentieth-century liberal reforms. It marked an acknowledgment by the judiciary of the need for protective legislation, shaping the development of labor rights, social justice policies, and the expansion of government's role in promoting social welfare.

Defining Moment

Rapid industrialization and increased urbanization in the United States in the late nineteenth century inspired reform campaigns associated with the progressive movement. In the early 1900s, progressives worked to secure the health of citizens, to address the plights of workers, and to win rights for women. While many tactics were employed and many roads taken, an especially successful, if often arduous, route lay in persuading legislatures to pass laws supporting the progressive agenda. Even after legislative victory, however, a formidable obstacle remained—the U.S. Supreme Court.

A conservative majority sat on the Court during the time of this progressive movement. When called on to determine the constitutionality of laws intended to alter social conditions and economic relations, this bloc of justices consistently struck down government regulation. The Court protected the private sector and enforced its own preferred system of economic

relations, the laissez-faire doctrine. The prime case in which government regulation was defeated and individual economic liberty supported was *Lochner v. New York*, decided in 1905.

In *Lochner*, the Supreme Court considered New York's law restricting bakery employees to a sixty-hour workweek. The state argued that its law was a legitimate exercise of its police power, which included the authority to protect the health, safety, and welfare of its citizens. The Court thought otherwise, however, asserting that no reasonable foundation existed for the contention that the maximum-hours regulation was necessary or appropriate for the safeguarding of the health of the bakery employees or the public. The regulation was held to interfere with the right of individuals to contract in the labor market, which the Court identified as a liberty interest protected by the Fourteenth Amendment. The Court declared New York's law unconstitutional.

In cases that followed, the Court employed the principles put forth in *Lochner* to strike down state and federal legislation that regulated economic activity. Critics of these results argued that the Supreme Court was prioritizing abstract principles and was taking no account at all of the real-world conditions, social and economic, to which regulatory legislation was responding. The Court was failing, the critics contended, to consider the impact its decisions had on society. These arguments informed the supporters of government regulation who participated in the 1908 constitutional challenge to Oregon's law restricting the number of hours women could work in a laundry.

Author Biography

The decision in *Muller v. Oregon* was unanimous, with Justice David J. Brewer writing the opinion for the Court. Born in 1837 in what is now the nation of Turkey to missionary parents, Brewer was a member of a family prominent in U.S. legal history. His uncle Stephen J. Field served on the Court from 1863 to 1897; Field's final years on the bench overlapped with Brewer's early years there. David Dudley Field, another

uncle, was the driving force behind the development of the code of civil procedure, a major contribution to U.S. law. In 1890, President Benjamin Harrison appointed Brewer to the Supreme Court, where he served for 20 years. His votes consistently supported a free-market economy.

Louis D. Brandeis was not an author of the decision, but on behalf of the defendant he contributed the "Brandeis brief," for which the *Muller* case is known. Brandeis was a prominent attorney in Boston and was deeply involved in progressive and public-interest causes. When *Muller* was appealed to the Supreme Court, the National Consumers League, a pro-worker group advocating protective regulation, asked Brandeis to prepare a brief supporting Oregon's limit on working hours. Brandeis agreed on the condition that he would be the lead attorney for the Supreme Court appeal. Working closely with officials from the National Consumers League, Brandeis prepared the brief submitted to support Oregon's case. In its decision, the Court famously refers to the Brandeis brief. In 1916, President Woodrow Wilson appointed Brandeis to the Supreme Court; he served there until 1939.



Historical Document

Muller v. Oregon

Messrs. William D. Fenton and Henry H. Gilfry for plaintiff in error.

Messrs. H. B. Adams, Louis Brandeis, John Manning, A. M. Crawford, and B. E. Haney for defendant in error.

Mr. Justice Brewer Delivered the Opinion of the Court

On February 19, 1903, the legislature of the state of Oregon passed an act (Session Laws 1903, p. 148) the first section of which is in these words:

Sec. 1. That no female (shall) be employed in any mechanical establishment, or factory, or laundry in this state more than ten hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of any one day.

Sec. 3 made a violation of the provisions of the prior sections a misdemeanor subject to a fine of not less than \$10 nor more than \$25. On September 18, 1905, an information was filed in the circuit court of the state for the county of Multnomah, charging that the defendant "on the 4th day of September, A. D. 1905, in the county of Multnomah and state of Oregon, then and there being the owner of a laundry, known as the Grand Laundry, in the city of Portland, and the employer of females therein, did then and there unlawfully permit and suffer one Joe Haselbock, he, the said Joe Haselbock, then and there being an overseer, superintendent, and agent of said Curt Muller, in the said Grand Laundry, to require a female, to wit, one Mrs. E. Gotcher, to work more than ten hours in said laundry on said 4th day of September, A. D. 1905, contrary to the statutes in such cases made and provided, and against the peace and dignity of the state of Oregon."

A trial resulted in a verdict against the defendant, who was sentenced to pay a fine of \$10. The supreme court of the state affirmed the conviction (48 Or. 252, 85 Pac. 855), whereupon the case was brought here on writ of error.

The single question is the constitutionality of the statute under which the defendant was convicted, so far as it affects the work of a female in a laundry. That it does not conflict with any provisions of the state Constitution is settled by the decision of the supreme court of the state. The contentions of the defendant, now plaintiff in error, are thus stated in his brief:

(1) Because the statute attempts to prevent persons *sui juris* from making their own contracts, and thus violates the provisions of the 14th Amendment, as follows:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(2) Because the statute does not apply equally to all persons similarly situated, and is class legislation.

(3) The statute is not a valid exercise of the police power. The kinds of work prescribed are not unlawful, nor are they declared to be immoral or dangerous to the public health; nor can such a law be sustained on the ground that it is designed to protect women on account of their sex. There is no necessary or reasonable connection between the limitation prescribed by the act and the public health, safety, or welfare.

It is the law of Oregon that women, whether married or single, have equal contractual and personal rights with men. As said by Chief Justice Wolverton, in *First Nat. Bank v. Leonard*, 36 Or. 390, 396, 59 Pac. 873, 874, after a review of the various statutes of the state upon the subject:

We may therefore say with perfect confidence that, with these three sections upon the statute book, the wife can deal, not only with her separate property, acquired from whatever source, in the same manner as her husband can with property belonging to him, but that she may make contracts and incur liabilities, and the same may be enforced against her, the same as if she were a *feme sole*. There is now no residuum of civil disability resting upon her which is not recognized as existing against the husband. The current runs steadily and strongly in the direction of the emancipation of the wife, and the policy, as disclosed by all recent legislation upon the subject in this state, is to place her upon the same footing as if she were a *feme sole*, not only with respect to her separate property, but as it affects her right to make binding contracts; and the most natural corollary to the situation is that the remedies for the enforcement of liabilities incurred are made coextensive and coequal with such enlarged conditions.

It thus appears that, putting to one side the elective franchise, in the matter of personal and contractual rights they stand on the same plane as the other sex. Their rights in these respects can no more be infringed than the equal rights of their brothers. We held in *Lochner v. New York*, 198 U.S. 45, 49 L. ed. 937, 25 Sup. Ct. Rep. 539, that a law providing that no laborer shall be required or permitted to work in bakeries more than sixty hours in a week or ten hours in a day was not as to men a legitimate exercise of the police power of the state,

but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with, and void under, the Federal Constitution. That decision is invoked by plaintiff in error as decisive of the question before us. But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor.

In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation, as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis for the defendant in error is a very copious collection of all these matters, an epitome of which is found in the margin. While there have been but few decisions bearing directly upon the question, the following sustain the constitutionality of such legislation: *Com. v. Hamilton Mfg. Co.* 120 Mass. 383; *Wenham v. State*, 65 Neb. 394, 400, 406, 58 L.R.A. 825, 91 N. W. 421; *State v. Buchanan*, 29 Wash. 602, 59 L.R. A. 342, 92 Am. St. Rep. 930, 70 Pac. 52; *Com. v. Beatty*, 15 Pa. Super. Ct. 5, 17; against them is the case of *Ritchie v. People*, 155 Ill. 98, 29 L.R. A. 79, 46 Am. St. Rep. 315, 40 N. E. 454.

The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judicial cognizance of all matters of general knowledge.

It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the 14th Amendment to the Federal Constitution; yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a state may, without conflicting with the provisions of the 14th Amendment, restrict in many respects the individual's power of contract. Without stopping to discuss at length the extent to which a state may act in this respect, we refer to the following cases in which the question has been considered: *Allgeyer v. Louisiana*, 165 U.S. 578, 41 L. ed. 832, 17 Sup. Ct. 427; *Holden v. Hardy*, 169 U.S. 366, 42 L. ed. 780,

18 Sup. Ct. Rep. 383; *Lochner v. New York*, *supra*.

That woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and, as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, may, without conflicting with the provisions and this control in various forms, with diminishing intensity, has continued to the present. As minors, thought not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the schoolroom are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort to maintain an independent position in life, she is not upon an equality. Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the

self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation, and upholds that which is designed to compensate for some of the burdens which rest upon her.

We have not referred in this discussion to the denial of the elective franchise in the state of Oregon, for while that may disclose a lack of political equality in all things with her brother, that is not of itself decisive. The reason runs deeper, and rests in the inherent difference between the two sexes, and in the different functions in life which they perform.

For these reasons, and without questioning in any respect the decision in *Lochner v. New York*, we are of the opinion that it cannot be adjudged that the act in question is in conflict with the Federal Constitution, so far as it respects the work of a female in a laundry, and the judgment of the Supreme Court of Oregon is affirmed.



Glossary

secundum artem: in the English-American common law tradition, an unmarried woman in charge of her separate estate and against whom legal obligations are enforceable; the term is of French origin

epitome: an abstract account of a longer text

sui juris: of age and capacity to take full possession of one's rights

Document Analysis

The first party, Curt Muller, is the “plaintiff in error”; the Oregon Supreme Court decided against Muller, and in this case he appealed that decision to the U.S. Supreme Court. The second party is the State of Oregon, which convicted and fined Muller for violating the state law that set a limit on work hours. William D. Fenton, the lead attorney for Muller, was a member of a prominent Portland law firm. His regular clients included large corporate interests. For the State of Oregon, Louis Brandeis took charge of the case upon its appeal to the U.S. Supreme Court.

The Court begins by citing the Oregon law that Muller violated. An example of protective legislation, it is quite focused. It applies only to females and only to females working in particular places of employment. It sets maximum hours for any one day but does not restrict the number of days per week a woman might work. Moreover, this law does not limit the particular time during the day when a woman may work. Some protective laws, by contrast, set maximum working hours per week and prohibited women from working at nighttime.

The Court proceeds in paragraphs 2 and 3 to cite the enforcement mechanism contained in the law. This case arose from a complaint lodged by an employee of the Portland Grand Laundry, Emma Gotcher, who stated that her supervisor had forced her to work past the ten-hour daily limit. The laundry owner, Muller, was charged, found guilty by the circuit-court judge, and fined \$10, the minimum penalty. Upon appeal, the Oregon Supreme Court upheld the conviction.

Much is implied by the Court in the first sentence of paragraph 4, which begins, “The single question.” The issue in this case is whether Oregon’s law is consistent with the U.S. Constitution, “so far as it affects the work of a female in a laundry.” The Court signals that it will construct a holding that applies only to women workers engaged in a particular kind of labor. The ruling will not go beyond the facts of the case. In the next sentence, the Court, as is customary, accepts as authority the state supreme court’s ruling that the law in question is consistent with the state’s constitution. In the third sentence, the Court lists the

arguments underlying the appeal by Muller. His “brief” consists of the written arguments prepared by his attorneys, setting out the facts and the legal issues as perceived by them in support of their side.

The Court lists three arguments brought by Muller, each grounded in the U.S. Constitution: First, Muller argues that Oregon’s statute violates the Constitution by preventing persons (women working in laundries) who are *sui juris* (of age and of capacity to exercise their rights) from making their own contracts (deciding on their own how many hours in a day they wish to work). The right to contract, Muller argues, is protected by the Fourteenth Amendment. The text of the Fourteenth Amendment, quoted here, does not specifically mention a “right to contract,” but the Court states that the amendment’s due process clause included that right in 1905 in *Lochner v. New York*. (The “right to contract” established in *Lochner* is an example of a substantive due process right.)

Second, Muller argues that Oregon’s statute violates the Fourteenth Amendment’s equal protection clause: “No state shall... deny to any person within its jurisdiction the equal protection of the laws.” The class of people treated differently by the state’s legislation is women, in that it restricts their right to contract.

Third, Muller argues that “the statute is not a valid exercise of the police power” retained by the states under the Constitution, permitting them to protect the health, safety, morals, and general welfare of their citizens. *Lochner* set this standard: The state may use its police powers to restrict the right to contract, but the restriction must be fair, reasonable, and appropriate; it may not be unreasonable, unnecessary, or arbitrary. Muller argues that the legitimate goals of public health, safety, and welfare are not advanced by Oregon’s restriction. The state’s use of its police powers, Muller posits, is unconstitutional.

The Court proceeds to recognize that Oregon law establishes legal status for women equal to men’s. Common law tradition merged a woman’s legal status with her husband’s, effectively making her a dependent in the eyes of the law. Statutes passed by Oregon in the late 1800s extended to women legal rights denied them under common law, including, as held by

the state supreme court, the right to make binding contracts.

At issue in *Muller* was whether Oregon's law limiting daily work hours for a woman employed by a laundry was consistent with the U.S. Constitution; therefore, a woman's legal equality under Oregon law did not determine the decision in this case. (Even so, the state's supreme court, which recognized that a state law insured a woman's equal right to make a binding contract, had also ruled that the maximum-hours law for women under review in this case did not violate the state's constitution.)

Paragraph 6 contains the point upon which the case turned. In Oregon, the Court writes, women are equal to men regarding the right to contract, "putting to one side the elective franchise." (The state's woman suffrage proclamation would not be signed until 1912.) In *Lochner*, a law for maximum work hours applied to men was unconstitutional. Muller urges the Court to reach the same finding here. "But this," writes the Court, "assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor." The direction the Court is taking is clear: Women in Oregon have an equal right to contract, but a state's police powers may apply different protections to women than to men.

In paragraph 7 the Court states that it will note "the course of legislation, as well as expressions of opinion from other than judicial sources." The nonjudicial information taken note of by the Court is abridged in the first footnote and famously includes over one hundred pages of "facts"—including laws passed in other jurisdictions protecting women employees and the opinions of government, medical, and social work experts who, based on their observations of modern industry, concluded that long hours of labor are dangerous for women.

This "very copious collection" of facts was compiled by Louis Brandeis, attorney for Oregon, and his collaborator, Josephine Goldmark, an official with the National Consumers League. That organization was lobbying hard around the nation for protective legislation advancing the cause of workers. The regulatory laws and expert opinions that Brandeis and Goldmark assembled and submitted as a brief, intending to

overwhelm the Court with facts supporting a law protecting women workers, became known as the "Brandeis brief." It won acclaim as an early and auspicious demonstration of a realist style of argument bringing to bear on judicial reasoning the real-world causes and consequences of laws and of decisions made by courts.

In paragraph 8 the Court acknowledges and tries to explain its reliance on the nontraditional sources contained in the Brandeis brief, which "may not be, technically speaking, authorities." Here, the term *authorities* refers to the established sources relied on by the Court to arrive at decisions, a venerable example being precedent established in prior cases. Though technically not authorities, says the Court, the state laws and opinions contained in the Brandeis brief "are significant of a widespread belief" that a woman's physical structure and the functions she performs justify protective legislation that restricts "the conditions under which she should be permitted to toil." The Constitution places limits on legislative action "in unchanging form"; nevertheless, a "widespread and long continued belief"—here, regarding how a woman's physical nature affects her ability to work—may influence the extent to which a constitutional limitation is applied.

The Court next states the principles of *Lochner*: The right to contract is protected by the Fourteenth Amendment, but, consistent with the Constitution, a state may restrict that right, to an extent. The question begged is, of course, to what extent may that right be restricted? The answer, the Court asserts, can be found in three prior cases: *Allgeyer v. Louisiana* (1897), in which the Court struck down a state law prohibiting the purchase of insurance from companies outside the state because the law violated the Fourteenth Amendment rights of individuals; *Holden v. Hardy* (1898), in which the Court upheld a state law setting maximum work hours for coal miners owing to the dangers of exposure to coal dust; and *Lochner v. New York* (1905), in which the Court struck down a state law setting maximum work hours for bakery employees because the restriction was unreasonable and arbitrary.

In paragraphs 10 and 11 the Court states two findings that, as of 1908, added shape to the body of

constitutional law then developing around the issues of right to contract and the government's power to regulate economic activity: Equal protection is not violated by Oregon's laws treating women differently than men, and women's physical nature and maternal functions permit states to restrict their right to contract in the way Oregon has done here. The Court surrounds these holdings with extensive commentary on the limitations placed on women by their physical nature and societal role.

Women, the Court states, have a particular physical structure, and they also perform maternal functions. Up to this point, nothing about Oregon's law or its application has been associated with "maternal functions." In fact, the generalization drawn by the Court ignores the truths that all women do not have the same "physical structure" and that not all women are mothers. Nonetheless, the opinion holds that these characteristics "place her at a disadvantage in the struggle for subsistence." The Court knows that, at this time in history, most women who work are paid low wages; but the law under review is not about pay—it is about maximum-hour regulations.

The Court sharpens its portrait of women by drawing comparisons to men. Women are held to be dependent on men, who are stronger. As such, courts have always made compensations for women. Although they have gained equal rights, their dispositions and habits of life keep them from asserting those rights. The opinion reads, "She is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained." The Court is rejecting Muller's second argument, that Oregon's maximum-hours law for women workers denies women the equal protection of the law. A woman may be singled out by legislation, the Court holds, for the sake of her own health and for the sake of the race, which depends on the "proper discharge of her maternal functions." The Court thus cements the connection it requires between the state's power to protect the health and safety of its citizens and its restriction on the number of hours women may work.

In paragraph 12 the Court notes for the second time that women are not able to vote in Oregon. Women's suffrage was a hotly debated issue

throughout the country and would result four years later in the establishment of woman's right to vote in Oregon and a dozen years later in the Nineteenth Amendment to the U.S. Constitution, which nationalized suffrage for women. The Court states that its decision that Oregon may restrict working hours for women, even when a restriction on men would not stand, does not depend on Oregon's denial to women of the right to vote. "The reason runs deeper," the Court states, "and rests in the inherent difference between the two sexes."

In closing, the Court confirms that its decision in *Muller* is not to be extended past the facts of the case: Oregon's protective legislation does not violate the Constitution "so far as it respects the work of a female in a laundry." The decision in *Muller* does not challenge "in any respect" the decision in *Lochner*.

Essential Themes

The Court cabined, or kept narrow, its holding in *Muller*, but the long-term impacts of the decision were profound and far reaching. These effects traveled in two distinct directions. Along one path, *Muller* legitimated consideration by the Supreme Court of real-world conditions, as demonstrated in facts supplied by experts and scientists, when giving shape to the law. Along another path, *Muller* legitimated a view of women that supported sex discrimination, thus blocking or hindering the campaign for gender equality far into the twentieth century.

Predictably, the persuasive power of the Brandeis brief in *Muller* generated reliance on the same strategy in later cases. In state and federal courts alike, lawyers defending protective restrictions on economic activity compiled studies and statistics to bolster their cases. A high mark for sheer volume was achieved with the brief of over 1,000 pages prepared, again by Brandeis and Goldmark, to support a maximum-working-hours law for manufacturing employees, which was passed by the Oregon legislature in 1913 and promptly challenged in court. By 1917, when *Bunting v. Oregon* reached the Supreme Court, Brandeis had been appointed to a seat there. He recused himself from the case, which resulted in a 5-3 decision to uphold Oregon's restriction on the right to

contract. Brandeis's selection to the Court signaled the respect given to the idea that factual studies of real-world conditions merited consideration by courts. The approach has played a role in many cases since, including the landmark decision in *Brown v. Board of Education* (1954). There, the Court struck down separate-but-equal educational facilities for different racial groups, stating its reliance on "modern authority," including psychological and sociological studies (*Brown v. Board of Education*, 47 U.S. 483 [1954]).

In *Muller*, the Court justified Oregon's restriction on the right to contract by linking the state's protective regulation to cited characteristics of women workers emphasizing their relative weakness and their difference from men workers. Much of the Court's description of women in this vein was gratuitous. Observations on the weakness of women were iterated and then reiterated. A woman's "physical structure" and her "maternal functions," it was argued, justify the diminishing of her rights. The Court's view of women in the workplace did not arise solely from the Brandeis brief. The historian Nancy Woloch remarks, "Leaving the 'facts' of the Brandeis brief behind, [Justice] Brewer presented a timeless portrait of the 'dependent women'." One might easily imagine that the Brandeis brief supplied the Court (particularly Brewer, who wrote for the Court) with facts used to support opinions about women already held.

The decision in *Muller* marked an important step in the evolution of the law during the first four decades of the twentieth century regarding when government regulation may interfere with the right to contract. The case also stitched into the law a retro-view of women, as embodied in prior legal discourse, that equal rights advocates were fighting to change at the time the decision was announced. With respect to the decision in *Muller*, Kirp, Yudof, and Franks write, "This description of 'dependent' woman has its obvious antecedents in rationales for earlier common law paternalism. Women won their maximum-hours laws, but only because they could be described in a way which rendered such special treatment permissible, even laudable." Thus, the *Muller* decision and the Court's recognition of the

Brandeis brief—victories for progressives campaigning for protective workplace measures—were at the same time defeats for progressives campaigning for women's equal rights. The view adopted in *Muller* that a particular characterization of women could form the basis for laws treating them unequally survived a long time. "For more than sixty years," writes political scientist Judith Baer, "courts upheld nearly all cases of sex discrimination, citing this case as binding precedent, following its lead in emphasizing permanent rather than temporary, physical rather than economic or social, aspects of women's condition."

—Randy Wagner, JD, PhD

Bibliography and Additional Reading

- Baer, Judith A. *The Chains of Protection: The Judicial Response to Women's Labor Legislation*. Westport, Conn.: Greenwood Press, 1978.
- Erickson, Nancy S. "Muller v. Oregon Reconsidered: The Origins of a Sex-Based Doctrine of Liberty of Contract." *Labor History* 30, no. 2 (1989): 228-250.
- Ginsburg, Ruth Bader. "Muller v. Oregon: One Hundred Years Later." *Willamette Law Review* 45, no 3 (2009): 359-380.
- Kirp, David L., Mark G. Yudof, and Marlene Strong Franks. *Gender Justice*. Chicago: University of Chicago Press, 1986.
- Mason, Alpheus Thomas. "The Case of the Overworked Laundress." In *Quarrels That Have Shaped the Constitution*, ed. John A. Garraty. New York: Harper & Row, 1964.
- Urofsky, Melvin I. *Louis D. Brandeis and the Progressive Tradition*. Boston: Little, Brown, 1981.
- Woloch, Nancy. *Muller v. Oregon: A Brief History with Documents*. Boston: Bedford Books of St. Martin's Press, 1996.
- Zimmerman, Joan G. "The Jurisprudence of Equality: The Women's Minimum Wage, the First Equal Rights Amendment, and Adkins v. Children's Hospital, 1905-1923." *Journal of American History* 78, no. 1 (1991): 188-225.