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"The Hardest Struggle"

Women and Sweated Industrial Labor

A Unit of Study for Grades 7-12

Eileen Boris
Rita Koman

Organization of American Historians
and the
National Center for History in the Schools
University of California, Los Angeles

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Acknowledgments

This publication is the result of a collaborative effort between the National Center for History in the Schools (NCHS) at the University of California, Los Angeles and the Organization of American Historians (OAH) to develop teaching units based on primary documents for United States History education at the pre-collegiate level.

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David Vigilante, Associate Director of the National Center for History in the Schools (NCHS), has served as editor of the unit. Gary B. Nash, Director of NCHS, has offered suggestions and coordinated with the Organization of American Historians (OAH) for co-publication. At the OAH, Amy Stark has provided copyediting. Tamzen Meyer, Jason Groth, and Michael Regoli served as the initial Pagemaker editors while Marian McKenna Olivas did the photo research and placement and prepared the final layout.

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Introduction

Approach and Rationale

The National Center for History in the Schools (NCHS) and the Organization of American Historians (OAH) have developed the following collection of lessons for teaching with primary sources. They represent specific "dramatic episodes" in history from which you and your students can pause to delve into the deeper meanings of selected landmark events and explore their wider context in the great historical narrative. By studying a crucial turning-point in history, the student becomes aware that choices had to be made by real human beings, that those decisions were the result of specific factors, and that they set in motion a series of historical consequences. We have selected dramatic moments that best bring alive that decision-making process. We hope that through this approach, your students will realize that history in an ongoing, open-ended process, and that the decisions they make today create the conditions of tomorrow's history.

Our teaching units are based on **primary sources**, taken from documents, artifacts, journals, diaries, newspapers and literature from the period under study. What we hope to achieve using primary source documents in these lessons is to remove the distance that students feel from historical events and to connect them more intimately with the past. In this way we hope to recreate for your students a sense of "being there," a sense of seeing history through the eyes of the very people who were making decisions. This will help your students develop historical empathy, to realize that history is not an impersonal process divorced from real people like themselves. At the same time, by analyzing primary sources, students will actually practice the historian's craft, discovering for themselves how to analyze evidence, establish a valid interpretation, and construct a coherent narrative in which all the relevant factors play a part.

Content and Organization

Within this unit, you will find: Teacher Background Materials, including Unit Overview, Unit Context, Correlation to the National Standards for United States History, Unit Objectives, and Lesson Plans with Student Resources. This unit should be used as a supplement to your customary course materials. Although these lessons are recommended for grades 7-12, they can be adapted for other grade levels.

The Teacher Background section should provide you with a good overview of the entire unit and with the historical information and context necessary to link the specific dramatic episode to the larger historical narrative. You may consult it for your own use, and you may choose to share it with students if they are of a sufficient grade level to understand the materials.

The Lesson Plans include a variety of ideas and approaches for the teacher which can be elaborated upon or cut as you see the need. These lesson plans contain student resources which accompany each lesson. The resources consist of primary source documents, any hand-outs or student background materials, and a bibliography.

In our series of teaching units, each collection can be taught in several ways. You can teach all of the lessons offered on any given topic, or you can select and adapt the ones that best support your particular course needs. We have not attempted to be comprehensive or prescriptive in our offerings, but rather to give you an array of enticing possibilities for in-depth study, at varying grade levels. We hope that you will find the lesson plans exciting and stimulating for your classes. We also hope that your students will never again see history as a boring sweep of inevitable facts and meaningless dates but rather as an endless treasure of real life stories and an exercise in analysis and reconstruction.

Teacher Background Materials

I. Unit Overview

Industrial expansion by 1900 created multiple problems for American wage earners. Women, in particular, were disadvantaged in the unskilled jobs which they were limited to by managers and factory owners. Most women, many of whom were immigrants, worked to keep themselves and their families alive. In 1890, 3.7 million women and 18 percent of the population of working age were employed. By 1900, 5,319,397 women, or one in five, worked. In New York City alone, more than 350,000 women were employed; 132,535 were making clothing items of which the bulk were shirtwaists (blouses). Most of the women were between fourteen and twenty-five years of age. They worked thirteen to fourteen hour days, six days a week during peak production seasons with wages averaging $3.00 to $6.00 a week. Their pay could be altered for lateness, breakage, misuse of machinery, thread, needles or mistakes. Discrimination was common as women received 68.5 percent of a man's salary and were considered expendable.

Little skill was required to work in the sweatshops of garment production. Young girls hired as learners could pick threads, carry materials, and be on call to fetch piece goods. Workrooms were poorly lit, overcrowded, unsafe and unhealthy. The passage of legislation in New York to prevent fires was often ignored or adjusted to circumstances as witnessed by the tragic Triangle Shirtwaist Factory fire in 1911. The bizarre circumstances which resulted in that fire had been widely publicized during the lengthy strike of women shirtwaist workers in the winter of 1909-10. The death of 145 young women, mostly single immigrant Jews and Italians, forced state authorities to investigate the outcries for change made by women workers. At the same time, nearly thirty thousand women throughout the garment district picketed and shut down most of the industry. When the strike halted, many industry promises to improve conditions turned out to be just promises.

Coinciding with the sweated work of women in factories was that of untold numbers of married women who worked around the clock in overcrowded tenements mainly on the city's East Side. While homebound workers did not strike, they sometimes protested low payments by withholding material and taking longer to finish their work. They also employed their children to increase their production, and this effectively eliminated childhood for many.

A study of the conditions under which mainly immigrant women were exploited in factories and at home can reveal the factors that drove key women to fight for change for their sweating sisters in the labor force. Descriptions of working conditions found in public records, speeches, and personal antidotes depict the rationale behind union organization and lengthy strikes to draw the attention of lawmakers and the public to their poor working conditions, low pay, and long hours.

Graphic photos had even greater impact. This unit is designed to involve students in the human element of early twentieth-century mass production. To know that women, considered to be the heart of the home, were frequently ignored for the price they paid to add a few dollars to the family income in order to survive, is momentous. The role of women in the labor picture, generally downplayed, needs exploration and understanding for full comprehension of societal complexities facing the nation in the twentieth century. Only when their predicaments are presented within the broader context of the Progressive Movement and the attempted advancement of labor can students discern the need to obtain a decent living wage for both men and women.

The evolution of laws today protecting men, women and children are a direct result of legislation and court decisions resulting from actions taken by women when faced with the conditions presented in these lessons. The primary materials which follow forcefully illustrate their impact.

*Based upon testimony, New York State Factory Investigating Commission, *Fourth Report*, Vol.5, p. 2810.

II. Unit Context

This unit should be coordinated with a study of the Progressive Movement of 1900–1920. These lessons provide insight into the working conditions of women in the metropolitan area of New York City in the early twentieth century. Through an analysis of these documents students should be able to empathize with the personal circumstances of women in factories and at home as they sweated over garment production. An understanding of working conditions will better enable them to appreciate the more immediate needs of women workers that Progressives attempted to meet through legislation and court decisions.

III. Correlation with the National Standards for United States History

The Hardest Struggle: Women and Sweated Industrial Labor offers teachers opportunities to use primary sources in examining political, economic, and social aspects of women in the industrial work force in early twentieth-century America. The unit provides teaching materials that specifically address **Standard 3** of **Era 6**, Development of the Industrial United States (1870–1900) and **Standard 1** of **Era 7**, The Emergence of Modern America (1890–1930), *National Standards for United States History, Basic Edition* (Los Angeles, National Center for History in the Schools, 1996). Students investigate working conditions of women within factories and tenements, analyze problems leading to strikes, unionization and legal interpretations, and draw their own conclusions regarding women's accomplishments in the labor sphere.

The unit requires students to engage in historical thinking; to raise questions and to marshal evidence in support of their answers; to go beyond the facts presented in textbooks and examine the historical record for themselves. Students analyze cause-and-effect relationships, interrogate historical data by uncovering the so-

cial and political context in which it was created, and compare and contrast different sets of ideas and values. The documents presented in this unit help students to better appreciate historical perspectives by describing the past on its own terms through the eyes and experiences of those who were there. The unit challenges students to compare competing historical narratives and to hold interpretations of history as tentative, subject to change as new information is uncovered and new voices are heard.

IV. Unit Objectives

- To understand the price paid by women workers on their jobs in order to advance industrialization.
- To experience vicariously the ways women workers reacted to conditions imposed upon them by industrialization.
- To comprehend attempts made by immigrant women workers to improve conditions through strikes, unionization, and the law, and why those attempts failed.
- To deepen the appreciation of the plight of women workers through the use of primary source documents and photographs.

V. Lesson Plans

Lesson One	Working Conditions
Lesson Two	Women Workers Fight for Reform
Lesson Three	Progressives Make Reforms

VI. Historical Background

Progressivism combined ideals of social justice with concepts of efficiency in an attempt to alleviate the dislocations of capitalist development. With roots in the social gospel and the language of religion, it was a movement of the new white professional and managerial class that hoped for democracy and the remaking of community in an urban, ethnically diverse world. Early twentieth-century reform thus appeared as a crusade against the forces of evil as much as a legislative agenda to promote labor standards and clean government, Americanize immigrants, replace tenements, and rationalize business. The wage-earning woman, whether factory girl or home-bound mother, stood at the center of the Progressive imagination as a victim of long hours and low wages, even as actual laboring women rejected being labeled "downtrodden." Through cross-class organizations and their own collective action, often through unions, working-class women strove to improve living and laboring environments for themselves, their families, and their neighborhoods.

Progressives had inherited an ideal of domesticity that associated women with the home and assigned nurturing, intimacy, care, and morality to the female sex. Men were to be breadwinners, and women to be breadgivers. Women were to be

protected because, as "mothers of the race," they differed in physical and intellectual ways from men. However, the "New Woman" of the early twentieth century and a growing suffrage movement challenged these dichotomies, but the concept of women as different and better than men persisted. Moreover, the impact of this prevailing gender system depended on class and race or ethnicity. For white middle- and upper-class women, responsibility for home and children justified participation in public affairs. The resulting ideology of maternalism, as numerous scholars have argued, claimed that their position as nurturers and caregivers prepared such women to lead reform campaigns for the benefit of poor women and children. Women reformers relied on their position as mothers or potential mothers to engage in municipal housekeeping and fight for pure milk, maternal and infant health care, better housing, and mothers' pensions—services that later became public programs.

The wage-earning of poor women challenged the domestic norm as did the entrance of better-off women into higher education and the professions. Instead of a place of rest and safety, the homes of the immigrant poor turned into manufactories of garments, foodstuffs, and a host of other items. Despite the prevailing rhetoric, all homes were actually sites of work, though some women hired other women to perform the cleaning, cooking, washing, and childcare associated with domesticity itself. Indeed, female responsibility for family and home disadvantaged most women in a sex-segregated labor market, where most jobs divided into men's and women's work. Women not only were paid less but also judged as temporary and unreliable laborers, who would quit employment for marriage or value domestic obligations over their jobs. Such notions ignored how women, like men, fulfilled family needs through earning wages, as historian Alice Kessler-Harris has argued.

A woman's work varied by her place of residence, marital status, race, and ethnicity. Before World War I, U.S.-born single women typed in offices or clerked in the new department stores. Urban immigrant daughters tended machines, while their mothers hand sewed in tenements. African Americans cooked and cleaned for Southern households. Japanese labored on Hawaiian sugar plantations and in Californian truck gardens. Native Americans wove baskets while trying to eke out some subsistence on reservation farms. Mothers from many ethnic and racial groups also toiled in family businesses, large and small; they took in borders to lodge as well as goods to assemble, milked cows, and herded sheep. They migrated with their families to pick crops. Some even engaged in sex work.

In general, the wages of women's work were low; this was especially true of those who brought manufacturing into the home. Most homeworkers were mothers, sometimes aided by their children, although male tailors and cigar makers also labored at home. Homework had developed as an integral part of industrialization; it was an economic system where foot power competed with the dynamo, where long hours and low wages undermined working conditions and threatened the profitability of factories with their higher overhead. Subject to unpredictable consumer demand, handmade and fashion dependent goods cost more to make inside factories, which lacked the flexibility of space and workforce that sending manufacturing into tenements provided. By 1910, a minimum of 250

thousand homeworkers existed in New York City, producing at least one hundred items, such as coats, knee pants, paper bags, umbrellas, feathers, artificial flowers, spaghetti, and ice cream. By 1911, inspectors had approved over fourteen thousand tenements for homework licenses that restricted who could manufacture the specified items. Even with mandated inspection of tenements, enforcement proved difficult as families moved, employees lacked knowledge of their rights, and laws could only monitor the surroundings of workers—not the manufacturers, subcontractors, or retailers who profited from their labor. Licensing against sweated labor stressed perils to the consumer rather than rights of workers; it focused more on conditions in workers' homes than on the particularities of the labor contract.

"Sweating" characterized the entire ready-made clothing industry. Behind sweating lay competition, an oversupply of untrained labor, and the ability of small shops to produce cheaper than larger ones. At the turn of the century, the U.S. Department of Labor ignored location when defining sweating as "a condition under which a maximum amount of work in a given time is performed for a minimum wage, and in which the ordinary rules of health and comfort are disregarded."[1] But conditions in the clothing industry grew not solely from the desires of employers to make a maximum profit or the over supply of labor. Tenement workshops and homework built upon the preference among some Jewish immigrants to work at home and took advantage of social and cultural restraints on the labor of married women with children, especially among Italians. It developed in the context of rising land values, population overcrowding, a preexisting stock of buildings, and worker organization.

Subject to more strikes than most other industries, the clothing trade underwent walkouts, lockouts, and other confrontations from the mid-1880s into the 1910s. Unions were unstable and took numerous forms prior to the formation of the International Ladies' Garment Workers of America (ILGWU) in 1900 and the Amalgamated Clothing Workers of America (ACWA) in 1914. (These merged to form UNITE, the Union of Needletrades, Industrial and Textile Employees in 1995.) Though the precise ethnic and sexual composition of the labor force varied across cities, Jewish and Italian men—generally holders of the best jobs in the trade—dominated the unions.

Self-interest combined with social justice and moral conscience characterized campaigns to end the sweatshop from the 1890s through the first World War. Trade unionists wanted to eliminate low-waged competitors. Male leaders also fought for the family wage, a wage large enough for a man to support his wife and children. If men gained higher wages, the argument went, then wives and children would not need to supplement the family economy through homework. The middle class women who formed the National Consumers' League (NCL) and joined the National Women's Trade Union League (WTUL) desired to improve the lives of those they judged the most vulnerable. Although calling for fair wages

1. Henry White, "The Sweating System," *Bulletin of Department of Labor* 4 (Washington, D.C.: GPO, 1896), n.p.

and decent working conditions, women reformers initially emphasized the protection of the consumer and the preservation of the home. Protecting the family, then, lay behind both the demands of male trade unionists and women reformers alike.

Organized in 1898, the NCL tapped the moral righteousness of prosperous women by exhorting them to purchase goods made under sweatshop-free conditions. It issued a "white label" to manufacturers who both met the League's labor standards—obedience to state factory laws, production on the premises, no overtime, and no children employed under sixteen—and passed inspections conducted by the League or by state departments of labor. Eschewing individual solutions to removing the germs thought lurking in clothes, the NCL would protect consumers by improving the conditions of producers.

Investigation, education, publicity, mobilization, and legislation became weapons of choice for reformers who would politicize consumption and turn to legislatures for relief against sweating. Under its energetic secretary Florence Kelley, the white label offered a symbol around which the League organized to win government-enforced labor standards. Through numerous state campaigns it secured maximum hour and minimum wage laws for women and curbs on child labor. It also helped develop state enforcement bureaus, staffing such agencies with its members, and defended these laws in the courts, researching and writing legal briefs that defined the field of sociological jurisprudence, notably for *Muller v. Oregon* (1908) in which the Supreme Court upheld the setting of maximum hours for women. Between 1912, when Massachusetts established the first minimum wage board, and 1923, when the Supreme Court struck down the District of Columbia's law in *Adkins v. Children's Hospital*, fifteen states, the District of Columbia, and Puerto Rico provided minimum wages for women. The NCL spearheaded this drive, aided by the WTUL, social workers, settlement house residents, trade unionists, and male industrial relations specialists. Laws curtailed child labor, fourteen-hour days for women, and factory night work by women and minors, but these practices often remained legal if performed in the home, though in 1913 New York extended child labor prohibitions to homework.

Labor laws for women had only a limited impact; they never covered agriculture and domestic service where women of color were concentrated. However, restrictive laws prohibited women from working at night, lifting heavy weights, and laboring in a given occupation. Regulatory laws sought to improve working conditions, increase wages, lower hours, and end health hazards. In raising the cost of hiring women, regulatory laws often restricted job possibilities in mixed sex occupations at a time before legal remedies existed for sex discrimination. For those working in female-dominated industrial jobs, that is, for the majority of women in industry, such laws improved conditions. Those who argued for restrictive laws highlighted the sexual danger of women being out at night or the inappropriateness of women laboring in specific types of work, like foundries. Judged dependent, women before suffrage came under the police power of the state in ways that the Court refused to extend to men, whose right to contract it considered sacred. According to historian Kathryn Kish Sklar, when blocked from gender neutral labor standards after *Lochner v. New York* (1905), which struck

down a law restricting the hours of male bakers, reformers concentrated on gaining protections for women as an entering wedge for all workers.

By 1915, the NCL boasted eighty-nine locals in nineteen states, of which thirty-four were in universities, colleges, and schools. A year later membership stood at thirty-three thousand. By World War I, however, unions had brought some order to the chaotic garment industry. The 1910 "Protocol of Peace" not only solidified unionization of women's garments but also initiated the New York Joint Board of Sanitary Control to monitor conditions. Three years later, the ILGWU and the Joint Board asked the NCL to help them compose a new label agreement. But during the strike-torn war years, manufacturers who sought to stymie unions promoted the NCL label, whose standards then lagged behind those negotiated through collective bargaining. The League responded by dropping the white label in 1918 but continued to seek labor standards legislation to supplement union contracts, especially for women in unorganized industries and Southern workers. As historian Landon R.Y. Storrs has shown, the 1938 Fair Labor Standards Act, which covered men as well as women, culminated the NCL's quest for regulation of hours, wages, and child labor.

To focus only on middle-class reformers or male trade unionists silences the self-activity of working women themselves. Working-class women took to the streets repeatedly to protest the cost of food and housing. The Working Women's Society of New York City initiated the chain of events that led to the founding of the NCL when it approached charity reformer Josephine Shaw Lowell in 1886 for aid in organizing. Laboring women, like bookbinder Mary Kenney O'Sullivan and garment maker Leonora O'Reilly, were central to the formation of the WTUL at the 1903 convention of the American Federation of Labor, where only four women sat out of 496 delegates. Few women were in unions at that time, although over five million were wage earners. As a cross-class organization of women wage earners and middle class "allies," the WTUL had a dual agenda: it trained organizers and sought to unionize women and it pushed for labor legislation as a tool to facilitate organizing as well as to improve conditions in the workplace.

"The Uprising of the Thirty Thousand," the great 1909 strike in New York's women's garment industry, brought wage-earning women into prominence within the WTUL. Jewish immigrant garment workers, like Rose Schneiderman and Pauline Newman, became its core. According to historian Annelise Orleck, they were "industrial feminists," who envisioned a transformed world on both the shopfloor and in the community. They were also socialists of various persuasions and seasoned activists. Numerous smaller strikes, some confined to one shop, and shop-to-shop organizing prepared the way for the "Uprising." Organizers like Clara Lemlich (see "Dramatic Moment") worked long to overcome ethnic tensions fanned by management, which sought to pit Italian against Jew, immigrant against U.S. born. This was a protest led and sustained by factory girls, the majority still in their teens, with the aid of "mink brigade" suffragists, the WTUL, male unionists, and the Socialist Party. The strikers turned to their allies to expose the thugs who beat them and the police who arrested them, nearly eight hundred in the first month alone. Employers tried to discredit picketers by calling them "streetwalkers" at a time when starvation wages

were a major reason that women turned to prostitution. Socialites on the picket line generated publicity and funds and also restrained the police. Though the strike rejuvenated labor and strengthened the ILGWU, the resulting settlement ironically contributed to the Triangle Shirtwaist Factory tragedy two years later. Pushing for better pay and union recognition, the male ILGWU negotiators gave way on demands for safe working conditions without consulting the strikers. During the next decade, however, half of all women garment workers would become union members.

The "girl strikers," as they were called, smashed the myth that women were unorganizable and would not be good trade unionists. Their utopian imagination projected a self-identity forged from popular culture and the culture of consumption that rejected the status of victim. Instead, the young women in the garment factories became "girls of adventure," as historian Nan Enstad has named them, who forged the status of ladyhood out of dime novels and nickelodeons. They desired French heels and fashionable shirtwaists. Like the Lawrence textile strikers of 1912, they would have roses as well as bread. Like Boston telephone operators and Tennessee textile operatives, their youth culture, displayed on the picket line, provided a basis for collective action. Rather than the starving, serious, and "thinly clad" waifs of the labor press, they were ladies who demanded to be valued both as women and as workers. In time, they changed the sweating system by moving beyond the boundaries of maternalist reform.

Dramatic Moment

"I want to . . . go out on strike!"

In the fall of 1909 there were three major shirtwaist shop strikes in New York City to improve the working conditions of women employees. All were limited in scope, not well organized in effort, and squashed by owners. Known as the center of the garment industry, there were over six hundred shirtwaist and dress factories in the city. None were unionized as the major union, the American Federation of Labor (AFL), did not believe organizing women was a worthwhile endeavor. The failure of the three strikes energized many of the young women workers to attempt to organize every shop they could to act in unison. In early December, a mass meeting of immigrant women workers and the small, newly-formed International Ladies' Garment Workers Union (ILGWU), an AFL division, was called by word of mouth to the Cooper Union.

Five striking women having lunch.
New York, 1909
George Grantham Bain Collection (Library of Congress)
LC-USZ62-78093

The hall was packed to overflowing with many standing outside in the cold. For two hours labor officials, including AFL leader Samuel Gompers, spoke. All urged caution and stressed moderate action urging an all-out strike only as a last resort. Each received mild applause. Finally, in sheer frustration, a young, diminutive woman of five feet in heighth and barely over twenty years old, leaped to her feet shouting in Yiddish "I'm tired of listening to these speeches. I want to know if we're going to go out on strike!" She was Clara Lemlich, already a seasoned organizer, who had just been released from the hospital after a brutal beating received on a picket line in front of her workplace, the Leiserson Shirtwaist Factory, scene of one of the previous strikes. She then demanded a vote to strike.

Instantly, the crowd was on its feet yelling and cheering its support for an industry-wide strike. When the chair William M. Feigenbaum called for a vote, three thousand voices shouted unanimous approval as they waved hats, handkerchiefs and other objects. He then asked them, "Do you mean faith? Will you take the old Hebrew oath?" All right arms went up in the air as voices repeated "If I turn traitor to the cause I now pledge, may this hand wither from the arm I now raise."

So began the thirteen weeks of the "Uprising of 20,000" sweated women workers of New York City!

Source: Philip S. Foner. *Women and the American Labor Movement: From Colonial Times to the Eve of World War I* (New York: Free Press, 1979), p. 328.

Time Line

1890	General Federation of Women's Clubs founded
1899	Florence Kelley gives speech on "Working Woman's Need of the Ballot"
1900	International Ladies Garment Workers Union (ILGWU) founded
1901	McKinley assassinated; Theodore Roosevelt becomes President
1903	National Women's Trade Union League (WTUL) founded
1905	Industrial Workers of the World (IWW) founded
	Lochner v. New York
1908	*Muller v. Oregon*
	Lewis Hine photographs tenement home work conditions
1909–10	Massive shirtwaist factory shops begin series of strikes
1910	"Uprising of 20,000" women shirtwaist workers
1911	Triangle Shirtwaist Company fire occurs
	Rose Schneiderman addresses mass meeting
1912–13	New York State Factory Investigating Commission meets
1913	Woodrow Wilson becomes President
	Paterson Silk Strike occurs
1914	Elizabeth Gurley Flynn addresses the New York Civic Club Forum
1917	U.S. becomes involved in World War I
1918	*Hammer v. Dagenhart*
1920	Nineteenth Amendment grants women suffrage
1923	*Adkins v. Children's Hospital*

Lesson One
Working Conditions

A. Objectives

- To understand why young women worked as unskilled factory employees.
- To empathize with immigrant households forced to supplement income through sweated labor.
- To appreciate early legislative efforts to regulate the industry despite their limited success.

B. Lesson Activities (Two days)

Within the context of presenting the Progressive Movement as the first modern reform movement to bring order and social justice to all workers, set the stage for an examination of women as sweated industrial laborers with **Documents A**, **B**, **C**, **D**, **E**, **F**, **G**, and **H**.

Divide students into four groups. Provide each group with two of the documents—**A** and **B**, **C** and **D**, **E** and **F**, **G** and **H**. **Photos One**, **Two**, **Three**, **Four**, **Five**, and **Six** should be given to the groups (three for each) receiving **Documents E** and **F** and **Documents G** and **H**.

Documents:

A. Working at the Triangle Shirtwaist Factory

B. Fifth Avenue Sweatshops

C. Story of a Sweatshop Girl

D. What a $6.00 a Week Wage Means

E. The Problem of Sweating in America

F. The Wreck of the Home

G. New York Factory Investigating Commission Public Hearing

H. Report of the New York Factory Investigating Commission

Lewis Hine Photos 1 through 6 depicting families doing home work

Each group should examine their documents carefully, seeking details of the work situations described. A spokesperson from each group will report the cumulative information to the entire class orally. A discussion should follow focusing on these issues:

1. How to improve working conditions and tenement squalor.

2. The conundrum facing women in sweatshops and at home: how to unify to remedy low pay and poor working conditions without losing their jobs so necessary to support their families.

Working at the Triangle Shirtwaist Company

Pauline Newman was born in Lithuania around 1890 and came to the U.S. in 1901. She began working at the Triangle Shirtwaist Company shortly thereafter. In 1906, at age 15, she joined the Socialist Party. By 1909, she was working over 52 hours a week at Triangle until hired by the International Ladies Garment Workers Union (ILGWU) as an organizer. She was actively involved in the 1909–10 series of strikes. She worked for ILGWU for four years traveling to 14 states to organize workers. She also worked closely with Rose Schneiderman and the National Women's Trade Union League (WTUL) for a few years. Newman remained on the ILGWU staff for over 70 years.

"I went to work for the Triangle Shirtwaist Company in 1901. The corner of a shop would resemble a kindergarten because we were young, eight, nine, ten years old . . . .The hours were from 7:30 in the morning to 6:30 at night when it wasn't busy. . . . No overtime pay, not even supper money. There was a bakery in the garment center that produced little apple pies the size of [an] ashtray and that was what we got for our overtime instead of money.

"It [Triangle] was probably the largest shirtwaist factory in the city of New York. By the time I got there they had something like two, more that two hundred operators. And they had collars, examiners, finishers. Altogether probably, they had about four hundred people. And that was a large staff. And they had two floors.

"My wages as a youngster were $1.50 for a seven-day week. I know it sounds exaggerated, but it isn't; it's true. . . . I worked on the 9th floor with a lot of youngsters like myself. When the operators were through with sewing shirtwaists, there was a little thread left, and we youngsters would get a little scissors and trim the threads off. And when the inspectors came around, do you know what happened? The supervisors made all the children climb into one of those crates that they ship material in, and they covered us over with finished shirtwaists until the inspectors had left, because of course we were too young to be working in the factory legally.

"The Triangle Waist Company was a family affair, all relatives of the owner running the place, watching to see that you did your work, watching when you went into the toilet. And if you were two or three minutes longer than foremen or foreladies thought you should be, it was deducted from your pay. If you came five minutes late in the morning because the freight elevator didn't come down to take you up in time, you were sent home for a half a day without pay.

"The hours remained, no matter how much you got. The operators, their average wage, as I recall—because two of my sisters worked there—they averaged around six, seven dollars a week. If you were very fast—because they worked piece work—if you were very fast and nothing happened to your machine, no breakage or anything, you could make around ten dollars a week. But most of them, as I remember . . . they averaged about seven dollars a week. Now the collars are the skilled men in the trade. Twelve dollars was the maximum.

"The early sweatshops were usually so dark that gas jets [for light] burned day and night. There was no insulation in the winter, only a pot-bellied stove in the middle of the factory. . . . Of course in summer you suffocated with practically no ventilation. There was no drinking water, maybe a tap in the hall, warm, dirty. What were you going to do? Drink this water or none at all.

"The condition was no better and no worse than the tenements where we lived. You got out of the workshop, dark and cold in winter, hot in summer, dirty unswept floors, no ventilation, and you would go home. What kind of home did you go to? Some of the rooms didn't have any windows. I lived in a two-room tenement with my mother and two sisters [Her father died shortly after arriving in the U.S.] and the bedroom had no windows, the facilities were down in the yard, but that's the way it was in the factories too. We wore cheap clothes, lived in cheap tenements, ate cheap food. There was nothing to look forward to, nothing to expect the next day to be better. Someone asked me once 'How did you survive?' And I told him, 'What alternative did we have?' You stayed and you survived, that's all."

Source: Joan Morrison and Charlotte Fox Zabusky. *American Mosaic: The Immigrant Experience in the Words of Those Who Lived It* (Pittsburgh: University of Pittsburgh Press, 1980), 1993. Reprinted:
http://web.gsuc.cuny.edu/ashp/heaven/newman.html

Yard of tenement, New York, N.Y.
Laundry hangs between the buildings
ca. 1900-1910
Library of Congress (Detroit Publishing Co.) LC-D4-36489

Fifth Avenue Sweatshops

A weekly bulletin of the clothing trade union in New York reported on a warning issued by the Fire Chief regarding the danger of fire in the "Sweatshop District." The article appeared two months prior to the Triangle Shirtwaist Factory fire and called for an immediate remedy to correct the problem and protect factory workers.

"Fifth avenue workshops are nothing but high class sweatshops, and they're all the more dangerous because they are fireproof buildings. The law doesn't require fireproof buildings to have fire escapes, and the people in these shops are in constant danger."

The above statement was made . . . by the chief of the greatest fire fighting force in the world, Fire Chief Edward F. Croker, of the New York Fire Department. We have always been led to believe that our Fifth avenue shops and factories were models for safeguarding the lives and limbs of the people who are compelled to obtain a livelihood within their walls and that the only place in which workers were menaced with the fire danger was in the so-called congested or sweating district. . . . This understanding is now changed, and we are told that a district in which no thought of the sweatshop danger and evil was ever connected is really a more dangerous place for the workers to follow their vocation in than the so-called sweating district. . . .

It may be within the law to have people employed in a fireproof building without erecting fire escapes, and while the erection of fire escapes may be an expense to the owner of the property and the employees may never have need for them, we have known of instances where fires have occurred and death resulted in alleged fire-proofed buildings, these deaths being preventable if suitable fire escapes had been on the buildings.

The factory law gives the Labor Commissioner power to order the installation or erection of fire escapes on a building three or more stories in height when the building is occupied as a factory. This being the case, it is hoped that an early move in this direction will be made by him in the newly discovered sweating and firetrap district of Fifth avenue.

It has always been our policy to co-operate with the Labor Department in any and all reforms in which it has been engaged, and if the Labor Commissioner decides to take action along the lines suggested by Chief Croker to safeguard the lives of the workers in the Fifth avenue firetraps and sweatshops he is assured in advance of our hearty aid and co-operation until the evils complained of are replaced by conditions satisfactory to all interested parties.

But with or without the aid of the Labor Department or any other recognized authority in the premises, the employees of these shops have the power to remedy these conditions through a thorough organization. If immediate steps are not taken by the authorities to change the conditions complained of by Chief Croker or failure to abolish them results after a determined effort is made, then the employees would and have every right to strike until such time as they are assured their lives and limbs are amply protected by the erection of a sufficient number of fire escapes on every factory on Fifth avenue.

Source: *The Weekly Bulletin of the Clothing Trades*, Friday January 13, 1911; published by the United Garment Workers of America General Executive Board.

The Story of a Sweatshop Girl

Sadie Frowne, a sixteen-year-old Polish immigrant, worked in Manhattan, New York, at a factory making shirts. A magazine, *The Independent*, printed an interview describing her work at the factory. Frowne's description typifies that of other girls working in New York's sweatshops.

"When mother died I thought I would try to learn a trade and then I could go to school at night and learn to speak the English language well. So I went to work in Allen street [Manhattan] in what they call a sweatshop, making skirts by machine. I was new at the work and the foreman scolded me a great deal. 'Now, then,' he would say, 'this place is not for you to be looking around in. Attend to your work. That is what you have to do.'

I did not know at first that you must not look around and talk, and I made many mistakes with the sewing, so that I was often called a 'stupid animal.' But I made $4 a week by working six days in the week. For there are two Sabbaths here—our own Sabbath, that comes on a Saturday and the Christian Sabbath that comes on Sunday. It is against our law to work on our own Sabbath, so we work on their Sabbath.

. . . I lived at this time with a girl named Ella, who worked in the same factory and made $5 a week. We had the room all to ourselves, paying $1.50 a week for it, and doing light housekeeping. It was in Allen Street, and the window looked out of the back, which was good, because there was an elevated railroad in front, and in summer time a great deal of dust and dirt came in at the front windows. We were on the fourth story and could see all that was going on in the back rooms of the houses behind us, and early in the morning the sun used to come in our window.

. . . Two years ago I came to this place, Brownsville [Brooklyn] where so many of my people are, and where I have friends. I got work in a factory making underskirts—all sorts of cheap underskirts, like cotton and calico for the summer and woolen for the winter, but never the silk, satin or velvet underskirts. I earned $4.50 a week and lived on $2 a week, the same as before. I got a room in the house of some friends who lived near the factory. I pay $1 a week for the room and am allowed to do light housekeeping—that is cook my meals in it. I get my own breakfast in the morning, just a cup of coffee and a roll, and at noon time I come home to dinner and take a plate of soup and a slice of bread with the lady of the house. My food for a week costs a dollar, just as it did in Allen Street, and I have the rest of my money to do as I like with. I am earning $5.50 a week now and will probably get another increase soon.

It isn't piecework in our factory, but one is paid by the amount of work done just the same. So it is like piecework. All the hands get different amounts, some as low as $3.50 and some of the men as high as $16 a week. The factory is in the third story of a brick building. It is in a room twenty feet long and fourteen broad. There are fourteen machines in it. I and the daughter of the people with whom I live work two of these machines. The other operators are all men, some young and some old.

. . . I get up at half-past five o'clock every morning and make myself a cup of coffee on the oil stove. I eat a bit of bread and perhaps some fruit and then go to work. Often I get

there soon after six o'clock so as to be in good time, tho the factory does not open till seven. I have heard that there is a sort of clock that calls you at the very time you want to get up, but I can't believe that because I don't see how the clock would know. At seven o'clock we all sit down to our machines and the boss brings to each one the pile of work that he or she is to finish during the day, what they call in English their 'stint.' This pile is put down beside the machine and as soon as a skirt is done it is laid on the other side of the machine. Sometimes the work is not all finished by six o'clock and then the one who is behind must work overtime. Sometimes one is finished ahead of time and gets away at four or five o'clock, but generally we are not done till six o'clock.

The machines go like mad all day, because the faster you work the more money you get. Sometimes in my haste I get my finger caught and the needle goes right through it. It goes so quick tho, that it does not hurt much. I bind the finger up with a piece of cotton and go on working. We all have accidents like that. Where the needle goes through the nail it makes a sore finger, or where it splinters a bone it does much harm. Sometimes a finger has to come off. Generally, tho, one can be cured by a salve.

All the time we are working the boss walks about examining the finished garments and making us do them over again if they are not just right. So we have to be careful as well as swift. But I am getting so good at the work that within a year I will be making $7 a week and then I can save a least $3.50 a week. I have over $200 saved. The machines are all run by foot power, and at the end of the day one feels so weak that there is a great temptation to lie right down and sleep.

Source: Sadie Frowne, 16 years old, Polish immigrant, The *Independent*, Vol. 54.2, Sept. 25, 1902.

A woman working on large loom in a factory

Photograph of a mural in the Bronx Central Station, New York by artist Ben Shahn (ca. 1937)
National Archives, NLR-PHOCO-A-52114(32)

What a $6.00 a Week Wage Means

The impossibility of living on a $6.00 a week wage is illustrated by the following schedule of expenditure, one of the many thousands of individual expense accounts submitted to the New York State Factory Investigating Commission, the National Consumers' League and the Women's Trade Union League of Chicago.

WEEKLY EXPENDITURE

One half of furnished room	$1.50
7 breakfasts, rolls and coffee, at 10c	.70
7 dinners, at 20c	1.40
7 luncheons, coffee and sandwich, at 10c	.70
Carfare	.60
Clothes at $52 a year—weekly	1.00
Total	$5.90

The remaining 10c to cover laundry, dentist, doctor, newspapers, church and recreation.

10c a week for 52 weeks, makes $5.20.

But the girl works only 40 weeks.

She must live 52 weeks. HOW?

The Census figures for 1910 have not yet been published, but in 1900, the average wage for women workers in the United States was $270 a year.

Source: Papers of National Women's Trade Union League Papers, Schlesinger Library, Radcliffe College.

The Problem of Sweating in America

Florence Kelley devoted her life to social reform movements including the Settlement House Movement, the abolition of child labor, establishment of minimum wage laws, and the development of health care for the poor. When she moved from Illinois to New York, Kelley played an active role in exposing the exploitation of women and children in the work force. In an article in *Chautauquan*, November 1910, she called attention to the lack of sanitary conditions in New York's sweatshops.

Florence Kelley, n.d.
Library of Congress LC-USZ-62-73260

The intolerable social burden of disease, dependence, and vice inseparable from the sweating system can never be lifted from the community which endures sweating within its borders. Our descendants will doubtless look back upon our tolerance of sweating as we look back upon the relation of our ancestors to slavery—with wonder and sorrow.

. . . With regard to tenement house work, the outlook is utterly discouraging. [The Court of Appeals having held unconstitutional a quarter of a century ago, the statue of New York forbidding the manufacture of tobacco in tenement-houses, all effort to abolish tenement house work by law has ceased.] Instead thereof, a series of measures has been adopted vainly attempting to minimize the evils attending such work. As has been shown, it was made illegal to employ in the tenement-dwelling persons not members of the immediate family. Since 1904, owners of goods are responsible for learning from the local board of health whether there is infectious disease in the homes to which their goods go. [Syphilis is, however, not one of the registered diseases, and on this very important point no local board of health is in a position to afford information.] Tenements in which goods are made must be licensed and must conform to the building, tenement-house and sanitary code before the license issues. Indeed, all three departments must concur in approving the house before the license can legally issue. Licenses may be revoked for subsequent violation of the terms of issuance.

The population of New York City is so vast and so shifting, that these provisions are non-enforceable and the city of New York is, today, as it has been increasingly for a quarter of a century, a huge distributing center for the communicable diseases of the poorest people, which are daily shipped to all parts of the country in men's, women's, children's, and infants' garments; in feathers, flowers, passementeries, embroideries, and paper boxes, paste being a peculiarly favorable medium for the culture of bacteria.

Source: Florence Kelley. *Chautauquan* 60, November, 1910, p. 420.

The Wreck of the Home

The most hideous and uncontestable type of sweating is done in what should be the homes of working people. [East Side tenement houses]. . . . These homes of working men and women consist of from two to four rooms. In one room, that which opens on the street or yard, is carried on all the domestic life. This room serves for parlor, dining-room, and kitchen; and in this room in addition is carried on the manufacturing.

. . . The new law relating to manufacturing in tenement-houses provides that thirty-three distinct industries may be carried on in the living rooms of the workers—manufacturing all of which requires hand work or simple machinery. Every garment worn by a woman is found being manufactured in tenement rooms. The coarsest home-wrappers to the daintiest lace gown for a fine evening function are manufactured in these rooms. Corsets and shoes are the most uncommon. The adornments of woman's dress, the flowers and feathers for her hats, the hats themselves—these I have seen being made in the presence of small-pox, on the lounge with the patient. In this case the hats belonged to a Broadway firm. All clothing worn by infants and young children—dainty little dresses—I have seen on the same bed with children sick of contagious diseases and into these little garments is sewed some of the contagion. Every garment worn by men is found being manufactured in rooms whose legitimate use is for living purposes. . . . All clothing when not being sewed upon is thrown on the bed or under it, on the floor or more often used as a couch for a child. . . .The workers, poor, helpless, ignorant foreigners, work on in dirt, often in filth unspeakable, in the presence of all contagious and other diseases. . . .The sick as long as they can hold their heads up, must work to pay for the cost of their living. . . . A child from 3 to 10 or 12 years adds by its labor from 50 cents to $1.50 per week to the family income. The hours of the child are as long as its strength endures or the work remains. . . . Obviously under such conditions the child is deprived of the two greatest rights which the parents and the state are bound to give each child, health and an education.

The particular dangers to the child's health are such as can be induced by the confinement in the house, in an atmosphere always foul. The bad light under which the child works causes a continual eyestrain, from the effects of which the child will suffer all its life. The brain of the child under 8 years of age is not developed sufficiently to bear fixed attention. Hence it must be continually forced to fix its attention to the work and in doing this an irreparable damage is done to the developing brain. . . . Children over 8 years of age who attend school begin work immediately after school hours, and frequently work until late at night, and on Saturdays and Sundays.

The women usually begin about 5 a.m., taking a cup of coffee, working steadily without stopping from 4 to 6 hours. When the work must be finished at a fixed time, they usually work until midnight or until 1 or 2 a.m.; nothing will be allowed to interfere with it. I frequently make a medical visit during which the work is not stopped one minute. . . . Work had to be at the factory at a certain hour, [or] she could not get the money needed to pay the month's rent, then over-due. The hours are regulated solely by the amount of work on hand or by the physical strength of the workers; Sundays and holidays, in sickness and health, work they must.

. . . In no case in over 515 families was any women working other than from dire necessity. The average weekly income from the man's work was $3.81. The average rent [the

one item in the living expenses which must be paid and promptly] was $8.99 per month. The average family to be supported was of 4 1/2 persons. As it requires more than two weeks' wages to pay one month's rent, it is very evident that the women must work or the family go hungry. . . . The actual amount of money which the women earned averaged $1.04 per week. The combined income of the men and women averaged $4.85. The additional sources of income came from work of persons under 18 years and from what could be received from boarders and lodgers. This made the average income from all sources for over 515 families $5.69.

The fact that despite the work of the entire family the income is still too small for living purposes gives rise to greater evil of overcrowding. The average number of persons in the apartments, due largely to this cause, was 6.4 persons. The average number of rooms occupied by such groups was 2.6. In order to make the income reach the out-go, boarders, lodgers, two and three families huddle together, until not even the ghost of decency remains.

. . . And what are the dangers? To the workers—chiefly the loss of health, physically, morally; the loss of a home. Absolutely no home life is possible in a tenement workroom. . . . To the consumers—the real danger of being infected by disease germs. Among the 150 families manufacturing in the living rooms 66 continued at work during the entire course of the contagious disease for which we were attending the family. We have laws which if enforced would obliterate every sweat-shop great and small in New York. To enforce these laws would require an army of inspectors working day and night.

. . . Frequently the visit of the inspector is reported upon his entrance to the block, and the work is hidden until after the inspection has been made. In cases of contagious disease the door is usually kept locked; the time consumed in opening it permits the hiding of the work. . . . A clause of the law forbids the employment of any but members of the family, a clause which not only is not obeyed, but the work is carried to other apartments and even to other houses. . . . It frequently occurs that a woman takes more work than she can finish. She then distributes it to neighbors or friends; or she takes a large quantity of work and obtains the services of girls, whom she teaches the trade, usually neckties or artificial flowers. The girls receive no pay for this work.

. . . If women must add to the income of the family they should do it in buildings built for this purpose; children at least under eight years of age would not be employed; men and women in the last stages of tuberculosis could not work because of inability to go to a factory. The children, the future Americans, would stand a better chance of becoming useful citizens; and the consumer possessed of much wealth or little, could know that his garments were not stained with the blood of helpless women and little children.

Source: Annie S. Daniel, "The New York Infirmary for Women and Children," in an address to the annual meeting of the New York City Consumers' League, *Charities* XIV, April 1, 1905, #1, pp. 624-629.

New York Factory Investigating Commission
Public Hearing

In 1912, the New York legislature established a commission to investigate child labor in New York's sweatshops. The following is an excerpt from a public hearing before the Commission.

Examined by Mr. Elkus

Q. What is your name?
A. Amelia Cazza.

Q. How old are you?
A. I will be sixteen January 20th.

Q. Where do you work?
A. Shirtwaists.

Q. Do you do the same thing as the last girl?
A. No, I work at a machine.

Q. What do you make?
A. Shirtwaists.

Q. Work the machine with your feet, or what?
A. With my feet.

Q. What time do you go to work in the morning?
A. Eight o'clock.

Q. What time do you stop?
A. Five.

Q. How much do you make a week?
A. Six dollars.

Q. You live at home?
A. Yes, sir.

Q. Have you got a father and mother?
A. Yes, sir.

Q. What does your father do?
A. My father has a little stand with fruit and candy.

Q. Where is it?
A. On Baxter street.

Q. Where do you live?
A. 24 James street.

Q. Do you walk to your work every day?
A. Yes, sir.

Q. Eat your lunch there where you work?
A. Yes, sir.

Q. Bring your lunch there where you work?
A. Yes, sir.

Q. How long have you been working?
A. I have been working since I left school.

Q. When did you leave school?
A. When I was fourteen.

Q. Two years you have been working?
A. Yes, sir.

Q. You earn six dollars a week, making shirtwaists?
A. Yes, sir.

Q. How many shirtwaists do you make a day?
A. They give us some bundles of eight waists and sometimes ten or twelve. If they are plain waists we finish them in half a day, or two or three hours; if they are fancy waists it takes the whole day to make them.

Q. How many girls are there making them like you?
A. About 400 girls.

Q. About your age?
A. No, all older than me.

Q. You are the youngest?
A. There are some as old as me, and some younger.

Q. Working at the machines?
A. Yes, sir.

Source: Public Hearings Minutes of the Factory Investigating Commission of New York, 1912, Preliminary Report, The Argus Co., March 1912, pp. 1784-1785.

Smithsonian National Museum of American History
http://americanhistory.si.edu/sweatshops/history/2t71.htm

Shirtwaist similar to those made at the Triangle Shirtwaist Company factory

Report of The New York State Factory Investigating Commission

Within a month of the Triangle Shirtwaist Factory fire the governor of New York appointed a commission to investigate unsafe factory working conditions. The Commission conducted a series of statewide hearings that ultimately led to the enactment of legislation promoting safety in the state's factories. The following excerpt from the Commission's second report addresses sanitary conditions in the factories.

Sanitary Conditions

A license is granted by the Department of Labor to the landlord or his agent for the entire house, not for a worker, or family, or apartment. It is issued only after examination by the Commissioner of Labor of the records of the local department of health and the tenement house department. If these records show any orders outstanding against the building or reveal any infections or contagious disease among the tenants, the commissioner may withhold the license until the records show that the premises are in satisfactory sanitary condition. Before issuing the license, an inspector visits the premises, and reports in writing the result of his inspections.

In the effort to insure the continuance of satisfactory sanitary conditions after the granting of the license, the statute has been elaborated with an attention to detail which strikingly reveals the difficulty of enforcement. Licensed tenements are required to be inspected by the Commissioner of Labor once in six months (a task for the accomplishment of which the state has never yet provided even an approximately sufficient number of inspectors.)

. . . Reports of the Commission's investigators and the testimony reveal the great difficulties in the way, of enforcing this, the basic provision of the state's attempt to insure a minimum standard of sanitation in the dwellings of home workers. Investigators reported the following instances:

One family was found running ribbons and sewing buttons on corset covers. The father has had tuberculosis for several years. He had just been sent away to the country. The house had not been fumigated, and the members of the family were still working. Moreover, they were working all the time the father was ill.

In another house, where four members of the family had been sick with typhoid, and one was just convalescent, the family was working on feathers. Mary, one member of the family, had been doing the work all through her convalescence.

In another house, a young woman whose father was finally sent away to a tuberculosis hospital, was working on dolls' clothes in the same room where her sick father lay. A relief society had refused this young woman further assistance unless she also would go to a tuberculosis hospital. She refused to do this, and is working on dolls' clothes with tuberculosis progressing towards its final stages.

In another family which was visited the mother was out. The daughter went upstairs for her, followed by the investigator, who saw the mother come out of an apartment on the door of which the Board of Health had posted "Diphtheria." When the mother had re-

turned to her own apartment, she fell to work on the willow plumes which were lying on the table near a pile of clothing. After the interview she went upstairs again to the supposedly quarantined apartment. In the same house were four apartments in which there had been diphtheria since September, 1912. (This investigation was made November 9, 1912.)

Among homeworking families, our investigators found many cases of impetigo, a loathsome skin trouble, which is contagious, and practically due to dirt. A child, whose face and head were sore with this eruption, was seen playing with a felt slipper just manufactured. In another instance, a child with this disease was lying on a bundle of finished clothes, while in a third case a little girl suffering with impetigo was picking nuts for a factory.

. . . The following are a few instances of child labor reported by our inspectors:

It is no uncommon sight to find four and five year-old babies making flowers. Little Camilla only three years old was found in the afternoon of November 15th, 1912, running ribbons in corset covers. Rosie, her 11 year-old sister, was taking care of the baby, while Elsa, age 6 and Camilla helped mother.

Angelina says, "When I go home from school, I help my mother to work—I help her earn the money—I do not play at all. I get up a six o'clock and I go to bed at ten o'clock."

Camilla, 9 years old, says, "I have no time for play, when I go home from school, I help my mother. Half hour I make my lessons. Every morning I get up at 6 o'clock—I go to bed at 11 o'clock."

Govanna: "I get up at 5 o'clock in the morning. Then I work with my mother. At 9 o'clock I go to school. I have no time for play. I must work my feathers. At 10 o'clock I go to bed."

Maria: "I have no time to play when I work by my mother, but when I don't work, I mind the baby and clean the house."

Little 9-year old Antoinette: "I earn money for my mother after school, and on Saturday, and half day Sundays. No, I do not play, I must work; I get up to work at 4 o'clock in the morning, I go to bed at 9 o'clock."

Michaelina is not quite 14 years old. She crochets Irish lace. She gets up at 5:30 every morning, prepares her father's breakfast, crochets one hour before going to school, works again two hours after school, and takes care of the baby. Pasqualina, her sister, is 12 years old. She gets up at six o'clock and crochets an hour and a half every morning before going to school, and three hours every day after school. It takes two and a half hours to make one yoke for which the children receive nine cents, but as each yoke takes a spool of thread, two and a half cents is deducted from the profits. Working together the two children make 25 cents a day.

Francesca, 12 years old, works from 3:30 p.m. to 9:30 p.m. crocheting slippers. Even her little fingers can make eight or nine slippers in six hours. (These are children's slippers, and it takes from one-half to three-quarters of an hour to make one slipper.)

Nicolina is 9 years old. She cuts embroidery four hours every day and two hours at night. Little Pasqualina, her 8 year-old sister, helps too, and together they can make $2 a week.

Source: *Second Report of the New York State Factory Investigating Commission*, January 15. 1913, pp. 95–97, 105–106.

Garment Workers

National Archives, NWDNS-102-LH-1309 (New York City, 01-26-1910)

Garment workers. Katrina De Cato, 6 years old, Franco Brezoo, 11 years old, Maria Attreo, 12 years old, Mattie Attreo, 5 years old. 4 P.M.

A "Reflection" on the Parent

National Archives, NWDNS-102-LH-2698 (New York City, 12-12-1911)

Reflection in looking glass shows the father who has been picking nuts but refused to be photographed. He is out of work. Tomy, 5 years old, picks some, Minni, 7 years old, Rosie, 9, and Angeline, 11. Make $3 to $4 a week.

Mrs. Mauro and Family Working on Feathers

National Archives, NWDNS-102-LH-2709 (New York City,12-19-1911)

Mrs. Mauro, and family working on feathers, make an average of $2.25 a week. Victoria 8, Angeline, a neighbor, 10, Fiorandi, 10, Maggie, 11. Father is a street cleaner, and has a steady job.

Mrs. Guadina, Living in a Dirty, Poverty Stricken Home

National Archives, NWDNS-102-LH-2821 (New York City, 02-01-1912)

On the trunk is the work of 4 days. She was struggling along (actually weak for want of food), trying to finish this batch so she could get the pay. There seemed to be no food in the house. The father is out of work. Three small children and another expected soon.

Making Neckties in the Kitchen

National Archives, NWDNS-102-LH-2877 (New York City, 02-23-1912)

The 11 year old girl and 13 year old boy work on the ties every day after school. The mother on right works steadily. Two neighbors help with the work.

Making Garters (Armlets)

National Archives, NWDNS-102-LH-2881 (New York City, 02-27-1912)

A Jewish family and neighbors working until late at night. This happens several nights in the week when there is plenty of work. The youngest work until 9 P.M. The other until 11 P.M. or later. 7 year old Sarah, next is 11 year old sister, 13 year old brother. On left is 7 year old Mary and 10 year old Sam, and next to the mother is 12 year old boy. The last three are neighbors' children. Father is out of work and helps make garters.

Lesson Two
Women Workers Fight for Reform

A. Objectives

- To comprehend the impact of the Triangle Factory fire.
- To analyze the rationale of women labor leaders.
- To dissect the goals and controversies surrounding a general strike.

B. Lesson Activities (Five days)

1. Have all students read The Triangle Shirtwaist Fire (**Student Handout One**). Use the following questions to guide discussion:
   a. What violations occurred?
   b. What could survivors do to publicize deplorable safety and sanitary conditions? (e.g. investigate other factories for potential fire hazards, provide a public funeral procession for unidentified dead, train employees in safety procedures)
2. Distribute copies of Rose Schneiderman's speech (**Document I**) explaining that she made these remarks at a mass meeting held at the Metropolitan Opera House on May 2, 1911—over five weeks after the Triangle fire. The meeting was called by leading civic and religious leaders, including New York Governor John A. Dix, to protest factory conditions and to show support for the workers. These questions can be used for follow-up discussion:
   a. What does Schneiderman tell workers they must do?
   b. What, if any, responsibility does she lay on lawmakers, factory owners, consumers?
   c. How might her words swell membership in the International Ladies Garment Workers' Union (ILGWU)?
3. To gain a truer perspective of actual working conditions and consequences of a lengthy strike, the following roleplaying simulation of a fictitious trial of Industrial Workers of the World (IWW) labor leader Elizabeth Gurley Flynn should be created. The trial enactment centers on the Paterson Silk Strike of 1913 in nearby New Jersey in which Flynn was asked by the strikers, including many women, to act as their leader. Explain the role-playing activity to the students. Refer to "Teacher Instructions for the Trial Procedures." Have students read carefully **Student Handout Two** "Collision Course: Historical Background and Facts of the Case."

   Once students know the background, review **Student Handout Three**, "Trial Mechanics." Then assign roles providing each with their appropriate individual

role descriptions (**Student Handout Four**). Arrange the classroom into a courtroom setting to proceed with *City of Paterson, New Jersey v. Elizabeth Gurley Flynn*. (Note: While the trial is fictitious, all of the characters were real people involved in the strike.) Upon completion of the trial critique as follows:

a. Have each juror explain how he/she voted and what most influenced their decision.

b. Could Flynn have received a fair trial in Paterson in 1913?

4. Distribute copies to everyone of an abridged speech by Elizabeth Gurley Flynn (**Document J**) in which she attempted to explain the failure of the Paterson Silk Strike to the New York Civic Club Forum in 1914. These questions can be used for follow-up discussion:

   a. Why is Flynn giving this speech?

   b. What does Flynn consider a labor victory?

   c. What are the causes for the strike?

   d. How did the leaders use stimulation? What was its purpose?

   e. Why was violence on the part of the strikers avoided?

   f. What was the purpose of meeting in Haledon?

   g. Why were a series of short strikes avoided?

   h. How does Flynn contrast police brutality to workers' physical condition?

   i. What was the tragedy of the Paterson strike?

   j. What does Flynn think were the lessons of Paterson? What do you think the lessons were?

5. Provide all students with copies of the "Preamble of the Industrial Workers of the World Constitution of 1908 (**Document K**) to read. Follow with a general class discussion in which students explain Flynn's position regarding the role of the I.W.W. in the Paterson strike.

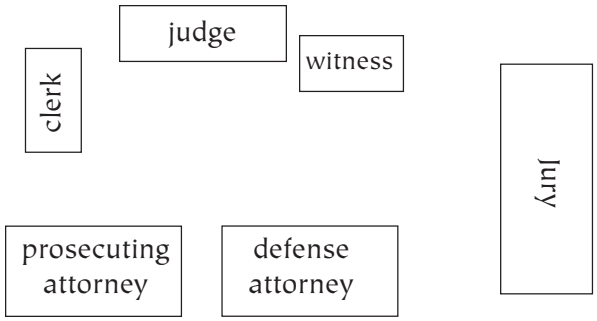
Teacher Instructions for the Trial Procedures

The Trial of Elizabeth Gurley Flynn

A. Preparation

1. Photocopy materials as follows:
   a. **Student Handout Two**, Historical Background: "Collision Course" and "Facts of the Case," one per student.
   b. **Student Handout Three**, "Trial Mechanics: Rules, Procedure for Trial, Trial Begins," one per student.
   c. **Student Handout Four**: Make 6-12 copies of the "Juror" role description (according to the number of students assigned to that role) and one copy of each of the other roles. If there are not enough students to play each role, eliminate the roles of newspaper reporter, artist, and/or cartoonist.
2. Read and discuss scenario with class, reviewing highlights of facts of the case insuring student understanding of events. A review of the included vocabulary will help students gain insight to the jobs performed by the workers.
3. Student Roles: About a week prior to the trial make role selections of judge, attorneys (two per each side), clerk, all witnesses, jurists, newspapermen, and/or artist or cartoonist.
   a. Once selections are made, group students as follows:
      1) Prosecuting attorneys and witnesses.
      2) Defense attorneys and witnesses.
      3) Judge, clerk, and jurists.
      4) Newsmen, artists, and/or cartoonists.
   b. Review roles for each group separately checking for understanding of details from facts of the case. (**Student Handout Two**)
      1) Help each set of attorneys organize their cases in conjunction with their witnesses; organize to "tell the story."
      2) Help witnesses by reviewing their separate rules with each one.
      3) Discuss courtroom procedure with judge, clerk, and jurists.
      4) Discuss assignment results expected from reporters, artists, or cartoonists.
   c. Parts can be expanded upwards to fifty or sixty or downwards to eighteen or twenty. ALL students should have a part.

4. Room Arrangement: Organize the room so that the attorneys face the judge who is at a desk in the front of the room. The jury should be seated in a group to the left of the judge. The witness stand should be located in the front of the room between the judge and the jury. The clerk of the court should be seated to the right of the judge. (Refer to diagram below.)



5. Conducting the Trial: Follow the instructions provided under rules and procedure. The trial has three major parts: an opening statement to the court by the attorneys, direct and cross-examination of the witnesses, and a closing statement by the attorneys. The role of the teacher during the trial is limited—act as an observer as much as possible. It may be necessary to advise the court when it rules on difficult objections or on courtroom procedures. It may also be necessary to review the preceding day's activities before starting on a second or third day.

   a. Make arrangements for the jury to deliberate in private without influence from the teacher. The best decision will be made this way.

   b. While the jury is reaching its verdict, the teacher should review for those remaining, the jury's procedure. It may also be appropriate to have newspaper reporters comment on how they feel the jury will vote.

6. **Critique.** After the verdict has been given by the court, have each juror tell how they voted and explain what influenced them.

Sources for the trial: Steve Golin, *The Fragile Bridge: Paterson Silk Strike 1913* (Philadelphia: Temple University Press), 1933; Philip B. Scranton, ed. *Silk City: Studies on the Paterson Silk Industry, 1860–1940* (Chelsea, MI: Bookcrafters),1985.

Trial Participants

List the names of students assigned to each role for your records.

Judge James F. Minturn _____

Clerk of the Court _____

Attorneys for the Plaintiff, Passaic County:

Michael Dunn, Lead Attorney _____

Assistant District Attorney _____

Attorneys for the Defendant, Elizabeth Gurley Flynn

Witnesses for the Plaintiff

1. _____
   Dr. Andrew McBride, Mayor of Paterson
2. _____
   Rodney Miller, Labor Consultant
3. _____
   Moses Strauss, Chairman,
   Paterson Board of Commissioners
4. _____
   Henry Doherty, Mill Owner
5. _____
   Samuel McCallom, Manufacturers' Leader
6. _____
   John Golden, President, UTW
7. _____
   John Bimson, Paterson Police Chief
8. _____
   Jerry O'Brien, Detective, agency owner
9. _____
   James Carroll, Paterson City Recorder
10. _____
    Jack Dunne, *N. Y. Times* reporter

Jurors:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

Witnesses for the Defendant

1. _____
   Elizabeth Gurley Flynn, defendent
2. _____
   Edward Zuersher,
   member, Executive Strike Committee
3. _____
   Adolph Lessig, local IWW organizer
4. _____
   Ewald Koettgen, leader IWW local 152
5. _____
   Joseph Mangor, Shop Chairman
6. _____
   Joseph Hoffspiegel, broad silk worker
7. _____
   Carrie Golzio, weaver
8. _____
   Louis Magnet, skilled ribbon weaver
9. _____
   Scully Bell, dye worker
10. _____
    William D. Haywood, IWW President
11. _____
    Art Shields, Associated Press reporter

8. _____
9. _____
10. _____
11. _____
12. _____

The Triangle Shirtwaist Fire

. . . On Saturday afternoon, March 25, 1911, in New York City's Greenwich Village, a small fire broke out in the Triangle Waist Company, just as the 500 shirtwaist employees were quitting for the day . . .

Fire broke out at the Trianble Company at approximately 4:45 p.m. (because time clocks were reportedly set back to stretch the day and because other records give differing times of the first fire alarm, it is uncertain exactly what time the fire started), just after pay envelopes had been distributed and employees were leaving their work posts. It was a small fire at first and there was a calm, controlled effort to extinguish it. But the fire began to spread, jumping from one pile of debris to another, engulfing combustible shirtwaist fabric. It became obvious that the fire could not be snuffed out, and the workers tried to reach the elevators or stairway. Those who reached the one open stairway raced down eight flights of stairs to safety; those who managed to climb onto the available passenger elevators also got out. But not everyone could reach the available exits. Some tried to open the door to a stairway and found it locked. Others were trapped between long working tables or behind the hordes of people trying to get into the elevators or out through the one open door.

Under the work tables, rags were burning; the wooden floors, trim, and window frames were also afire. Frantically, workers fought their way to the elevators, to the fire escape, and to the windows—to any place that might lead to safety.

Fire whistles and bells sounded as the fire department raced to the building. But equipment proved inadequate, as the fire ladders reached only to the seventh floor. And by the time the firemen connected their hoses to douse the flames, the crowded eighth floor was completely ablaze.

For those who reached the windows, there seemed to be a chance for safety. The *New York World* describes people balancing on window sills, nine stories up, with flames scorching them from behind, until firemen arrived: "The nets were spread below with all promptness. Citizens were commandeered into service, as the firemen necessarily gave their attention to the one engine and hose of the force that first arrived. The catapult force that the bodies gathered in the long plunges made the nets utterly without avail. Screaming girls and men, as they fell, tore the nets from the grasp of the holders, and the bodies struck the sidewalks and lay just as they fell. Some of the bodies ripped big holes through the life nets."

One reporter who witnessed the fire remembered how, "A young man helped a girl to the window sill on the ninth floor. Then he held her out deliberately, away from the building, and let her drop. He held out a second girl the same way and let her drop. He held out a third girl who did not resist. They were all as unresisting as if he were helping them into a street car instead of into eternity. He saw that a terrible death awaited them in the flames and his was only a terrible chivalry. He brought around another girl to the window. I saw her put her arms around him and kiss him. Then he held her into space and dropped her. Quick as a flash, he was on the window sill himself. His coat fluttered upwards—the air filled his trouser legs as he came down. I could see he wore tan shoes."

Those who had rushed to the fire escape found the window opening rusted shut. Several precious minutes were lost in releasing them. The fire escape itself ended at the second floor, in an airshaft between the Asch Building and the building next door. But too frantic to notice where it ended, workers climbed on to the fire escape one after another until, in one terrifying moment, it collapsed from the weight, pitching the workers to their death.

Those who had made their way to the elevators found crowds pushing to get into the cars. When it became obvious that the elevators could no longer run, workers jumped down the elevator shafts, landing on the tops of the cars, or grabbing for cables to ease their descent. Several died, but incredibly, some did manage to save themselves this way. One man was found, hours after the fire, beneath an elevator car in the basement of the building, nearly drowned by the rapidly rising water from the firemen's hoses.

Several people, among them Triangle's two owners, raced to the roof, and from there were led to safety. Others never had that chance. "When Fire Chief Croker could make his way into the [top] three floors," states one account of the fire, "he found sights that utterly staggered him . . . he saw as the smoke drifted away, bodies burned to the bare bones. There were skeletons bending over sewing machines." By the time it was over 146 workers had died. The day after the fire, the *New York Times* announced that "the building was fireproof. It shows hardly any signs of the disaster that overtook it. The walls are as good as ever, as are the floors; nothing is worse for the fire except that furniture and 141[sic] of the 600 men and girls that were employed in its upper three stories."

The building *was* fireproof. But there had never been a fire drill in the factory, even though the management had been warned about the possible hazard of fire on the top three floors. Owners Max Blanck and Isaac Harris had chosen to ignore these warnings in spite of the fact that many of their employees were immigrants who could barely speak English, which would surely mean panic in the event of a crisis.

The *New York Times* also noted that Leonora O'Reilly of the Women's Trade Union League had reported Max Blanck's visit to the WTUL during the shirtwaist strike, and his plea that the girls return to work. He claimed a business reputation to maintain and told the Union leaders he would make the necessary improvements right away. Because he was the largest manufacturer in the business, the League reported, they trusted him and let the girls return.

But the improvements were never made. And there was nothing that anybody could or would do about it. Factory doors continued to open in instead of out, in violation of fire regulations. The doors remained bolted during working hours, apparently to prevent workers from getting past the inspectors with stolen merchandise. Triangle had only two staircases where there should have been three, and those two were very narrow. Despite the fact that the building was deemed fireproof, it had wooden window frames, floors, and trim. There was no sprinkler system. It was not legally required.

These were the same kinds of conditions which existed in factories throughout the garment industry; they had been cited repeatedly in the complaints filed with the WTUL. They were not unusual nor restricted to Triangle; in fact Triangle was not as bad as many other factories. . . .

Source: Mitelman, Bonnie. "Rose Schneiderman and the Triangle Fire," *American History Illustrated* 1981 16(4): 38–47.

Image courtesy of UNITE Archives, Kheel Center, Cornell University

Triangle Shirtwaist Fire

Fire fighters arrived soon after the alarm was sounded but ladders only reached the 6th floor and pumps could not raise water to the highest floors of the 10-story building. Still the fire was quickly controlled and was essentially extinguished in half an hour. In this fire-proof building, 146 men, women, and children lost their lives and many others were seriously injured.

Rose Schneiderman's Speech

Born in Russian Poland in 1882, Rose Schneiderman immigrated to the United States in 1890 and grew up on Manhattan's Lower East Side. She took her first job at the age of thirteen, eventually working in a cap factory, where in 1903 she organized the first female local of the Jewish Socialist United Cloth Hat and Cap Makers' Union. In 1907 she began to work closely with the Women's Trade Union League (WTUL), which she considered "the most important influence in my life." A stipend provided by one of the WTUL's elite allies enabled Schneiderman to become a full-time organizer for the New York branch of the League. In that capacity she was central to the successful shirtwaist strike in the garment industry that built the International Ladies' Garment Workers' Union, 1909-1910.

As a union activist, Schneiderman spoke for "bread and roses." By bread she meant shorter hours, higher wages, safe working conditions, medical care, decent affordable housing and food. By roses, she meant meaningful work, access to education, culture and egalitarian relationships. Her blueprint for working-class women activities had four strategies: trade unionism, worker education, community organization around tenant and consumer issues, and lobbying. Active involvement in the National Women's Trade Union League (WTUL) allowed her to work toward these goals.

On May 2 at a mass meeting to dramatize the scandalous working conditions of the immigrants following the horrendous Triangle Shirtwaist Company fire that included Governor John A. Dix, 29-year-old Schneiderman stepped up to the podium to speak. She made the following speech in a barely audible whisper.

"I would be a traitor to these poor burned bodies, if I came here to talk good fellowship. We have tried you good people of the public and we have found you wanting. The Inquisition had its rack and its thumbscrews and its instruments of torture with iron teeth. We know what these things are today: the iron teeth are our necessities, the thumbscrews the high-powered and swift machinery close to which we must work, and the rack is here in the fireproof structures that will destroy us the minute they catch on fire.

"This is not the first time girls have burned alive in the city. Every week I must learn of the untimely death of one of my sister workers. Every year thousands of us are maimed. The life of men and women is so cheap and property is so sacred. There are so many of us for one job it matters little if 140-odd are burned to death. We have tried you, citizens, we are trying you now, and you have a couple of dollars for the sorrowing mothers and daughters and sisters by way of a charity gift. But every time the workers come out in the only way they know to protest against conditions which are unbearable, the strong hand of the law is allowed to press down heavily upon us.

"Public officials have only words of warning to us—warning that we must be intensely orderly and must be intensely peaceable, and they have the workhouse just back of all their warnings. The strong hand of the law beats us back when we rise into the conditions that make life bearable. I can't talk fellowship to you who are gathered here. Too much blood has been spilled. I know from my experience it is up to the working people to save themselves. The only way they can save themselves is by a strong working-class movement."

Source: Document 26: Rose Schneiderman Meeting Flyer, Milwaukee, October 1912, Rose Schneiderman Papers, Tamiment Library, New York University, WTUL microfilm, reel 2, #226; Rose Schneiderman with Lucy Goldthwite, *All for One* (New York: Paul S. Eielksson, Inc.), 1967.

Rose Schneiderman, a garment worker and union organizer, worked with a large pile of material, her day's assignment, at her side. In some shops women had to pay for electricity for their sewing machines (often at a profit to the employer), they had to buy replacement needles when one broke, and some had to rent the chairs on which they sat.

Image courtesy of UNITE Archives, Kheel Center, Cornell University

Collision Course: Historical Background and Facts of the Case

For decades, labor unrest was an integral facet of life in Paterson, New Jersey. As early as 1828, one of the nation's first strikes occurred here when women and children demanded a 12-hour work day. From that point in time until the 1913 strike, Paterson offered fertile ground for the American labor movement. While the products manufactured diversified over time, the working conditions tended to grow more demanding and complex. Constant pressure to increase output, adjust to mechanical improvements made by the textile industry, expand the number of mills from a few to hundreds employing thousands of workers, and meet competition while maintaining quality impacted the city's development. By 1900, Paterson was nationally prominent as the fifteenth largest city and a technological marvel. Internationally, it had a reputation as "Silk City of the New World", for it had shifted out of the production of cotton textiles in post-Civil War days to establish a virtual monopoly of silk production in the United States by the turn of the century. As demand for products grew, Paterson was aided by its close proximity to New York for distribution, sales, and ease of access to the influx of immigrants flocking into Ellis Island.

In the early years of silk production most workers had come from the silk centers of France, Germany, Switzerland, and, especially, England. They were considered skilled craftsmen who had learned their hand-processing skills through apprenticeship systems that restricted entry into the trade. Even with the advent of power looms, skilled workers were demanded in silk textile manufacturing because of the care necessary to produce a superior product. It took many years to train broad silk weavers to be experts and several years to train workers to perform semi-skilled jobs like winding, doubling, and twisting of silk in preparation for weaving. The introduction to and mixing of Jacquard designs with the expanding broad silk and ribbon productions along with technological advances captured European markets for Paterson's manufacturers.

Unfortunately for the mill owners, workers could not be transformed as easily, for the demand remained for experienced, skilled help. This factor made Paterson's industry unique. While most textile manufacturers could routinely hire the unskilled to run a machine, Paterson manufacturers had to have skilled workers to create their expensive fine silks, and to cut this corner would mean production of an inferior product with related profit losses. Well into the 1930s, this type of work demanded a skilled weaver who knew what to do immediately if a thread broke. More important, however, was the weaver's ability to watch the loom carefully and anticipate breaks in order to keep it running and avoid lost production time. Multifaceted skills were frequently passed from father to son. This gave the workers an advantage in making certain demands of their employers and allowed them to become heirs in a long tradition of artisan independence. Thus strikes were something of a way of life and manufacturers learned to adjust over time.

By 1913, the makeup of the working population had changed from those who were predominately English and German to those who were from Eastern and Southern Europe. Italians dominated the new silk workers with weavers coming from the Piedmont and dyers from Lombardy. Many of the newer broad silk weavers came from Lodz or Bialystok, Poland, however, and were Jews. Both Italians and Jews were involved in labor conflicts

on both sides of the Atlantic. As a result, they tended to speak out, hold more mass meetings, and seem radical to the casual observer. Generally, when dyers were displeased, the broad silk or ribbon weavers were content and vice-versa. Manufacturers might perceive skilled immigrants as troublesome or unmanageable but recognized that these vital skills were not easily replaced.

Manufacturers realized that some of the simpler silk operations could be performed by semi or unskilled workers, and they began establishing many elements of work in nearby Pennsylvania towns. They moved to take control of Paterson's political operations by restructuring local government through a new, non-elected Board of Commissioners appointed by the mayor. The Paterson Board of Trade became more prominent also. By 1913, the supervisors appointed policemen, and the Board of Trade could siphon work out of Paterson, giving manufacturers more leverage during a strike than before. This leverage, the development of an automatic stop motion on looms, and the growing wedge between a manufacturing upper class of owners and a large working, immigrant class seemed to tip the scales toward the manufacturer.

The 1913 strike, which lasted over six months from start to finish, came to involve more than twenty-four thousand workers and nearly three hundred mills in Paterson. Many of the participants were members of the Industrial Workers of the World (IWW), called Wobblies. Some of the leaders came from Greenwich Village, a center of social and intellectual ferment in New York City. The strike began when Henry Doherty, a broad silk manufacturer, opened a new mill designed specifically to increase production by having each worker operate four looms instead of two. Silk workers had protested this system before, claiming that larger loom assignments would lead to increased unemployment and more work for about the same wages. Since only Doherty's workers were affected, he might have been able to work out a compromise, as he had in strikes previous to1910. Concurrently, however, militancy on the part of other dyers also shaped the 1913 strike.

The working conditions of dyers were the worst in the entire silk industry. The bulk of the work force consisted of unskilled dyers' helpers. A semi-skilled supervisor oversaw the work of teams of seven or eight men who worked in a dirty, unhealthy building consumed with steam and boiling chemicals that were poured into large tubs to color silk yarn. Lighting was poor, floors were usually slippery, and pay was about $11.00 for a sixty to seventy hour work-week. While the delicacy and value of silk required weavers have better lighting and cleaner surroundings, dyers did not share in these advantages. Disgruntled dyers who struck in 1902 had brought violence and the state militia into play, scaring manufacturers into protecting their investments by 1913.

Three major divisions of workers—broad silk weavers, ribbon weavers, and dyers—collectively conspired to create a general strike. The rallying cry centered ultimately on the desire of all three divisions for an eight hour day with increased wages for every silk worker no matter what their job was. They asked that the two loom system of broad weaving be left in place and that working conditions be improved in all the big dye houses. Perhaps the most remarkable element about this strike, however, was the total involvement of the entire labor community. Regardless of ethnicity or skill on the job, all of the silk workers supported each other in a rare show of solidarity. In response, the manufacturers also exhibited a rare solidarity, realizing that time was on their side if they could maintain the upper hand with a show of patience.

The initial agreement of Italians and Jews in the broad silk industry to unite against the four-loom assignment and maintain their integrity as artisans found support in the ranks of the ribbon weavers, whose 300 percent increase in productivity was paralleled by a decrease in wages. Despite a manufacturers' attempt to "throw them a bone" by increasing their wages a dollar a week, the dyers' helpers felt that only a walkout as a body in support of all the weavers would bring permanent improvements. Their actions effectively shut down the entire industry. The general strike's essential ingredients were unity between nationalities and unity between different crafts. A Central Strike Committee was established to present demands to manufacturers, and they showed their united front by refusing meager offers leading the Paterson Local 152 of the IWW to appeal to their national organization for support. The unanimity of the workers, however, was of their own doing. The IWW leaders who came to Paterson merely acted as supporters who urged the workers to win their demands from management.

Fresh from a successful strike completed the year before in Lawrence, Massachusetts, IWW leaders saw Paterson as a golden opportunity to gain both a wider membership and national acceptance. The eight hour day had been advocated by the organization for several years and its demand by the silk workers seemed the next logical step to gain adoption within an important industry.

Among the IWW leaders who came to Paterson was Elizabeth Gurley Flynn. She was the only leader to remain faithfully in Paterson on a daily basis, giving speeches regularly at meetings, encouraging nonviolent picket lines, and acting as an outspoken model for emulation by the many women strikers. Charges which led to her arrest and subsequent trial stemmed from the first major meeting held on Tuesday morning, February 25, 1913 at Turn Hall in Paterson, where she addressed over five thousand workers. As it was the first official strike day, three invited IWW leaders spoke to give the strikers encouragement. Flynn was the last to appear. At the conclusion of the meeting, the speakers followed the strikers out of the hall into the street. Outside, the speakers were met by Police Chief John Bimson, who gave them an ultimatum: either leave town permanently or be arrested. One left, but two, Carlos Tresca and Flynn, insisted on their rights and were arrested. Assuming the silk workers were incapable of striking on their own without the IWW leadership, Chief Bimson regarded the arrests as a preventative measure. The fifteen hundred milling strikers on the street went particularly wild at seeing Flynn in Bimson's clutches. The speakers were led to the station by four mounted policemen. Despite the repeated use of clubs on the strikers to get them to disperse, the strikers insisted upon escorting the entourage to the jail. The speakers spent one night in jail on the day of their arrest until bail could be paid by the IWW. Tresca elected to leave town, but Flynn stayed on to become a symbol of encouragement, especially for the embattled women. The use of police force on that day escalated the numbers involved in the strike within the next several days, weeks, and months.

Charges for which Flynn was tried on June 30, July 1 and 2 were:

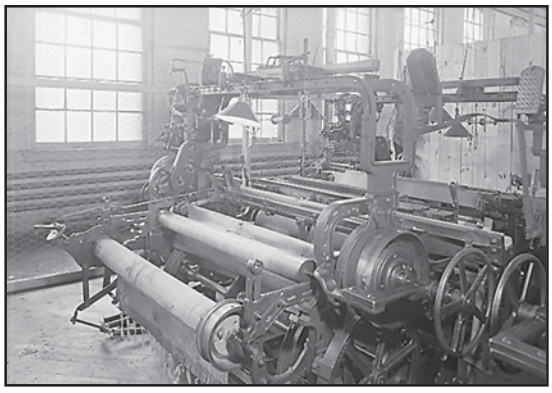
1. Use of inflammatory oratory to incite rioting by strikers.
2. Disturbance of the peace by encouraging the maintenance of picket lines.
3. Corruption of minors by encouraging their disobedience of laws.
4. Disobedience of the law to discourage assemblage in meeting halls (added later after adopted by City Council).

Implicit in these charges were the real concerns of the manufacturers that she was:

1. Overly critical of police and outside private detectives brought in to maintain order.
2. Promoting anarchy by criticizing local, state, and national governments for not supporting workers' rights.
3. Attempting to subvert authority by stressing equality between employers and employees, trying to erase class distinctions, and overtly pushing struggles to acquire better working conditions for strikers through use of speech and assembly.

National Archives, NWDNS-69-RP-363 (3/18/1937)

A view of part of the Barnett Silk Mill, Paterson, New Jersey. Homes (foreground) surround the mill, which has been cut up into so-called "family-shops"(also known as "cockroach shops").



National Archives, NWDNS-69-RP-328 (3/18/1937)

Idle quilling machines and looms in a Paterson, New Jersey "cockroach" shop. Note partition on the right and chicken-wire in the front.

Trial Mechanics

RULES

1. The case will be limited to what is in **Student Handout Two**. Other information must be cleared by the instructor.
2. All witnesses will be bound by the statements made in their role sheets. However, witnesses may elaborate on the statements.
3. All students will be assigned a special role or will be made a member of the jury panel. Those not selected for the jury will automatically become newspaper reporters or courtroom artists covering the trial.
4. This was a serious case and should be treated as such. The student judge presiding is the symbol of justice. Good courtroom procedure will be followed during the trial.
5. When questioning witnesses, attorneys will generally object for the following reasons:
   - Immaterial—statement has nothing to do with the case.
   - Leading a Witness—putting words in the witnesses mouth.
   - Calling for an unqualified opinion or conclusion by the witness—the witness could not have known this or the witness is not an expert
   - Badgering the witness—trying to bully the witness
6. When the objection is made, the judge may require a reason. He may ask the attorney to explain why this question is being asked or why a certain line of questioning is being used. After he has heard a discussion of the objection, he will rule on the objection (sustain or overrule). When they have finished questioning a witness, attorneys should say "that is all" or "your witness". Each attorney has the right to cross-examine his opponent's witness and to re-examine his own witness after cross-examination. When both sides are finished the judge should say "you may step down."

Procedure for the Trial

First Day

1. Judge enters. Everyone rises. Clerk of the court says "Hear ye! Hear ye! the honorable Passiac County Court of New Jersey is now in session. Judge James F. Minturn presiding."
2. Judge sits down, raps his gavel, and everyone sits.
3. Judge asks the Clerk to read the case.
4. Clerk reads: "The people of the City of Paterson, New Jersey versus Elizabeth Gurley Flynn."
5. Judge says: "The defendant will please rise while the charges are read."
6. Clerk reads: "The charges are as follows:
   - Use of inflammatory, oratory to incite rioting by strikers.
   - Disturbance of the peace by encouraging the maintenance of picket lines.
   - Corruption of minors by encouraging their disobedience of laws.
   - Disobedience of the law to discourage assemblage in meeting halls."
7. Judge asks the Defendant's lawyers "How do you plead?"
8. Defense Attorneys answer, "Not guilty to all counts, your honor."
9. Judge will then direct the Clerk to proceed with the selection of a jury. The Clerk will place the names of all the students who do not have parts in a box. The Clerk will pick a name out of the box and call that person to the witness stand.
10. Attorneys may question each prospective juror briefly or may accept the juror without questioning. Either group of attorneys may refuse jurors by giving cause.
11. Clerk, after all jurors are picked, directs them into the jury box. The jurors remain standing, and they raise their right hands. The Clerk says: "Do you solemnly swear that you will truly try the issue now to be given to you. That you will speak nothing to anyone of the business or matters you have at hand, but among yourselves; nor will you allow anyone to speak to you about the same, but in court. When you are agreed upon any verdict, you will deliver it up in court. Do you so swear?"
12. Jurors answer "I do."

Trial Begins

1. Opening statement by the Prosecution (Passaic County Attorney): "We intend to prove" followed by a brief statement about the essential facts that you intend to show, or bring out. Your opening statement should tell what Elizabeth Gurley Flynn did and what you intend to prove.
2. Opening statement by the Defense (Flynn's Attorney):

   "We intend to show" followed by a brief statement about your client's inno cence and briefly summarize what you will show.
3. Direct examination of the Prosecution's witnesses. They may be called to the witness stand in any order desired.
4. Cross-examination of the Prosecution's witnesses by the defense. The attorneys for the defense may question each witness before they leave the witness stand, if they wish.
5. Direct examination of the Defendant's witnesses. They may be called to the witness stand in any order.
6. Cross-examination of the Defendant's witnesses by the Prosecution. May question each witness if they wish.
7. Prosecution's closing statement is made after the defense has presented their last witness. They should summarize their case and attempt to persuade the jury to convict Flynn.
8. Defense's closing statement is made after the Prosecution has finished their statement. Defense should summarize their case and attempt to persuade the jury to acquit Flynn.
9. When the defense attorney has completed his closing statement, the Judge will instruct the jury. The Judge should explain to the jury that they must render a verdict on each of the four charges, that they must talk to no one other than jury members about the case until they have reached a verdict, and that they will be sent to a private room to make their decision. The Clerk of the court will take the jury to the room and stay outside until they have reached a verdict, and then he will return them to the courtroom to read the verdict.
10. The jury should use the procedure outlined on their instruction sheet.
11. When the jury returns, the Judge orders the defendant to stand. He then asks the foreman of the jury to read the verdict.

CLERK OF THE COURT

As Clerk, your job is to assist the court and the teacher in the direction of the trial. Each day before the trial see that the courtroom is properly set up. Immediately after the trial is over, see to it that the classroom is returned to order.

Your major job is to bring the court to order each day by reading the official opening of the court as follows:

1. The judge remains outside the courtroom. You ask all the people in the courtroom to stand.
2. You say: "Hear ye! Hear ye! The Honorable Court of Passaic County, New Jersey is now in session. Judge James F. Minturn Presiding."
3. The judge enters the room and takes his seat, raps his gavel and everyone sits down.

Your second responsibility is to know the courtroom procedure for the trial. You will have a number of things to say and do during the trial.

Your third responsibility is to swear in witnesses as they are called to testify. Before each witness takes the witness stand to answer questions for the first time, you ask the witness to put their left hand on the Bible, raise their right hand and answer the following question. "Do you swear to tell the whole truth and nothing but the truth in this case, under penalty of perjury, so help you God?": When the witness answers "I do," you should tell them to sit down. Be sure a Bible is on hand for use. It is only necessary to swear in each witness once.

JUDGE JAMES F. MINTURN

You will be the judge in this case and you must assume a great deal of responsibility. The rules and procedure for the Flynn Trial should be reviewed with care. Read these pages carefully and discuss them with the Clerk of the Court, who will assist you in conducting the trial.

You should make sure that good courtroom procedure is followed. Your major responsibility will be ruling on objections made by the attorneys. Make sure you use your best judgement in deciding to rule in favor or against objections by the attorneys. If you agree with the objection, use the term "sustained". If you disagree with the objection, use the term "overruled". If you are not sure how to proceed on any point, call for a short recess to confer with the instructor or attorneys.

Careful study of all parts of this case and adequate preparation are very essential. Take your part seriously.

JUROR

You have been selected as a juror, and, as a citizen of the United States, you should be happy for the opportunity. You should try as best you can to place yourself in the time of 1913, but your name will remain the same. It is your responsibility to listen carefully to all of the testimony and to all instructions given to you by the judge. While both attorneys will try to convince you that their point of view is correct, it will be up to you to make the final decision on the innocence or guilt of the Defendant. Listen to everything carefully. Try to be as fair and objective as possible in considering all the facts of the case. At the end of the trial you may receive instructions from the judge. You will then consider the facts of the case in private with the other jurors. The jury will select a foreman who will conduct the discussion of the trial.

When the foreman feels that the jury is ready to decide, he will poll the jury by a show of hands or by written ballot. Whenever 2/3 agree, he will lead you back into the courtroom and tell the judge you have reached a verdict. The judge will then ask the foreman to read the verdict.

There are four charges; you must convict or acquit on each one separately.

1. Use of inflammatory oratory to incite rioting by strikers.

   Guilty Not Guilty

2. Disturbance of the peace by encouraging the maintenance of picket lines.

   Guilty Not Guilty

3. Corruption of minors by encouraging their disobedience of laws.

   Guilty Not Guilty

4. Disobedience of the law to discourage assemblage in meeting halls.

   Guilty Not Guilty

PLAINTIFF: ATTORNEYS FOR PASSAIC COUNTY
Prosecuting Attorney Michael Dunn
Assistant Prosecuting Attorney

1. Read the fact sheet thoroughly. You will be given a copy of all facts on each witness in the case. As the county prosecuting attorneys you are charged by the power of your office to uphold local city—Paterson—and county—Passaic—laws.

2. Your case should rest on the fact that Elizabeth Gurley Flynn and her union openly and knowingly broke the laws of Paterson by her inflammatory socialist message which incited rioting and public demonstrations. She has blatantly attempted to subvert all authority. In resisting arrest by the police, she set a bad example for local workers. Her national reputation as a strike leader is well known. She was leading disruptive actions on the part of workers that endangered the lives of innocent citizens. She urged the con tinuation of an unnecessary strike that would not have lasted so long without her intervention and which totally disrupted the life of Paterson. As attor neys for Passaic County, you have brought suit in a county court charging Flynn with four crimes.

3. You must present enough evidence by questioning witnesses to persuade the jury to deliver a verdict against Flynn. Your job consists of five main parts:

   a. The selection of a jury.

   b. An opening statement to the court of not longer than five (5) minutes to describe the case to the court and give them a summary of the essential facts.

   c. Direct examination of your witnesses—questions are asked of each of your witnesses to bring out the facts which support your case.

   d. Cross-examination of the witnesses of the other party—your aim is to get admissions from an opposing witness that will help your client's case.

   e. A closing argument of not longer than five (5) minutes to summarize the points made in the testimony of witnesses which help your case.

4. You should attempt to prove:

   a. Flynn led the strikers to shut down Paterson's silk industry by her speeches. Without IWW influence, the strike would have collapsed under its own weight as the workers are incapable of organizing on their own.

   b. Flynn is a Socialist who would like to destroy our system of capitalism through disruption of Paterson's silk industry where the workers are better off than anywhere else.

ATTORNEYS FOR PASSAIC COUNTY (cont.)

c. Violence occurred at the workers' hands when mill owners attempted to cross picket lines with outside workers (strikebreakers or scabs) to keep their businesses operating which they have a legal right to do. They had to hire private detectives for protection of property and their workers.

d. Attempts of a peaceful nature were made to settle differences through the recognized AFL affiliate, the United Textile Workers President John Golden, but workers chose to follow IWW leadership like Flynn's instead.

e. To protect the citizens and property of Paterson, it is absolutely necessary to keep workers from assembling to hear speeches and to picket.

5. Your opposition will attempt to prove:

a. The strike is justified and is nonviolent in nature.

b. Workers are in charge of the strike and IWW is merely rallying unified support within and without Paterson.

c. Laws to silence Flynn and forbid workers to assemble are a violation of their First Amendment rights.

DEFENSE ATTORNEYS FOR ELIZABETH GURLEY FLYNN
Attorney #1
Attorney #2

1. Read the fact sheet thoroughly. You will be given a copy of all facts on each witness in the case. You have been hired by the IWW Union to defend Flynn and, consequently, the workers' right to strike. You are equally anxious to stress the strikers' First amendment rights of free speech and freedom of assembly which the Paterson City Council has legislated against within city limits.
2. You should attempt to prove that Passaic County has no case, and the strike was justified. You should also prove that the workers have a right to exercise their First amendment rights.
3. You must present enough evidence through questioning witnesses in order to persuade the jury to deliver a verdict against the county. Your job consists of five main parts:
   a. The selection of a jury.
   b. An opening statement to the court of no more than five (5) minutes. Use the time to describe the case to the court and give them a summary of the essential facts.
   c. The direct examination of your witnesses—questions are asked of each of your witnesses to bring out the facts which support your case.
   d. Cross-examination of the witnesses of the other party—your aim is to get admissions from an opposing witness that will help your client.
   e. A closing argument of no more than five (5) minutes—you should summarize the points made in the testimony of witnesses which help your case.
4. You should attempt to prove the following:
   a. Your local union #152 tried to find a peaceful solution to their demands through negotiation, but mill owners refused to meet with representatives.
   b. Strikers from broad silk weaving, ribbon weaving and dyeing work were united in their desire to improve their hours, wages and working conditions because past strikes taught them the only way to succeed was through solidarity. They had a tradition of pride and independence.
   c. Workers turned to national IWW leadership for spokesmen to help them avoid later blacklisting, to provide backing to shut down Paterson's silk industry, and to seek support for their strike from silk workers outside of Paterson.

DEFENSE ATTORNEYS, (cont.)

d. Mill owners had wrested control of the local government and the police force by handpicking a labor opponent as chief. The size of the police had been doubled and owners had further contracted with the O'Brien Private Detective Agency to provide "heavies" to brow beat workers under the guise of protecting strikebreakers.

5. Silk workers only want fair treatment as producers; they were basically peaceful and responded to Flynn's requests for nonviolent picketing. It was the overreacting of the police and detectives that led to violence—not Flynn's speeches.

6. Your opposition will attempt to prove:

   a. The Socialist leanings of the IWW and spokeswoman Flynn violated the workers' rights of free speech and assembly because of violence.

   b. There is a direct link between Flynn's presence, acts of violence, and the strike.

   c. Workers in Paterson are better off than any other silk workers in New York or Pennsylvania and have no reason to be on strike.

   d. Workers were tricked or frightened into following IWW leadership.

Prosecution Witness: Dr. Andrew F. McBride
Mayor of Paterson, Trustee of Paterson Board of Trade

You are the mayor of Paterson and in effect are "under the thumb" of the mill owners. As an Irish Catholic doctor and Democrat, you need to show loyalty to the owners because they would prefer an English or Scottish Republican. However, since you are also a trustee of the Board of Trade, which exists solely to promote the interests of the business community, especially silk manufacturers, most owners trust you to act on their behalf. Unlike your predecessors, you show no sympathy toward the strikers, nor are you neutral. In fact, you are the one who authorized and encouraged the regular and special police on picket duty to make routine assaults on the striking workers. It is your belief that IWW leaders like Elizabeth Gurley Flynn are behind the strike. If the police can separate the strikers from their leaders by force, then the strike could end and workers would return to their jobs. You firmly believe that a few nights in jail and plenty of fines for leaders and violent strikers would stamp out the strike.

Prosecution Witness: Rodney Miller
Private Organization Engineer and Labor Consultant from New York

You were hired by the National Silk Dyeing Company in February for a six month study to find out what was bothering the dyers' helpers who worked for the company. Owners felt if the problem could be uncovered, they could address it. You were successful previously in labor conflicts in both Brooklyn and Boston, so the owners felt that discovering the problem in Paterson could solve the problem. On the basis of your investigations, you conclude that the IWW was symptomatic of a disease in which immigrant labor was the cause. Separation of the two should solve the illness. However, only the manufacturers were capab;e of determining how this would be accomplished.

Prosecution Witness: Moses Strauss
Chairman of the Board of Commissioners of Paterson

You are a successful Jewish manager of two Paterson ribbon mills, one which employs male weavers on German looms and one which employs female weavers on high speed looms. To you, skilled male weavers will be gone in fifteen to twenty years because capitalism is bringing change to the industry through technological advances. You expect owners to get rid of the slower German looms and replace them with high speed looms requiring fewer skilled weavers. You have little sympathy for the complaints of the male workers. In fact, you support owners who, in the past ten years, located some work in Pennsylvania where workers are paid less, giving owners the upper hand with complaining workers. Male weavers who complain are generally told by you that if they do not like conditions in the mills, they will be fired. As for women weavers, your perception is that females are dependent on men for help, which you try to provide. Instructions on how to stretch meager pay are paternalistically supplied by you regularly. It was somewhat shocking to you, therefore, when some two hundred women and girls walked out of one of the mills in early March in sympathy, you supposed, with male weavers. In your opinion, these women have nothing to complain about because they never told you about any grievances. You can only assume they have been spellbound by Flynn and her IWW ideology, when a group of your "girls" turn up with a list of demands (with the eight-hour day at the top) bearing the stamp of IWW Local 152. You are still amazed that the workers would close the mills and associate themselves with the IWW.

Prosecution Witness: Henry Doherty
Owner of several broad silk mills in Paterson

You are an aging mill owner who began at the bottom of the silk industry and worked your way to the top. Arriving in Paterson as a young weaver from Macclesfield, England in 1868, it was not long before you became a shop foreman. Observing the ease with which one could move into his own business, you soon formed a partnership with Joseph Wadsworth in late 1879. Starting with one loom, your business quickly expanded to 100 looms and 250 workers within two years. By the turn of the century, you had total control of the business and had added several more mills. In 1910 you built your newest, and now the biggest, mill in Paterson; equipping it with state-of-the-art looms which had the automatic warp stop motion that nearly eliminated production slowdowns. You increased the loom assignment of some of your workers from two to four looms to see how it would work (Pennsylvania mills had already put weavers on four looms some time ago). Perceiving possible worker complaints despite the increase in wages you gave, you sought and received prior approval from AFL's United Textile Workers, the recognized union of most weavers at that time. The new textile technology excited you almost as much as the estimated future profits you expected to receive from greater production. Your high expectations were deflated, however, when in spite of your best efforts to appease workers in advance, they went out on strike upon your implementation of the four loom assignment. You really could not understand why workers were striking, especially when you were willing to keep all your mill operatives in Paterson and not spread them into Pennsylvania like other owners were doing. You were further mystified in 1912 when even the Local 52 union of the Socialist Party could not placate workers. Meanwhile, you noticed several other mills had started their weavers on four loom assignments so maybe, you thought, it was just a matter of time and the weavers would come around. Shockingly, you saw your weavers march out of your finest mill in January of this year after turning to IWW Local 152 for support. As the strike spread and the months rolled by, your business suffered greatly. Finally, you made an offer to the workers: they could run the mill for you provided they guaranteed you five percent profit, repudiated the IWW, and worked ten-hour days on four looms. They refused your offer!

Prosecution Witness: Samuel McCollum
Silk Industry Manufacturers Leader of Paterson

You are representative of the newer breed of manufacturers in Paterson who decided some years earlier to expand the locations of their silk operations. Recognizing the increasing difficulty the Silk Association of America and the Paterson Board of Trade had with keeping control over unionization and strikes, you, among many of your other colleagues, moved several of your larger factories into Pennsylvania. The bulk of manufacturers had come to agree, as had you, that your businesses belonged to you, and you were fed up with workers' interference in trying to dictate how to run them. You supported without question your right to hire and fire whomever you wanted. Spreading your factories to different locations allowed you to protect your operations from the whims of sensitive immigrant workers.

By 1913, the silk association had declared that the very lifeline of individual manufacturers depended upon the running of their own mills without interference from workers. A master must direct and success must depend upon skilled directions—this principle led you to assume the leadership of the Paterson manufacturers to act as a united front against the most determined effort ever made by silk workers to organize themselves. You saw their action as having revolutionary aims intended to repudiate all distinctions between owners and workers. Your opposition to any union, even AFL, therefore, arises because of your perception that unions interfere with business. The smaller, newer firms in Paterson were upstarts, and your unified organized efforts controlled them with a little pressure.

You had also been partly responsible for the earlier restructuring of the local city government which weakened the powers of the labor supported Board of Alderman, and created the more powerful non-elected Board of Commissioners. As tensions grew with expansion of the strike, you continued to urge your fellow manufacturers not to budge but to stand as a united front. You backed increasing the support of the police department with private detectives from the O'Brien Detective Agency, to protect property and punish any workers willing to cross picket lines. Law and order must be upheld, you maintained. Your attitude was that disobedient workers must be punished in full and the blacklist must be utilized extensively if the strike was to be broken.

Prosecution Witness: John Golden
President of the AFL affliate United Textile Workers Union

You have been a member of your union for many years and appreciate what unity of workers can accomplish. However, as a member of the board of directors of the Militia of Christ, a conservative Catholic organization trying to stamp out radical unionism, you were appalled at the success of IWW hotheads in the Lawrence, Massachusetts strike. To you, IWW leaders were all anarchists and lawbreakers who would do anything to lead uneducated masses of newly arrived immigrants to sabotage businesses in order to accomplish their aims. When trouble started brewing in Paterson, you stepped in with the encouragement of the silk manufacturers, to break the workers away from the IWW influence and act as a conciliator. Your union, the United Textile Workers, is conservative in nature and more open to compromise. In April, you opened two recruiting offices in Paterson in an attempt to offer workers a less radical approach to their problems. In an agreement with the manufacturers you were supposed to enroll five thousand workers who repudiated IWW so that talks between employers and employees could begin. You held the olive branch of mediation in your hand.

Unfortunately, you have had little success with your recruitment efforts, in part because many weavers see you as a collaborator with Doherty to put the four loom system into operation. You are perceived by the workers as being manipulative and biased toward the manufacturers' interests. You perceive the workers as pawns in the hands of IWW leaders who want to destroy AFL's record of cooperation that has worked throughout its history. You understand what these workers do not want to understand—the four loom system is inevitable! Your attitude is to accept the inevitable and try for the possible—fewer hours and better pay.

Prosecution Witness: John Bimson
Chief of Police of Paterson

You have been Chief of Police since 1906 after serving as acting chief when the previous police chief was suspended following a major strike in 1902. Manufacturers' beliefthat a tough hard-liner was needed to counteract the growing militancy of workers coincided with your own personal beliefs. You have never respected the right of silk workers to protest, even if it be peaceful. You liked the change in the city power structure that came in 1907, which removed jurisdiction of the police department from elected aldermen to appointed commissioners. That move increased your police force by 50 percent, finally allowing your men to be effective in your efforts to uphold law and order. Not only did the new arrangement increase your forces, but the commissioners allotted money for a mounted horse division, the installation of a telephone system which allowed patrolmen a direct connection to headquarters, and placed two Italian detectives in the new precinct station located in the predominantly Italian section of town. Your first reaction to the sudden embellishments on the department was that the businessmen were really getting serious about law enforcement.

Thus, when the first mass meeting of strikers was held at Turn Hall on the morning of 25 February, you were there to arrest all the IWW leaders for breaking the laws of Paterson. Elizabeth Gurley Flynn was the most belligerent figure, with her flashing eyes and outspoken mouth. You immediately told all the speakers to leave town permanently or be arrested. When Flynn refused to leave, you arrested her along with Carlo Tresca. You thought of this action as preventative medicine even if it probably exceeded your authority. You were, however, determined to keep the strike within manageable bounds. After all, without leaders, you were absolutely certain the silk workers were incapable of successfully challenging the power of the mill owners. If you controlled the outside agitators, you would control the strike. Over the past five months, this premise had been what you based your actions upon. Now you do not understand why things have not worked out as planned.

Prosecution Witness: Jerry O'Brien
Owner of O'Brien Detective Agency

You are the middle aged, mildly successful owner of a detective agency. As an Irish policeman who patrolled the streets of Brooklyn, you knew first hand how to control newly arrived immigrants to the city. You had to be tough and let them know who was boss. After a dozen years of patrol duty, you gathered together a number of fellow policemen and organized your agency across the harbor in Newark to meet the growing demands of manufacturers who wanted their property protected from strikers. Given the climate of the times, strikes were frequent in the New York metro area, allowing plenty of expansion for your business. A request on behalf of the Paterson Board of Trade to send detectives to do a little more "dirty work" than the law allowed the police force to do was attractive because it would employ most of your agents and the profits would be very lucrative. Due to the potential danger involved, however, you decided to pay your agents an unprecedented $5.00 a day or night (twelve hours per day) to guard the plants and homes of foremen, dyers and strikebreakers. If some got hurt or killed, so be it, but you warned your agents to come well protected with multiple weapons at their disposal. Chief Bimson authorized your men to act as "special policemen" and the county made them deputies in their efforts to keep the peace. You saw your agents as a "private army" of the mill owners.

Prosecution Witness: James Carroll
Recorder for City of Paterson

You are the recorder for the City of Paterson, a job you have held for a number of years. You tend to be something of a curmudgeon and have a temper that is easily aroused. During the past five months, you have been forced to work overtime constantly due to the ongoing length of the strike. Your job is to hand out fines and or jail sentences for strikers, and any lawbreakers, brought before you. After too much overtime and so many offending strikers, your patience has run thin. Consequently, in an effort to discourage strikers, your fines and sentences sometimes rise above the regular $10.00 or ten days in jail. If a prisoner is "mouthy", your rule is to give them a heavy sentence. Unfortunately, the length of the strike has depleted workers' money, so by June you have had to frequently overload the city jail cells with prisoners due to the multitude of arrests. You will be very glad when these "young funs", as you call them, come to their senses and the big city folks stay in New York so Paterson can get back to normal again.

Prosecution Witness: Jack Dunne
***New York Times* Reporter**

As the Paterson strike dragged on, your editor assigned you the detail of writing a series of articles about it. You felt contempt for the continuing influx of Italian and Jewish immigrants, who were so deeply involved in the strike. Rather than visit Paterson first-hand, like many of the Greenwich Village intellectuals were doing to experience the strike for yourself, you took the side of the manufacturers from a philosophical viewpoint. Capitalism was here to stay; technological advances would continue to occur; workers would have to adjust. It seemed simple to you—owners had the right to do whatever they wanted with their property. It was perfectly legal to protect their interests in any way possible. After all, their financial stakes were certainly higher than any workers' wage. You applauded the owners' decisions to expand the locations of their silk operations, urged them to hang tough and felt it was just a matter of time before the strike crumbled. You, like others, believed if IWW leaders could be splintered off from the workers, then like a body without its head, it would die. Given enough time, hardship and hunger would divide and conquer the workers forcing them to beg for their old jobs back—at least that is what you wrote in your articles.

Defense Witness: Edward Zuersher
Member of the Executive Strike Committee

You are the son of a ribbon weaver who began working in Paterson in 1903. Your family came from Germany and you were born in Yonkers, New York. In the late 1880s your family moved to Paterson to work in the silk mills. You are a socialist and a militant member of the IWW. You maintain that local workers possess the skill and practical knowledge to run the big strike and plan it through the Strike Committee. IWW leaders were only needed to address mass meetings so local workers, would not be blacklisted when work resumed, and to encourage support from outside silk workers.

Defense Witness: Defendant: Elizabeth Gurley Flynn

You are the defendant around whom this case is built. Police, jails, and courts have become a regular part of your life by 1913. Although you are young at twenty-two, you have been involved with labor activities since you were a small child. You frequently attended union meetings with your father, Tom Flynn, who was a Socialist and an IWW organizer. It was not difficult to take up the same positions yourself. Leaving school early, you became involved in labor activities and discovered a natural ability to speak to large crowds of workers urging them to demand their rights and join the IWW. By seventeen, you had married a miner, and within two years you were a mother. Not wishing to remain away from labor activities in spite of your husband's wishes, the two of you separated. Being the daughter of Irish-born Annie Gurley, an early outspoken feminist, you felt almost like a missionary in your desire to help lead workers, especially women, to demand their rights.

With your three-year old son frequently in tow, you became a national IWW organizer working with President William "Bill" D. Haywood, Carlo Tresca and Patrick Quuinlan. As a dark-haired beauty with flashing blue eyes, your polished speaking abilities easily swayed audiences, especially younger women who saw you as a model. Your devotion to the Paterson strike led you to deliver two to three speeches a day and often you were on the streets giving encouragement to picketers. You were not, however, urging violence. Rather, fresh from a major strike resulting in concessions through nonviolence in Lawrence, Massachusetts, you urged the workers to obey police when told to disperse. You begged strikers not to attack the strikebreakers or scabs, as they were called, and in general, encouraged workers to be united, stoic and nonviolent. Industrial unionism to you means economic freedom to determine wages, hours and working conditions whether you are male or female. Paterson's strike allows you to exhibit your strong feelings about the politics of Socialism, unionism and feminism. You are determined to hold out until the workers demands are met, no matter how long it might take.

Defense Witness: Adolph Lessig
Leader of IWW Local 152 Union

You are a broad silk weaver of German descent who has been weaving both cotton and silk since the 1880s. Upon moving to Paterson in 1902, you joined the AFL United Textile Workers (UTW) for a time but switched to the IWW shortly after it was founded. You felt the IWW was more open and allowed all immigrants to join. IWW emphasized democratic control of the union and shops. As a class-conscious union man you found this equality refreshing and more empowering than the UTW. In 1913 you worked full time at the David mill as a broad silk weaver. When Doherty mill workers agreed to walk out in protest of working four looms, you helped question Local 152 members in other mills about supporting a general strike. Encouraged by a favorable response, you called a series of mass meetings and formed the Executive Strike Committee.

Defense Witness: Ewald Koettgen—Only Full-time Local IWW Organizer

Of German descent, you worked in Paterson as a ribbon weaver since the 1890s. Following the 1912 Lawrence victory, the local IWW elected you as their only paid organizer because your militancy and commitment were well known. As an IWW National Board member with weaving experience you were very helpful in Lawrence, and Paterson workers have great confidence in your capabilities. In 1913, you are about forty-years-old, tall, gaunt, and have deep lines in your face which attest to your reputation as a frequent picketer. In January, you were elected chairman of the IWW's National Textile Union in part because you were recognized as successfully building the membership of Local 152 to nearly five hundred.

You were out of town, however, when the Doherty mill workers decided to strike and hurried back to Paterson to help Local 152 sound out its membership for a general strike. Favorable response led to mass meetings, the formation of an Executive Strike Committee of fifteen to twenty silk workers, and the assemblage of a Central Strike Committee of 125 silk workers initially, which expanded to 300. Most of these committee members were not IWW members but they were ultimately the ones who called for a general strike on 25 February, arranged the meeting in Turn Hall, and invited national IWW to send speakers to encourage strikers and instruct them on success techniques used in Lawrence.

Defense Witness: Joseph Mangor—Shop Chairman at Doherty's Mill

You are a volatile man and active member of Local 25 of the Socialist Labor Party. You have managed to rise to the top as one of Doherty's shop chairmen in his biggest mill, the one he built and equipped with automatic warp stop motion on its looms. This device, and the arrangement of looms so that a weaver could tend two looms in front and two behind, led Doherty to seek prior approval from AFL's United Textile Workers Union to make his employees shift from operating two looms to four. Agreement with the union was obtained as long as this system was only used on plain forms of broad silk, and workers' pay would increase (but not double). Doherty implemented his plan in 1910, only to find that you and most of the workers who were to run four looms decided to strike anyway. It was at that juncture that the UTW ordered the workers back to work, and you joined the Socialist Labor Party. Workers struck several more times; but without union support, they got nowhere. You tried to incite limited sabotage, but no one paid attention to you. Finally, in January 1913, the broad silk workers and you turned to Local 152 of the IWW which insisted on nonviolence as a policy. To this you grumblingly agreed.

Defense Witness Joseph Hoffspiegel—Skilled Broad Silk Weaver

You are a Jew born in Lodz, Poland, twenty-five years ago and trained by your father as a skilled broad silk weaver. Your family immigrated directly to Paterson due to its international reputation as "silk city" and the possibility of improving your lifestyle as a craftsman. The machinery made silk weaving easier than handweaving, but it resulted in tedious work. A person's nerves were tense all day as the machines demanded constant attention in order to avoid breaking the yarn. Not only did four looms increase the intensity, but they were much harder on the eyes. The long term effects outweighed the increase in pay for you. You were among the weavers who struck Doherty because you could foresee a future day when fewer weavers would be needed if four loom assignments continued. Not only was there personal physical strain, but the ranks of unemployed weavers would increase and ultimately a general reduction in wages would occur. To you, any worker who thought extra pay would continue indefinitely was blind to future realities. By joining a general strike, you believed solidarity of all silk workers would bring about a return to the use of two loom assignments.

Defense Witness: Carrie Golzio—Skilled Broad Silk and Jacquard Weaver

You are a second-generation weaver who began learning the craft at your father's machine at age ten. Your parents had been involved in labor disputes back in their native Piedmont region of Biella in Northern Italy and then in Paterson. As a young woman in her twenties who is experienced in both broad silk and Jacquard weaving, you are prepared to fight to advance yourself and others like you. You feel Elizabeth Flynn is a model you would like to follow and believe in her faith in the workers. Quality is what gives you pride in your work, and four loom assignments will only lead to a progressive degrading of weaving. As a skilled craftswoman, this aspect bothers you. It also bothers you that mill owners like Doherty are beginning to take broad silk weavers for granted and are looking down on Italians as being inferior. Also, policemen always seemed to be "hassling" people of Italian descent. A similar attitude drives you and your friends into a cooperative spirit with Jews who are treated similarly to Italians. By 1913, a rather powerful alliance between Italians and Jews has already been initiated. You will help activate it when you respond to the four loom assignment by striking.

Defense Witness: Louis Magnet—Skilled Ribbon Weaver

You are a middle-aged experienced male ribbon weaver who dislikes some of the practices of mill owners regarding your craft. You are displeased that many women are moving into the craft and willing to work for less pay at longer hours. It appear to you that a struggle between mill owners and ribbon weavers was escalating as the owners believed capitalism's changes were the wave of the future. In contrast, you believe social change can result from the conscious actions of people with similar interests. Capitalism is not inevitable. As a result, you have become active as a Socialist Party member and are the spokesman for local ribbon weavers who accept this philosophy also. Striking appears to be the only way you can protect your interests as the power balance shifts more sharply toward manufacturers. By 1913, if a ribbon weaver complains, he is systematically discharged and a woman often receives his job at lower pay. Militant ribbon weavers like you have come to decide that walking out as a group has to occur first. Later you can make demands upon employers. By joining broad silk weavers in their walk out, you believe the power scale will bemore favorably tipped toward workers. When the ribbon weavers met in Helvetia Hall on 4 March to debate and decide on joining a general strike, you made a particular point about how Police Chief Bimson was violating silk workers' constitutional rights to hold meetings and plan strategies. This helped the ribbon weavers unify with the other strikers.

Defense Witness: Scully Bell—Dye Worker

You are an unskilled immigrant who feels lucky to find work as a dyers' helper in Weidmann's, one of Paterson's largest dye houses. It is horrible work that often has you working double shifts just to stay employed. Of all the silk workers, you are the most replaceable because your job can be learned in one week. As a team member under the direction of a supervisor, you add the chemicals to large tubs of boiling water to which the silk yarns are added. The dye house is dirty and always filled with steam and fumes. The steam is suffocating in summer and condenses and freezes in winter. You wear wooden clogs weighing as much as five pounds to protect your feet from the wet floor but they still get wet. Sometimes you have to check chemicals by tasting them and other times skin peeled off your hands when splashed by boiling chemicals. Thus when the Local 152 of IWW began to talk about working eight hour days and increasing your pay beyond $11.00 a week, you listened and joined the union. When a proposal was made for dyers' helpers to join the general strike, you did not think twice about it. You walked out immediately.

Defense Witness: William "Bill" D. Haywood
President of the IWW

You first arrived in Paterson to speak to the strikers on 7 March. By that time, you could personally testify that the strike had been planned by local militants, not you or any other IWW leaders. Despite what Police Chief Bimson, the mill owners, or the newspapers claimed, the IWW was not leading the strike. Rather, leaders were there merely to give encouragement and guidance. Local workers had not only called for a general strike, they had organized it and controlled it. Your job as a speaker is simply to stress familiar IWW themes: every union member is equal and his or her own leader; the union is yours; solidarity will win the day.

Defense Witness Art Shields
Associated Press Reporter

You are a New York City reporter who came to Paterson to see for yourself how the silk strike was progressing in order to write articles to be sent out to affiliated newspapers of the Associated Press. To find out who is in control, you begin talking to a number of strikers carrying pickets. While doing this, police on horseback arrive and try to disperse the picketers who are demonstrating peacefully in front of a mill. You see policemen clubbing strikers for not moving fast enough. When you are told to move, you try to explain that you are a reporter, not a striker. Ignoring you, a policemen arrests you for disorderly conduct and throws you in jail until an AP associate can come bail you out the next day. These actions are duly reported by you in your articles and widely published.

NOTE: The order in which witnesses for both the prosecution and the defense appear in the trial is solely up to the attorneys. Each side should plan to utilize their set of witnesses to best tell their side of the story.

Source used for actual participants: Golin, Steve. *The Fragile Bridge: Paterson Silk Strike, 1913* (Philadelphia: Temple University Press), 1988.

VOCABULARY

American Federation of Labor (AFL)
Union led by Samuel Gompers, which was a federation of skilled trades linked by pro-labor stances. Strikes were called when necessary.

Anarchist
One who believed that governments should be abolished because they served only to uphold the rich against working people.

Apprentice
Someone in training to learn a trade through job experience. Frequently a father taught his son or a mother taught her daughter.

Arbitration
The method of settling disagreements between employers and workers by having an impartial person or committee decide them.

Blacklist
A secret list of names of union members and organizers developed and exchanged by employers and employers' associations to keep such "undesirable" or "troublesome" people from getting jobs.

Bobbin
A reel or spool for thread or yarn that is placed inside the shuttle which carries the weft thread through the shed.

Boycott
The organized refusal to buy, and to get others to refuse to buy, products or services produced in a non-union plant or by an employer accused of unfair labor practices. The aim is to win concessions from the employer.

Broad Silk
High fashion bolts of fabric woven for sale made by highly experienced weavers.

Closed Shop
Place of work that has made an agreement with a union not to hire anyone who is not a member of the union or who does not keep himself in good standing with the union.

Collective Bargaining
The negotiation between employer and union to reach an agreement on the terms and conditions of employment for a definite period.

Corporation
A company which makes products such as silk or locomotives.

Dyer
Masters were skilled workmen who created liquid dyes from chemicals to color silk yarn. Helpers were unskilled and responsible for coloring the silk skeins or thread in huge bins.

Entrepreneur
Risktaker willing to test ideas and try new things in business.

General Strike
A widespread strike in which workers throughout a city or throughout the country take part, regardless of industry or union.

Homework
The making of products in private homes or tenements from material supplied by an employer. The worker is paid by the hour or by the piece. It usually meant low wages and long hours and often involved whole families.

Hydraulics
A branch of science which deals with practical applications of water as in the transmission of energy or effects of water flow.

Immigrant
A person who leaves the country in which he or she was born to settle in a different nation.

Industrial Revolution
The period of time when people started to make products using machines, instead of making things by hand.

Jacquard Card
A design is pierced by holes onto a card and placed in the machinery. It regulates the raising of individual warp threads on a loom to create an intricate pattern in silk.

Knights of Labor
A labor organization formed in 1869 which was opened to all working people. Although it engaged in many strikes, the union strove to create a society in which workers and employers might cooperate.

Lockout
The shutting down of a plant by an employer to force workers to accept his terms. Sometimes, the workers convert the lockout into a strike.

Loom
A machine which weaves threads together to make cloth. In 1800, a weaver could produce between forty and ninety yards of cloth per week on a hand loom. By 1840, one weaver could tend two power looms, producing four hundred yards of cloth each week. By 1880, four looms per worker were in use doubling that output in eastern Pennsylvania.

Monopoly
One company controls the major part of the market on a particular product.

Open Shop
In theory, a plant where both union and non-union members are hired. However, employers who campaigned for the "open shop" meant to keep out all union members. "Open shop" soon came to mean "closed to union members."

Pickers
Women who were responsible for removing unsightly welts or ragged edges from broad silk before its delivery to customers.

Picketing
The placing by a labor organization of one or more members, usually carrying signs, at the entrance to a shop during a labor dispute. The purpose is to let the public and the workers know that there is a dispute, to persuade workers to join or help carry on the strike or boycott, and to keep people from entering or working in the shop.

Piecework
The form of payment to a worker based upon a fixed sum for each article produced; therefore, earnings would go up or down according to output.

Raceway
A canal built to carry a current of water to mills.

Ribbon Weaver
Person who made silk ribbons used on clothing and on hats in high demand in the nineteenth century.

Sabotage
The act of stopping or interfering with production in order to pressure the employer. It is a direct action method used for the peaceful limiting of output or even the destruction of machines and materials.

Scab
Aterm used for a worker who refuses to strike or who takes the place of a striking worker.

Speed-up
An increase in the worker's effort forced by the employer without an accompanying increase in pay. It can be done by speeding up the machine's rate, by demanding more units of production from the worker, or by asking the worker to tend more machines.

Spy
A person hired by an employer, either directly or through a private detective agency, to keep a watch on union members and their activities. The information is desired by the employer to help him break up a union. Sometimes spies become union members and do their work from the inside. Or they may work from the outside, associating with workers in the neighborhood or town.

Strike
When a large group of workers refuses to work, hoping to force their employer to give pay raises, improve working conditions, etc.

Textiles
Woven or knit cloth of cotton, wool, silk.

Throwing
The term used to mean making thread.

Union
An organization which represents workers, helping them to bargain with their employer. If a union and an employer cannot agree on things like pay and working conditions, sometimes the union organizes a strike.

Wages
The regular payment for work done under normal conditions, that is, not including overtime or holiday work.

Warp
The length-wise thread in woven cloth. The warp for a broad silk loom was made by winding thread from numbers of bobbins onto a roller or "beam" which fitted onto the loom.

Weaving
One of the last steps in making cloth. Threads cross each other in an over and under pattern. Weaving is done with a loom.

Winding Room
Location in a silk mill where bobbins of silk thread were wound from skeins of silk put on reels.

Wobblies
Nickname given to the Industrial Workers of the World. They were a union of all workers, skilled and unskilled, and vowed to help all working people everywhere.

Yellow Dog Contract
The term workers coined for the contract employers once forced their workers to sign in which the worker promised not to join a union. Workers signed this in order to get a job.

Elizabeth Gurley Flynn's Speech

Elizabeth Gurley Flynn was born in Concord, New Hampshire on August 7, 1890. The family moved to New York in 1900, and Flynn was educated at a local public school. Converted by her parents to socialism, she was only sixteen when she gave her first speech, "What Socialism will do for women", at the Harlem Socialist Club. As a result of her political activities, Flynn was expelled from high school. She frequently went to Union Square with her father, an organizer for the newly-formed Industrial Workers of the World (IWW). Speaking there, she attracted the attention of the press. The author Theodore Dreiser, then working as a journalist, wrote of her as "an East Side Joan of Arc."

In 1907, Flynn became a full-time organizer for the IWW. Over the next few years, she organized campaigns among garment workers in Pennsylvania, silk weavers in New Jersey, restaurant workers in New York, miners in Minnesota, and textile workers in Massachusetts. She was arrested ten times during this period but was never convicted of any criminal activity. A founding member of the American Civil Liberties Union, she was active in the campaign against the conviction of Sacco-Vanzetti and concerned with women's rights and suffrage. She frequently criticized the leadership of trade unions for being male dominated and not reflecting the needs of women.

Comrades and Friends:

The reason why I undertake to give this talk at this moment, one year after the Paterson strike was called, is that the flood of criticism about the strike is unabated, becoming more vicious all the time, drifting continually from the actual facts, and involving as a matter of course the policies and strike tactics of the IWW. To insure future success in the city of Paterson it is necessary for the past failure to be understood, and not to be clouded over by a mass of outside criticism. . . . I feel that many of our critics are people who stayed at home in bed while we were doing the hard work of the strike. Many of our critics are people who never went to Paterson, or who went on a holiday; who did not study the strike as a day-by-day process. Therefore it's rather hard for me to overcome my impatience with them and speak purely theoretically.

What is a labor victory? I maintain that it is a twofold thing. Workers must gain economic advantage, but they must also gain revolutionary spirit, in order to achieve a complete victory. For workers to gain a few cents more a day, a few minutes less a day and go back to work with the same psychology, the same attitude toward society is to have achieved a temporary gain and not a lasting victory. For workers to go back with a class-conscious spirit, with an organized and determined attitude toward society means that even if they have made no economic gain they have the possibility of gaining in the future. In other words, a labor victory must be economic and it must be revolutionizing. Otherwise it is

Elizabeth Gurley Flynn
New York City: Bain News Service, ca. 1917
Library of Congress, LC-USZ62-96665

not complete. . . . Among the garment workers in New York there has unfortunately been developed an instrument known as the protocol, whereby this spirit is completely crushed, is completely diverted from its main object against the employers. This spirit has now to assert itself against the protocol. . . .

The IWW attitude in conducting a strike, one night say, is pragmatic. We have certain general principles; their application differs as the people, the industry, the time and the place indicate. It is impossible to conduct a strike among English-speaking people in the same way that you conduct a strike among foreigners, it is impossible to conduct a strike in the steel industry in the same manner you conduct a strike among the textile workers where women and children are involved in large numbers. So we have no ironclad rules. . . . We realize that our fundamental principles of solidarity and class revolt must be applied in as flexible a manner as the science of pedagogy.

. . . The Paterson strike divides itself into two periods. From the 25th of February, when the strike started, to the 7th of June, the date of the pageant in New York City [This was a major finale for the workers to raise money, but it failed.], marks the first period. The second period is from the pageant to the 29th of July, when every man and woman was back at work. But the preparation for the strike had its roots in the past, the development of a four-loom system in a union mill organized by the American Federation of Labor. This four-loom irritated the workers and precipitated many small outbreaks. At any rate they sent to Mr. John Golden, the president of the United Textile Workers of America, for relief, and his reply was substantially, 'The four-loom system is in progress. You have no right to rebel against it.' They sought some other channel of expressing their revolt. . . .

. . . There was a strike in the Doherty mill against the four-loom system. There had been agitation for three months by the Eight-Hour League of the IWW for the eight-hour day, and it had stimulated workers. So we held a series of mass meetings calling for a general strike, and the strike broke on the 25th of February, 1913. It was responded to mostly by the unorganized workers. We had three elements to deal with in the Paterson strike; the broad silk weavers and the dyers, who were unorganized . . . easily stimulated to aggressive activity. But on the other hand we had the ribbon weavers, the English-speaking conservative people, who had behind them craft antecedents, individual craft unions

that they had worked through for thirty years. These people responded only after three weeks, and they formed the complicating element in the strike, continually pulling back on the mass through their influence as the English-speaking and their attitude as conservatives. The police action precipitated the strike of many workers. They came out because of the brutal persecution of the strike leaders and not because they themselves were so full of the strike feeling that they could not stay in any longer. This was the calling of the strike [while] the administering of the strike was in the hands of a strike committee formed of two delegates from each shop. If the strike committee had been full force there would have been 600 members.

The majority of them were not IWW; were non-union strikers. The IWW arranged the meetings, conducted the agitation work. But the policies of the strike were determined by that strike committee of the strikers themselves. And with the strike committee dictating all the policies of the strike, placing the speakers in a purely advisory capacity, there was a continual danger of a break between the conservative element who were in the strike committee and the mass who were being stimulated by the speakers. The socialist element in the strike committee largely represented the ribbon weavers, this conservative element making another complication in the strike. . . . The administering of the strike was done democratically by the silk workers themselves. . . . Our plan of battle was very often nullified by the democratic administration of the strike committee.

The industrial outlook in Paterson presented its difficulties and its advantages. No one realized them quicker than we did. There was the difficulty of 300 mills, no trustification, no company that had the balance of power upon whom we could concentrate our attack. . . . 300 manufacturers, but many of them having annexes in Pennsylvania, meant that they had a means whereby they could fill a large percentage of their orders unless we were able to strike Pennsylvania simultaneously. . . . We had the difficulty that silk is not an actual necessity. . . . Silk is a luxury. We had the condition in Paterson, however, that this was the first silk year in about thirty years. In 1913 fortunately silk was stylish. Every woman wanted a silk gown. . . . [This] meant that employers were mighty anxious to take advantage of this exceptional opportunity. And the fact that there were over 300 of them gave us on the other hand the advantage that some of them were very small, they had great liabilities and not very much reserve capital. . . . We were sort of playing a game between how much they could get done in Pennsylvania balanced off with how great the demand for silk was and how close they were to bankruptcy. We had no means of telling that, except by guesswork. They could always tell when our side was weakening.

The first period of the strike meant for us persecution and propaganda, those two things. Our work was to educate and stimulate. Education is not a conversion, it is a process. One speech to a body of workers does not overcome their prejudices of a lifetime. We . . . had to stimulate them. Stimulation, in a strike, means to make that strike and through it the class struggle their religion; to make them forget all about the fact that it's for a few cents or a few hours, but to make them feel it is a 'religious duty' for them to win that strike. Those two things constituted our work, to create in them a feeling of solidarity and a feeling of class-consciousness—a rather old term, very threadbare among certain elements in the city of New York, but meaning a great deal in a strike. . . . The first big criticism that has been made . . . is that we didn't advocate violence. Strange as it may seem, this is the criticism that has come from more sources than any other.

I contend that there was no use for violence in the Paterson strike; that only where violence is necessary should violence be used. This is not a moral or legal objection but a utilitarian one. . . . Where there is no call for it, there is no reason why we should resort to it. In the Paterson strike, for the first four months there wasn't a single scab in the mills. The mills were shut down as tight as a vacuum.. . . Mass action means that the workers withdraw their labor power, and paralyze the wealth production of the city, cut off the means of life, the breath of life of the employers. Violence may mean just weakness on the part of those workers. . . . Physical violence is dramatic . . . but actual violence is an old-fashioned method of conducting a strike. And mass action, paralyzing all industry, is a new-fashioned and a much more feared method of conducting a strike. That does not mean that violence shouldn't be used in self-defense. Everybody believes in violence for self-defense. . . . In the Paterson strike police persecution did drop off considerably after the open declaration of self-defense was made by the strikers.

The second criticism is 'Why did we go to Haledon? Why didn't we fight out the free speech fight in Paterson?'

. . . Our original reason for going to Haledon—I remember we discussed it very thoroughly—was to give them novelty, to give them variety, to take them en masse out of the city of Paterson some place else, to a sort of picnic over the Sunday that would stimulate them for the rest of the week. In fact that is a necessary process in every strike, to keep the people busy all the time, to keep them active, working, fighting soldiers in the ranks. And this is the agitator's work—to plan and suggest activity, diverse, but concentrated on the strike. That's the reason why the IWW has these great mass meetings, women's meetings, children's meetings; why we have mass picketing and mass funerals. And out of all this continuous mass activity we are able to create that feeling on the part of the workers, 'One for all and all for one.' We are able to make them realize that an injury to one is an injury to all, we are able to bring them to the point where they will have relief and not strike benefits, to the point where they will go to jail and refuse fines, and go hundreds of them together.

. . . This is the agitator's work, this continual activity. And we lay awake many nights trying to think of something more we could give them to do. . . . It has been asked 'Why didn't we advocate short strikes, intermittent strikes? Why didn't we practice sabotage? Why didn't we do everything we didn't do?' . . . You may have the best principles, but you can't always fit the people to the best principles. And for us to have gone into Paterson for the first three months of the strike and to have advocated a short strike would have said 'Aha, they got theirs, didn't they?' They are very revolutionary until the boss gives them theirs, and then they say 'Boys, go back to work.' In other words, we would simply have duplicated what every grafting, corrupt labor leader has done in Paterson and the United States: to tell them 'Go back to work, your strike is lost.' And so it was necessary for us first to gain the confidence of the people and to make them feel that we were willing to fight just as long as they were; that we were not the first ones to call quits. . . . We felt that the strike was going to be won . . . up until the Sunday before the Paterson strike was lost. We didn't tell the people to stay out on a long strike knowing in our hearts that they were losing. We couldn't have talked to them if we had felt that way. But every one of us was confident they were going to win that strike. . . . Democracy means mistakes, lots of them, mistake after mistake. But it also means experience and that there will be no repetition of those mistakes.

. . . What the workers had to contend with in the first period of this strike was this police persecution that arrested hundreds of strikers, fined hundreds, sentenced men to three years in state's prison for talking; persecution that meant beating and clubbing and continual opposition every minute they were on the picket line, speakers arrested, Quinlan arrested, Scott convicted and sentenced to 15 years and $1500 fine. On the other side, what? No money. If all these critics all over the United States had only put their interest in the form of finances the Paterson strike might haver been another story. We were out on strike five months. We had $60,000 and 25,00 strikers. That meant $60,000 for five months, $12,000 a month for 25,000 strikers; it meant an average of less than 50 cents a month. And yet they stayed out on strike for six months. . . . I saw men go out in Paterson without shoes, in the middle of winter and with bags on their feet. I went into a family to have picture taken of a mother with eight children who didn't have a crust of bread, didn't have a bowl of milk for the baby in the house—but the father was out on the picket. Others were just as bad off. Thousands of them that we never heard of at all. This was the difficulty that the workers had to contend with in Paterson: hunger; hunger gnawing at their vitals; hunger tearing them down; and still they had the courage to fight it out for six months.

. . . So that was the tragedy of the Paterson strike, the tragedy of a stampede, the tragedy of an army, a solid phalanx being cut up into 300 pieces, each shop-piece trying to settle as best for themselves. It was absolutely in violation of the IWW principles and the IWW advice to the strikers. No strike should ever be settled without a referendum vote, and no shop settlement should ever have been suggested in the city of Paterson, because that was the very thing that had broken the strike the year before. So this stampede came, and the weaker ones went back to work and the stronger ones were left outside, to be made the target of the enemy, blacklisted for weeks and weeks after the strike was over, many of them on the blacklist yet. It produced discord among the officers in the strike.

. . . It was the stampede of hungry people, people who could no longer think clearly. The bosses made beautiful promises to the ribbon weavers and to everybody else, but practically every promise made before the settlement of the Paterson strike was violated, and the better conditions have only been won through the organized strikes since the big strike. Not one promise that was made by the employers previous to breakup on account of the shop-by-shop settlement was ever lived up to. . . . And on the 28th of July everybody was back at work, back to work in spite of the fact that the general conviction had been that we were on the eve of victory. I believe that if the strikers had been able to hold out a little longer by any means, by money if possible, which was refused to us, we could have won the Paterson strike. We could have won it because the bosses had lost their spring orders, they had lost their summer orders, they had lost their fall orders and they were in danger of losing their winter orders, one year's work; and the mills in Pennsylvania, while they could give the bosses endurance for a period, could not fill all the orders and could not keep up their business for the year round. . . .

Source: Kornbluh, Joyce L. *Rebel Voices: An IWW Anthology* (Chicago: Charles H. Kerr Publishing, 1988), pp. 215–26.

Preamble of the Industrial Workers of the World Constitution of 1908

The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and the few, who make up the employing class, have all the good things of life.

Between these two classes a struggle must go on until the workers of tile world organize as a class, take possession of the earth and the machinery of production, and abolish tile wage system.

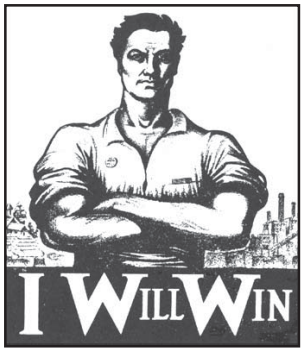
We find that the centering of management of the industries into fewer and fewer hands makes the trade unions unable to cope with the ever growing power of the employing class. The trade unions foster a state of affairs which allows one set of workers to be pitted against another set of workers in the same industry, thereby helping defeat one another in wage wars. Moreover, the trade unions aid the employing class to mislead the workers into the belief that the working class have interests in common with their employers.

These conditions can be challenged and the interest of the working class upheld only by an organization formed in such a way that all its members in any one industry, or in all industries if necessary, cease work whenever a strike or lockout is on in any department thereof, thus making all injury to one an injury to all.

Instead of the conservative motto, "A fair day's wage for a fair day's work," we must inscribe on our banner the revolutionary watchword, "abolition of the wage system."

It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for the every-day struggle with capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.

Source: Joyce L. Kornbluh, *Rebel Voices: An I.W.W. Anthology* (Ann Arbor: University of Michigan Press, 1965), pp. 12-13.



Solidarity (IWW journal) 8/4/1917

Lesson Three
Progressives Make Reforms

A. Objectives

- To investigate the purposes of urban middle-class progressive reformers seeking change through legislation.
- To analyze the constitutionality of state protective legislation, freedom of contract, and gender equality.
- To interpret the impact of social welfare legislation and Supreme Court decisions on women laborers.

B. Lesson Activities (Fourdays)

1. Middle-class Progressives played a major role in the campaign for labor reform. They recognized the disadvantaged status of women in the workforce and lobbied state legislatures to adopt legislation to improve the lives of all industrial workers with an emphasis on women and children. Thus, several women's organizations were relevant in crusading for the passage of protective laws that would help ameliorate the ills of industrialization.

   Divide the class into three sections. Each section will review the legislative plans of one of these three national women's organizations: the National Women's Trade Union League (WTUL) (**Document L**), the National Consumers' League (NCL) (**Document M**), or the General Federation of Women's Clubs (GFWC) (**Document N**). Their review should focus on the following:

   a. Protection of women and children

   b. Efforts urging unionization to obtain improvements in working conditions

   c. Recognition of differences between men and women in the work force

   d. Acknowledgement of women as second-class citizens due to marriage and childbearing commitments

3. Throughout the latter half of the nineteenth century, the U.S. Supreme Court invoked the due process clause of the Fourteenth Amendment to develop a doctrine of freedom of contract which seemed to cloak industry with unassailable constitutional protection. Upon the adoption of state legislation promoting social and economic reform within industries, state courts were suddenly faced with analyzing this legislation in light of the federal court decisions. Women's rights ultimately surfaced in the legal mix through the issue of sexual discrimination. Children's rights tended to be viewed through the rights of their parents. Four Supreme Court decisions were significant because of their national implications making them worthy of student analy-

sis. They are:

a. *Lochner v. New York* (1905)

b. *Muller v. Oregon* (1908)

c. *Hammer v. Dagenhart* (1918)

d. *Adkins v. Children's Hospital* (1923)

Divide the class into four groups and provide each group with a copy of a different case (Documents O, P, Q, R). Each case has a summary of its background and/or legal arguments followed by statements of the majority and the minority decisions. The documents conclude with specific questions relevant to that case to be answered by the group after they have read the case.

Upon completion of the above, a spokesperson from each group (in chronological order) should present the entire class with:

a. Summary of the case, the majority and minority decisions.

b. Answers to their specific questions.

When finished, trace the pluses and minuses of these decisions with regard to women's and children's rights in industry. Have students grade what they think women's economical and political position was by the 1920s.

4. In August 1920, the Tennessee legislature ratified the Nineteenth Amendment granting women the right to vote. It went into effect with the federal election that fall. In 1898, Florence Kelley, who at the time was a safety inspector for Illinois factories, gave a speech entitled "Working Woman's Need of the Ballot." Many people of both genders assumed obtaining the ballot would solve all of the problems women faced as industrial laborers. Provide all students with copies of this speech (Document R) to read. Follow with a discussion to complete this unit around the following questions:

   a. What reasons does Kelley give for needing the ballot?

   b. In your opinion, what was more effective in helping women—the ballot or U.S. Supreme Court decisions?

   c. What Progressive Measures did the most to help women workers? How were they limited in their scope?

   d. How successful do you think the Progressive reformers were in changing the working situations for women laborers? In time, would the enfranchisement of women significantly impact the social issues they faced? Explain.

National Women's Trade Union League

The National Women's Trade Union League was the first national association dedicated to organizing women workers. Founded in 1903, the WTUL proved remarkably successful in uniting women from all classes to work toward better, fairer working conditions. The organization relied largely upon the resources of its own members, never receiving more than token financial support from the American Federation of Labor (AFL) or other major organized labor groups.

The WTUL came into existence as a result of a 1903 Boston meeting of the AFL, during which time it became clear that the AFL had no intention of including women within its ranks. Later that year, labor leaders Mary Kenney O'Sullivan and Leonora O'Reilly and settlement workers Lillian Wald and Jane Addams helped found the NFWTUL, and by 1904 the organization had branches in Chicago, New York City and Boston. From the outset the organization had a strong reformist agenda, working in the tradition of social settlements to provide working women with educational opportunities while also striving to improve working conditions.

Platform of the National Women's Trade Union League (1903)

1. Organization of all workers into trade unions
2. Equal pay for equal work
3. Eight-hour day
4. Minimum wage scale
5. Full citizenship for women and
6. All principles embodied in the economic program of the AFL

Possible Lines of Work Suggested

(Second Meeting, Boston, November 14, 17, 19, 1903)

1. Investigation of state factory laws with a view to the adoption of progressive industrial legislation and uniformity in factory laws throughout the United States.
2. Co-operation with existing trades unions, and the formation of unions in the unorganized trades.
3. Acting Agent for speakers on trades unions before women's clubs and kindred organizations.
4. Establishing a bureau of information in connection with existing organizations, or at a local centre where statistics, literature and practical information about methods of organization may be given.
5. The careful gathering of statistics in regard to conditions in trades where women are generally employed, and newspaper work to inform public opinion.

6. Practical work in raising money and in finding substitute employment in a righteous strike—as in Fall River [MA].

Incident to the discussion of this report two further motions were carried.

1. The membership fee shall remain one dollar, but at the option of the local committees this fee may be paid by an organization instead of an individual. One fee shall entitle to one vote.
2. A member of the National Board absent from a board meeting may appoint a substitute from the League.

The committee on publications by the League was reported for by Mr. Walling. The complete plan for a popular book on unionism was presented, with different chapters to be written by different people. The report was accepted with cordial commendation and referred to the Committee with full power. Miss McDowell than reported on a series of little folders, direct and popular, which she and Miss Addams are projecting for working girls. The printing of these leaflets in conference with the General Secretary was authorized.

The meeting closed with three resolutions.

1. Voted: That the Committee declare itself in favor of an eight hour day and demand a law that no women shall be allowed to work more than fifty-eight hours a week, nor after 9 p.m.
2. Voted: To instruct Miss McDowell, Miss Wald and Mr. Walling to consult with Miss Kellor about securing a law to prevent hiring of workers under false pretenses.
3. Voted: That the National Board recommend to each branch the appointment of a committee to secure for displaced workers employment not in conflict with labor's interests.

Source: Records of WTUL, Manuscript Division, Library of Congress, Papers of the WTUL and its Principal Leaders, Reel l

Jane Addams
Dictionary of American Portraits
(Dover Publications, 1967)

Lillian D. Wald
Dictionary of American Portraits
(Dover Publications, 1967)
Courtesy Henry Street Settlement House

National Consumers League

The National Consumers League (NCL) was founded in 1899 to fight for the welfare of consumers and workers who had little voice or power in the marketplace and workplace. Many of the NCL's goals, such as the establishment of a minimum wage and the limitation of working hours, directly benefited poor working women. According to the NCL constitution, it was "concerned that goods be produced and distributed . . . at reasonable prices and in adequate quantity, but under fair, safe, and healthy working conditions that foster quality products for consumers and a decent standard of living for workers."

Under the leadership of social reformer Florence Kelley, the NCL worked to educate the public on issues of wages, hours, and working conditions. One of the organization's chief tools during its early years was its "white label." Employers whose labor practices met with the NCL's approval for fairness and safety were granted the NCL's white label and consumers were urged to support only companies with the white label and to boycott those that failed to earn it. Throughout the 20th century, the NCL continued as a broad-based consumer protection and advocacy organization.

Working for Labor Standards by Mary W. Dawson, Chairman, Labor Standards Committee, and Emily Sims Marconnier, Associate General Secretary

The fight for improved labor standards in this country has been going on for forty years—each year gathering momentum as more and more people realized that the responsibility for some of the worst evils from which wage earners suffer really rests with them. Labor laws multiplied and improved when people became aware of the effects of low wages, long hours, speeding and other unwholesome conditions of labor.

At the beginning of this century less than a dozen states were seriously attempting to limit the labor of little children. In most states boys and girls could work unlimited hours for a mere pittance. Women could work any number of hours day and night and seven days in the week. Homework was on the increase. No state attempted to influence women's wages with the result that wages fell below the level of decent living.

It was because of these evils, flourishing unseen, that the National Consumers' League was organized to arouse public opinion to the point of demanding protection for these defenseless workers. The League had three watchwords—investigate, educate, legislate. Investigations centered in industries where workers were largely unskilled women and children and thus least able to defend themselves. Evidence in hand, the League informed the public by every possible method and urged cooperation and support of legislation to correct these evils. Gradually working conditions improved. The more enlightened states now protect children. Women's working hours have gradually been limited although many industrial states still lag far behind others.

The fight for minimum wage laws suffered a setback when in 1923 the United States Supreme Court declared such laws unconstitutional. But in spite of this adverse opinion the educational movement went steadily on because advocates of minimum wage believed that the time would come when the American people, realizing the social cost of sweated labor, would lend its support to this much needed legislation.

The depression ushered in the long looked-for moment and the NCL was quick to seize its opportunity. Following its long tried policy of investigating before agitating, the League gathered information about wages and hours which proved beyond doubt that labor standards which had been built up inch by inch over a period of twenty-five years were fast disappearing. Unscrupulous employers, taking advantage of the plight of the unemployed, had cut wages to a starvation level. The sweatshop, once driven out, was again flourishing in our midst.

Realizing that only by concerted effort on the part of many individuals and organizations could any results be obtained, the NCL called a conference to discuss the serious situation. More than fifty organizations from twelve states sent delegates to this meeting where definite plans were made to maintain and improve labor standards. Probably the most valuable outcome of the conference was the formation of labor standards committees in twelve states organized for the express purpose of working for better labor standards.

The NCL acted as a clearing house of information and advice to these state committees. Each committee was kept in touch with progress made by other committees. The NCL built up a background of publicity which was an important part of the whole campaign. A constant barrage of newspaper and magazine articles supplemented the efforts of local committees. A standard minimum wage bill drafted by a committee of experts of the League was supplied to all the states.

With this help from headquarters the state labor standards committees were off to a good start. The success of these committees is measured by results—actual mandatory minimum wage laws in New York, New Jersey, New Hampshire, Connecticut and Ohio based on the standard bill and so much publicity in other states where it was introduced that in at least one case a special session of the legislature will be called to reconsider minimum wage legislation.

The organization of the New York Committee is typical of the others. With the Consumers' League of New York taking the lead, a meeting of organizations was held which immediately organized itself into a Labor Standards Committee with a minimum wage law as its definite objective. Seventy civic, religious, community and labor organizations officially represented on the committee, worked as a single unit for the passage of the bill. Each organization kept its membership informed of conditions and emphasized the need for individual action if the bill was to be passed. How they responded is illustrated by one senator who received 450 letters in one mail, urging the passage of the bill. Members of the legislature pleaded with leaders to give them a chance to vote on the bill because of the pressure from their constituents.

The organizations in the state committee represented every kind of person and every part of the state--a total of perhaps 2,000,000 people. Members of these organizations saw to it that their newspapers carried news of sweatshop conditions and the need for

the minimum wage law. Hundreds of speeches were made all over the state. If the committee itself could not keep up with the demand for speakers, the local people did it themselves. . . . Minimum wage passed in New York and the other states where labor standards committees worked in a similar manner.

Source: Records of NCL, Manuscript Division, Library of Congress, Container # D1-D5, 99-102.

"Discriminate Against Inferior Unclean Sweat-Shop Clothing"
This UGWA advertisement, encouraging consumers to insist on the approved label in their garments, appeared in the *Saturday Evening Post* on March 8, 1902
Smithsonian Institute
http://americanhistory.si.edu/sweatshops/history/2t48.htm

General Federation of Women's Clubs

The General Federation of Women's Clubs (GFWC) is the world's oldest nonpartisan, nondenominational women's volunteer service organization. It was founded in 1890 and can trace its roots back to 1868 when Jane Cunningham Croly, an accomplished New York City newspaperwoman, started a club called Sorosis, which means in Greek meaning "an aggregation; a sweet flower of many fruits." Although the founders believed they were starting a new movement, they soon became aware of the existence of other women's clubs that had formed independently to meet the needs of women throughout the country.

The New York women called for a conference in their city to bring together sixty-one women's clubs to form a permanent organization. The constitution was adopted in 1890, and the U.S. Congress chartered the GFWC in 1901. Although clubs were originally founded as a means of self-education and development for women, the emphasis gradually changed to community service. The Federation distinguished itself with a record of legislative activity on issues of historical importance. GFWC was instrumental in the establishment of a national model for juvenile courts and was a forerunner in the early conservation movement. Members worked for the passage of the Pure Food and Drug Act in 1913 and supported legislation for the eight-hour work day and the first child labor law.

Background History by Mildred White Wells, President, 1953

In an address to the GFWC convention held in Chicago in 1914, Jane Addams traced the movement of women's clubs toward work for social progress: "The Federation of Women's Clubs has been an important factor in creating and disseminating the new social sympathy. . . . The clubs of this Federation early learned through their philanthropies that in loving kindness there is a great salvation; through their study of poetry and art, that in beauty there is truth; are not they adding the third dictum that in the understanding of life lies the path to social progress?" An initial step along this path was taken in 1895, when the *Woman's Cycle* published a symposium on the questions:

"What importance do you attach to the study of civics and social economics in women's clubs? Would you have clubs limited to study and discussion of these subjects or would you advise that they endeavor, by education and active cooperation, to promote a higher public spirit and a better social order?" Affirmative answers predominated and a "higher public spirit" was evident at the 1896 convention when the delegates declared that "Bodies of trained housekeepers shall constitute those guardians of the civic housekeeping of their respective communities."

A session was devoted to talks on the opportunities for women in business and the professions and, in 1898, it was resolved to encourage and promote clubs among business women.

At the same convention, clubwomen were ready to take up the cudgels to improve working conditions for women in industry. One session was given to the subject "The Industrial Problem as it Affects Women and Children," with Mrs. Sidney Webb of England as the featured speaker. The subjects were presented as matters of vital interest to the General Federation, matters which could not be ignored and must not be thrust aside."

"Believing that right and justice demand that women of larger opportunities should stand for the toilers who cannot help themselves," the Federation adopted a six point program: The establishment of postal savings banks for the benefit of small wage-earners; no child under fourteen to be employed in mill, factory, workshop, store, office or laundry, and no boy under sixteen in mines; adequate school facilities, including manual training, provided for every child to the age of fourteen; a maximum working day for women and children of eight hours with a forty-eight hour week; and the appointment by each member club of a standing committee to inquire into labor conditions in its locality."

When club women learned that there were about three million women wage-earners in the U.S. earning an average of not more than $5.00 per week for a ten or eleven-hour day, they went into action. The president, Mrs. Lowe, could report to the 1900 convention:

"There can be little doubt that the most significant feature of the two years just past, is the growing interest of the women of the Federation in the women and children who are wage-earners in America. This interest marks, perhaps, the most significant step in the history of our organization. . . . The wage-earning child as a class must be abolished. . . . In the South, that new storm center of labor activity, this must be the main point of attack, and no clubwoman shall rest content while a single child is suffered to lean eleven hours each day over a spindle during the weary time which lies between his seven years of stunted manhood or womanhood. . . . In other sections, clubwomen must grapple with the sweat shop evil, and the whole question of underpaid labor. Consumers' Leagues which are springing up about us, are another use of that great power through which, by various means, this fight for a wholesome, cheerful life for every creature is going to be won. . . . When the consumer, as well as the producer, is interested in the well being of the latter, this well being will not be long in arriving. When an organization like this one, mainly composed of leisure women, concerns itself with wage-earning women, all things may be accomplished. This is really unity in diversity; in consequence of it, things will begin to move."

The 1898 Biennial Convention Addressed Industrial Conditions

"The Department of Industrial Conditions as Affecting Women and Children is another sign of the enlarged view of the clubs. Many of the members, in fact the larger part, are homemakers, heads of families, but they have studied sociology to some purpose, and know that it is quite as important for them to apprehend the economic and the financial condition of women as for the woman who is struggling in the competitive labor market; that it is as necessary for the woman in her own home that her sister worker should receive a liberal wage and work under sanitary conditions as for the worker herself; that the self-being of her family is linked with the well being of every other human being. . . . I offer the following resolution:

That all clubs as bodies of trained housekeepers shall constitute those guardians of the civic housekeeping of their respective communities; That they make a study of measures of public sanitation, of matters of public comfort and of methods of improving and beautifying our towns and cities. Also, that they carefully watch all municipal legislation in such directions as shall improve the physical and moral conditions of the community."

Source: Records of GFWC, Washington, D.C. Headquarters; History and Proceedings from Biennial Conventions.

Exterior of General Federation of Women's Clubs
Library of Congress, Prints and Photographs Division, Theodor Horydczak Collection LC-H814- 2604-002

Lochner v. New York (1905)
5–4 Decision

Case Summary

Procedural Posture: Appeal from the Court of Appeals of New York, which found plaintiff in error violated state law prohibiting employers from allowing employees to work more than sixty hours in one week and upheld the law as a constitutional exercise of the state's power.

Overview: Plaintiff in error sought review of the appellate court's decision, which found plaintiff in violation of the state's law prohibiting an employer from allowing an employee to work more than sixty hours in one week. Court reversed and held the state's police power was unconstitutionally exercised. There was no reasonable foundation for finding the state's law to be necessary as a health, safety or welfare law to safeguard the health or welfare of employees. Rather, the law was an unnecessary interference with the rights of employers and employees to freely contract and thus violated the Fourteenth Amendment, U.S. Const.

Outcome: Court reversed lower court's decision, finding state's law prohibiting employers from allowing employees to work more than sixty hours in one week to be unconstitutional exercise of state's police powers because law was unnecessary to protect health and welfare of employees and interfered with individual contract rights. . . .

SYLLABUS: The general right to make a contract in relation to his business is part of the liberty protected by the Fourteenth Amendment, and this includes the right to purchase and sell labor, except as controlled by the State in the legitimate exercise of its police power.

Liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor.

There is no reasonable ground, on the score of health, for interfering with the liberty of the person or the right of free contract, by determining the hours of labor, in the occupation of a baker. Nor can a law limiting such hours be justified as a health law to safeguard the public health, or the health of the individuals following that occupation.

Section 110 of the labor law of the State of New York, providing that no employes shall be required or permitted to work in bakeries more than sixty hours in a week, or ten hours a day, is not 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 labor, and as such it is in conflict with, and void under, the Federal Constitution.

n1 "§ 110. *Hours of labor in bakeries and confectionery establishments*. — No employe shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week, or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work.

The indictment averred that the defendant "wrongfully and unlawfully required and permitted an employe working for him in his biscuit, bread and cake bakery and confectionery establishment, at the city of Utica, in this county, to work more than sixty hours in one week," after having been theretofore convicted of a violation of the same act; and therefore, as averred, he committed the crime or misdemeanor, second offense. The plaintiff in error demurred to the indictment on several grounds, one of which was that the facts stated did not constitute a crime. The demurrer was overruled, and the plaintiff in error having refused to plead further, a plea of not guilty was entered by order of the court and the trial commenced, and he was convicted of misdemeanor, second offense, as indicted, and sentenced to pay a fine of $ 50 and to stand committed until paid, not to exceed fifty days in the Oneida County jail. A certificate of reasonable doubt was granted by the county judge of Oneida County, whereon an appeal was taken to the Appellate Division of the Supreme Court, Fourth Department, where the judgment of conviction was affirmed. 73 App. Div. N.Y. 120. A further appeal was then taken to the Court of Appeals, where the judgment of conviction was again affirmed. 177 N.Y. 145.

COUNSEL: *Mr. Frank Harvey Field* and *Mr. Henry Weissmann* for plaintiff in error:

The statute in question denies to certain persons in the baking trade the equal protection of the laws.

The legislation must affect equally all persons engaged in the business of baking in order to conform to this provision of the Fourteenth Amendment. It really affects but a portion of the baking trade, namely, employes "in a biscuit, bread or cake bakery, or confectionery establishment." *Connolly v. Union Sewer Pipe Co.,* 184 U.S. 540; *Ex parte Westerfield*, 55 . . . .

The statute in question is not a reasonable exercise of the police power either from the standpoint of the trade itself or from the standpoint of the decisions interpreting the exercise of the police power in connection with the Fourteenth Amendment. . . .

. . . The statute in question was never intended as a health provision but was purely a labor law. This is indicated by the facts leading up to the adoption of this statute by the New York legislature. For acts of this nature generally, see English Bakehouse Acts of 1863. . . .

Mr. Julius M. Mayer, Attorney General of the State of New York, for defendant in error:

The New York statute under consideration involves an exercise of the police power of the State. The burden of demonstrating that this statute is repugnant to the provisions of the Federal Constitution is upon the plaintiff in error, and he must show that there was no basis upon which the state court could rest its conclusion that the legislation in question was a proper exercise of police power. *Holden v. Hardy*, 169 U.S. 366.

The conditions existing in the State of New York, which may be considered as the occasion for the enactment of the statute under consideration, show that it was a proper exercise of the police power of the State.

The power of the legislature to decide what laws are necessary to secure the public health, safety or welfare is subject to the power of the court to decide whether an act purporting to promote the public health or safety has such a reasonable connection therewith as to appear upon inspection to be adapted to that end. And the court may take judicial notice of the fact of the common belief of the people upon that subject. . . .

There are two views as to the words in the statute—"no employe shall be required or permitted to work." The statute was carefully drafted so as to prevent evasion. It was intended to be a barrier to the employer who might testify that he had not orally or in writing required his employe to work, and yet he might by inference and acquiescence accomplish the same result by "permitting" him to so work.

The State, in undertaking this regulation, has a right to safeguard the citizen against his own lack of knowledge. In dealing with certain classes of men the State may properly say that, for the purpose of having able-bodied men at its command when it desires, it shall not permit these men, when engaged in dangerous or unhealthful occupations, to work for a longer period of time each day than is found to be in the interest of the health of the person upon whom the legislation acts.

JUDGES: Fuller, Harlan, Brewer, Brown, White, Peckham, McKenna, Holmes, Day

OPINIONBY: PECKHAM

OPINION: MR. JUSTICE PECKHAM, after making the foregoing statement of the facts, delivered the opinion of the court.

The indictment, it will be seen, charges that the plaintiff in error violated the one hundred and tenth section of article 8, chapter 415, of the Laws of 1897, known as the labor law of the State of New York, in that he wrongfully and unlawfully required and permitted an employe working for him to work more than sixty hours in one week. There is nothing in any of the opinions delivered in this case, either in the Supreme Court or the Court of Appeals of the State, which construes the section, in using the word "required," as referring to any physical force being used to obtain the labor of an employe. It is assumed that the word means nothing more than the requirement arising from voluntary contract for such labor in excess of the number of hours specified in the statute. There is no pretense in any of the opinions that the statute was intended to meet a case of involuntary labor in any form. All the opinions assume that there is no real distinction, so far as this question is concerned, between the words "required" and "permitted." The mandate of the statute that "no employe shall be required or permitted to work," is the substantial equivalent of an enactment that "no employe shall contract or agree to work," more than ten hours per day, and as there is no provision for special emergencies the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer, permitting, under any circumstances, more than ten hours work to be done in his establishment. The employe may desire to earn the extra money, which would arise from his working more than the prescribed time, but this statute forbids the employer from permitting the employe to earn it.

The statute necessarily interferes with the right of contract between the employer and employes, 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. *Allgeyer v. Louisiana*, 165 U.S. 578. Under that provision no State can deprive any person of life, liberty or property without due process of law. 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. There are, however, certain powers, existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State. . . .

It must, of course, be conceded that there is a limit to the valid exercise of the police power by the State. There is no dispute concerning this general proposition. Otherwise the Fourteenth Amendment would have no efficacy and the legislatures of the States would have unbounded power, and it would be enough to say that any piece of legislation was enacted to conserve the morals, the health or the safety of the people; such legislation would be valid, no matter how absolutely without foundation the claim might be. The claim of the police power would be a mere pretext—become another and delusive name for the supreme sovereignty of the State to be exercised free from constitutional restraint. This is not contended for. In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor.

This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the State it is valid, although the judgment of the court might be totally opposed to the enactment of such a law. But the question would still remain: Is it within the police power of the State? and that question must be answered by the court.

The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. 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. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. They are in no sense wards of the State. 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. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground. It is a question of which of two powers or rights shall prevail—the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor. . . .

We think the limit of the police power has been reached and passed in this case. There is, in our judgment, no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health or the health of the individuals who are following the trade of a baker. If this statute be valid, and if, therefore, a proper case is made out in which to deny the right of an individual, *sui juris* [of one's own right], as employer or employe, to make contracts for the labor of the latter under the protection of the provisions of the Federal Constitution, there would seem to be no length to which legislation of this nature might not go. . . .

We think that there can be no fair doubt that the trade of a baker, in and of itself, is not an unhealthy one to that degree which would authorize the legislature to interfere with the right to labor, and with the right of free contract on the part of the individual, either as employer or employe. In looking through statistics regarding all trades and occupations, it may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of a baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health. Some occupations are more healthy than others, but we think there are none which might not come under the power of the legislature to supervise and control the hours of working therein, if the mere fact that the occupation is not absolutely and perfectly healthy is to confer that right upon the legislative department of the Government. It might be safely affirmed that almost all occupations more or less affect the health. There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness. But are we all, on that account, at the mercy of legislative majorities? . . . No trade, no occupation, no mode of earning one's living, could escape this all-pervading power, and the acts of the legislature in limiting the hours of labor in all employments would be valid, although such limitation might seriously cripple the ability of the laborer to support himself and his family. . . .

It is also urged, pursuing the same line of argument, that it is to the interest of the State that its population should be strong and robust, and therefore any legislation which may be said to tend to make people healthy must be valid as health laws, enacted under the police power. If this be a valid argument and a justification for this kind of legislation, it

follows that the protection of the Federal Constitution from undue interference with liberty of person and freedom of contract is visionary, wherever the law is sought to be justified as a valid exercise of the police power. Scarcely any law but might find shelter under such assumptions, and conduct, properly so called, as well as contract, would come under the restrictive sway of the legislature. Not only the hours of employees, but the hours of employers, could be regulated, and doctors, lawyers, scientists, all professional men, as well as athletes and artisans, could be forbidden to fatigue their brains and bodies by prolonged hours of exercise, lest the fighting strength of the State be impaired. We mention these extreme cases because the contention is extreme. We do not believe in the soundness of the views which uphold this law. On the contrary, we think that such a law as this, although passed in the assumed exercise of the police power, and as relating to the public health, or the health of the employes named, is not within that power, and is invalid. The act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals, both employers and employes, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts. Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed in the exercise of the police power and upon the subject of the health of the individual whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to the public health or to the health of the employes, if the hours of labor are not curtailed. If this be not clearly the case the individuals, whose rights are thus made the subject of legislative interference, are under the protection of the Federal Constitution regarding their liberty of contract as well as of person; and the legislature of the State has no power to limit their right as proposed in this statute. . . .

It is manifest to us that the limitation of the hours of labor as provided for in this section of the statute under which the indictment was found, and the plaintiff in error convicted, has no such direct relation to and no such substantial effect upon the health of the employe, as to justify us in regarding the section as really a health law. It seems to us that the real object and purpose were simply to regulate the hours of labor between the master and his employes (all being men, *sui juris* [of one's own right]), in a private business, not dangerous in any degree to morals or in any real and substantial degree, to the health of the employes. Under such circumstances the freedom of master and employe to contract with each other in relation to their employment, and in defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.

Reversed.

DISSENT BY: HARLAN; HOLMES

DISSENT: MR. JUSTICE HARLAN, with whom MR. JUSTICE WHITE and MR. JUSTICE DAY concurred, dissenting.

While this court has not attempted to mark the precise boundaries of what is called the police power of the State, the existence of the power has been uniformly recognized, both by the Federal and state courts.

All the cases agree that this power extends at least to the protection of the lives, the

health and the safety of the public against the injurious exercise by any citizen of his own rights.

So, as said in *Holden v. Hardy*, 169 U.S. 366, 391: "This right of contract, however, is itself subject to certain limitations which the State may lawfully impose in the exercise of its police powers. While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of the employes as to demand special precautions for their well-being and protection, or the safety of adjacent property.

Subsequently in *Gundling v. Chicago*, 177 U.S. 183, 188, this court said: "Regulations respecting the pursuit of a lawful trade or business are of very frequent occurrence in the various cities of the country, and what such regulations shall be and to what particular trade, business or occupation they shall apply, are questions for the State to determine, and their determination comes within the proper exercise of the police power by the State, and unless the regulations are so utterly unreasonable and extravagant in their nature and purpose that the property and personal rights of the citizen are unnecessarily, and in a manner wholly arbitrary, interfered with or destroyed without due process of law, they do not extend beyond the power of the State to pass, and they form no subject for Federal interference. . . .

. . . I take it to be firmly established that what is called the liberty of contract may, within certain limits, be subjected to regulations designed and calculated to promote the general welfare or to guard the public health, the public morals or the public safety. "The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import," this court has recently said, "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good." *Jacobson v. Massachusetts*, 197 U.S. 11.

Granting then that there is a liberty of contract which cannot be violated even under the sanction of direct legislative enactment, but assuming, as according to settled law we may assume, that such liberty of contract is subject to such regulations as the State may reasonably prescribe for the common good and the well-being of society, what are the conditions under which the judiciary may declare such regulations to be in excess of legislative authority and void? Upon this point there is no room for dispute; for, the rule is universal that a legislative enactment, Federal or state, is never to be disregarded or held invalid unless it be, beyond question, plainly and palpably in excess of legislative power. In *Jacobson v. Massachusetts*, *supra*, we said that the power of the courts to review legislative action in respect of a matter affecting the general welfare exists only "when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law"—citing *Mugler v. Kansas*, 123 U.S. 623, 661; *Minnesota v. Barber*, 136 U.S. 313, 320: *Atkin v. Kansas*, 191 U.S. 207, 223. If there be doubt as to the validity of the statute, that doubt must therefore be resolved in favor of its validity, and the courts must keep their hands off, leaving the legislature to meet the responsibility for unwise legislation. If the end which the legisla-

ture seeks to accomplish be one to which is power extends, and if the means employed to that end, although not the wisest or best, are yet not plainly and palpably unauthorized by law, then the court cannot interfere. In other words, when the validity of a statute is questioned, the burden of proof, so to speak, is upon those who assert it to be unconstitutional. *McCulloch v. Maryland*, 4 Wheat. 316, 421.

Let these principles be applied to the present case. . . .

It is plain that this statute was enacted in order to protect the physical well-being of those who work in bakery and confectionery establishments. It may be that the statute had its origin, in part, in the belief that employers and employes in such establishments were not upon an equal footing, and that the necessities of the latter often compelled them to submit to such exactions as unduly taxed their strength. Be this as it may, 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. So that in determining the question of power to interfere with liberty of contract, the court may inquire whether the means devised by the State are germane to an end which may be lawfully accomplished and have a real or substantial relation to the protection of health, as involved in the daily work of the persons, male and female, engaged in bakery and confectionery establishments. But when this inquiry is entered upon I find it impossible, in view of common experience, to say that there is here no real or substantial relation between the means employed by the State and the end sought to be accomplished by its legislation. . . . Therefore I submit that this court will transcend its functions if it assumes to annul the statute of New York. It must be remembered that this statute does not apply to all kinds of business. It applies only to work in bakery and confectionery establishments, in which, as all know, the air constantly breathed by workmen is not as pure and healthful as that to be found in some other establishments or out of doors. . . .

I take leave to say that the New York statute, in the particulars here involved, 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 by such regulations as they in their wisdom deem best. Health laws of every description constitute, said Chief Justice Marshall, a part of that mass of legislation which "embraces everything within the territory of a State, not surrendered to the General Government; all which can be most advantageously exercised by the States themselves." *Gibbons v. Ogden*, 9 Wheat. 1, 203. . . .

The judgment in my opinion should be affirmed.

MR. JUSTICE HOLMES dissenting.

I regret sincerely that I am unable to agree with the judgment in this case, and that I think it my duty to express my dissent.

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. 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. The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics.

General propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise. But I think that the proposition just stated, if it is accepted, will carry us far toward the end. Every opinion tends to become a law. I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss.

Source: 198 U.S. 45; 25 S. Ct. 539; 49L.Ed. 937

Questions to be Addressed:

1. What are the basic facts of the case?
2. What are the core arguments used in support of Lochner? Of New York?
3. What key points were made by the majority of the court?
4. What are the key points made by the dissenters of the court?
5. How might this case impact women laborers?

Muller v. Oregon (1908)
Unanimous Decision

CASE SUMMARY
Procedural Posture: Appeal from a ruling of the Supreme Court of Oregon upholding the constitutionality of state restrictions on the working hours of females.

Overview: Appellant, the owner of a laundry, was convicted of allowing a female employee to work longer than the maximum permitted hours for women. Appellant contended that restricting the employment hours of females violated U.S. Const. Amend. XIV. The Oregon Supreme Court upheld the constitutionality of state restrictions on the working hours of females. The United States Supreme Court affirmed, taking judicial notice of the historical belief that women required protective legislation.

SYLLABUS: The peculiar value of a written constitution is that it places, in unchanging form, limitations upon legislative action, questions relating to which are not settled by even a consensus of public opinion; but when the extent of one of those limitations is affected by a question of fact which is debatable and debated, a widespread and long continued belief concerning that fact is worthy of consideration.

This court takes judicial cognizance of all matters of general knowledge—such as the fact that woman's physical structure and the performance of maternal functions place her at a disadvantage which justifies a difference in legislation in regard to some of the burdens which rest upon her.

As healthy mothers are essential to vigorous offspring, the physical well-being of woman is an object of public interest. The regulation of her hours of labor falls within the police power of the State, and a statute directed exclusively to such regulation does not conflict with the due process or equal protection clauses of the Fourteenth Amendment.

The right of a State to regulate the working hours of women rests on the police power and the right to preserve the health of the women of the State, and is not affected by other laws of the State granting or denying to women the same rights as to contract and the elective franchise as are enjoyed by men.

While the general liberty to contract in regard to one's business and the sale of one's labor is protected by the Fourteenth Amendment that liberty is subject to proper restrictions under the police power of the State.

The statute of Oregon of 1903 providing that no female shall work in certain establishments more than ten hours a day is not unconstitutional so far as respects laundries.

48 Oregon, 252, affirmed.

COUNSEL: Mr. William D. Fenton, with whom Mr. Henry H. Gilfry was on the brief, for plaintiff in error:

Women, within the meaning of both the state and Federal constitutions, are persons and citizens, and as such are entitled to all the privileges and immunities therein provided,

and are as competent to contract with reference to *their labor as are men*. In *re Leach,* 134 *Indiana,* 665*; Minor v. Happerset*, 21 Wall. 163; *Lochner v. New York*, 198 U.S. . . .

The right to labor or employ labor and to make contracts in respect thereto upon such terms as may be agreed upon, is both a liberty and a property right, included in the constitutional guarantee that no person shall be deprived of life, liberty or property without due process of law. . . .

The law operates unequally and unjustly, and does not affect equally and impartially all persons similarly situated, and is therefore class legislation. . . .

Section 3 of this act is unconstitutional in this, that it deprives the plaintiff in error and his employes of the right to contract and be contracted with, and deprives them of the right of private judgment in matters of individual concern, and in a matter in no wise affecting the general welfare, health and morals of the persons immediately concerned, or of the general public. . . .

Conceding that the right to contract is subject to certain limitations growing out of the duty which the individual owes to society, the public, or to government, the power of the legislature to limit such right must rest upon some reasonable basis, and cannot be arbitrarily exercised. . . .

The police power, no matter how broad and extensive, is limited and controlled by the provisions of organic law. . . .

Women, equally with men, are endowed with the fundamental and inalienable rights of liberty and property, and these rights cannot be impaired or destroyed by legislative action under the pretense of exercising the police power of the State. Difference in sex alone does not justify the destruction or impairment of these rights. Where, under the exercise of the police power, such rights are sought to be restricted, impaired or denied, it must clearly appear that the public health, safety or welfare is involved. This statute is not declared to be a health measure. The employments forbidden and restricted are not in fact or declared to be, dangerous to health or morals. . . .

. . . "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."

Section 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, *State v. Muller*, 48 Oregon, 252, 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 Fourteenth 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 proscribed 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 National Bank v. Leonard*, 36 Oregon, 390, 396, 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 femme sole. There is now no residuum of civil disability resting upon her which is not recognized as existing against the husband."

In foreign legislation Mr. Brandeis calls attention to these statutes: Great Britain: Factories Act of 1844 . . . ; Factory and Workshop Act of 1901, . . . France, 1848; Act Nov. 2, 1892, and March 30, 1900. Switzerland, Canton of Glarus, 1848; Federal Law 1877. . . . Austria, 1855; Acts 1897. . . . Holland, 1889. . . . Italy, June 19, 1902. . . . [and] Germany, Laws 1891.

Then follow extracts from over ninety reports of committees, bureaus of statistics, commissioners of hygiene, inspectors of factories, both in this country and in Europe, to the effect that long hours of labor are dangerous for women, primarily because of their special physical organization. The matter is discussed in these reports in different aspects, but all agree as to the danger. It would of course take too much space to give these reports in detail. Following them are extracts from similar reports discussing the general

benefits of short hours from an economic aspect of the question. In many of these reports individual instances are given tending to support the general conclusion. Perhaps the general scope and character of all these reports may be summed up in what an inspector for Hanover says: "The reasons for the reduction of the working day to ten hours—(a) the physical organization of women, (b) her maternal functions, (c) the rearing and education of the children, (d) the maintenance of the home—are all so important and so far reaching that the need for such reduction need hardly be discussed."

OPINION BY: BREWER

OPINION: 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 selection of which is in these words.

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 Fourteenth 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 Fourteenth 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; *Holden v. Hardy*, 169 U.S. 366; *Lochner v. New York*, 198 U.S. 45.

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, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though 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 school room 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 it 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.

Source: 208 U.S. 412; 28 S. Ct. 324; 1908 U.S. LEXIS 1452; 52L.Ed. 551

Questions to be Addressed:

1. What are the basic facts of the case?
2. What are the core arguments used in support of Muller? of Oregon?
3. What are the major points made by the Brandeis Brief? Does the argument advanced by this brief rest mainly on overwork injuries to women workers or to society?
4. What were the key points made by this unanimous court?
5. What was the precedent set by this case for women? Define the doctrine of "female exceptionalism."

Older women doing hand ironing in laundry

Department of Labor, National Archives, NWDNS-86-G-6U(10), ca. 1920

HAMMER V. DAGENHART (1918)

5–4 Decision

Prior History

Appeal from the District Court of the United States for the Western District of North Carolina

Congress exceeded its power under the commerce clause of the Federal Constitution in enacting the provisions of the Act of September 1, 1916, which prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to the removal of the goods, children under fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in a week, or between 7 in the evening and 6 in the morning.

SYLLABUS: The Act of September 1, 1916, c. 432, 39 Stat. 675, prohibits transportation in interstate commerce of goods made at a factory in which, within thirty days prior to their removal therefrom, children under the age of 14 years have been employed or permitted to work, or children between the ages of 14 and 16 years have been employed or permitted to work more than eight hours in any day, or more than six days in any w*eek,* or after the hour of 7 P.M. or before the hour of 6 A.M. Held unconstitutional as exceeding the commerce power of Congress and invading the powers reserved to the States.

The power to regulate interstate commerce is the power to prescribe the rule by which the commerce is to be governed; in other words, to control the means by which it is carried on.

The court has never sustained a right to exclude save in cases where the character of the particular things excluded was such as to bring them peculiarly within the governmental authority of the State or Nation and render their exclusion, in effect, but a regulation of interstate transportation, necessary to prevent the accomplishment through that means of the evils inherent in them.

The manufacture of goods is not commerce, nor do the facts that they are intended for, and are afterwards shipped in, interstate commerce make their production a part of that commerce subject to the control of Congress.

The power to regulate interstate commerce was not intended as a means of enabling Congress to equalize the economic conditions in the States for the prevention of unfair competition among them, by forbidding the interstate transportation of goods made under conditions which Congress deems productive of unfairness.

It was not intended as an authority to Congress to control the States in the exercise of their police power over local trade and manufacture, always existing and expressly reserved to them by the Tenth Amendment. . . .

The fundamental and far reaching question here to be determined is: Is there a line between"the commercial power of the Union and the municipal power of the State?" Has Congress absorbed the police power of the States? If Congress has the power here asserted, it is difficult to conceive what is left to the States.

JUDGES: White, McKenna, Holmes, Day, Van Devanter, Pitney, McReynolds, Brandeis, Clarke

OPINION BY: DAY

OPINION: MR. JUSTICE DAY delivered the opinion of the court.

A bill was filed in the United States District Court for the Western District of North Carolina by a father in his own behalf and as next friend of his two minor sons, one under the age of fourteen years and the other between the ages of fourteen and sixteen years, employees in a cotton mill at Charlotte, North Carolina, to enjoin the enforcement of the act of Congress intended to prevent interstate commerce in the products of child labor. Act of Sept. 1, 1916, c. 432, 39 Stat. 675.

The District Court held the act unconstitutional and entered a decree enjoining its enforcement. This appeal brings the case here.

The attack upon the act rests upon three propositions: First: It is not a regulation of interstate and foreign commerce; Second: It contravenes the Tenth Amendment to the Constitution; Third: It conflicts with the Fifth Amendment to the Constitution.

The controlling question for decision is: Is it within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of fourteen have been employed or permitted to work, or children between the ages of fourteen and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock P.M. or before the hour of 6 o'clock A.M.?

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution which authorizes Congress to regulate commerce with foreign nations and among the States.

In *Gibbons v. Ogden*, 9 Wheat. 1, Chief Justice Marshall, speaking for this court, and defining the extent and nature of the commerce power, said, "It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed." In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities. But it is insisted that adjudged cases in this court establish the doctrine that the power to regulate given to Congress incidentally includes the authority to prohibit the movement of ordinary commodities and therefore that the subject is not open for discussion. The cases demonstrate the contrary. They rest upon the character of the particular subjects dealt with and the fact that the scope of governmental authority, state or national, possessed over them is such that the authority to prohibit is as to them but the exertion of the power to regulate.

The first of these cases is *Champion v. Ames*, 188 U.S. 321, the so-called *Lottery Case*, in which it was held that Congress might pass a law having the effect to keep the channels of commerce free from use in the transportation of tickets used in the promotion of lottery schemes. In *Hipolite Egg Co. v. United States*, 220 U.S. 45, this court sustained the power of Congress to pass the Pure Food and Drug Act which prohibited the introduction into the States by means of interstate commerce of impure foods and drugs. In *Hoke v.*

United States, 227 U.S. 308, this court sustained the constitutionality of the so-called "White Slave Traffic Act" whereby the transportation of a woman in interstate commerce for the purpose of prostitution was forbidden. In that case we said, having reference to the authority of Congress, under the regulatory power, to protect the channels of interstate commerce:

"If the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls."

In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.

This element is wanting in the present case. The thing intended to be accomplished by this statute is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States. The goods shipped are of themselves harmless. The act permits them to be freely shipped after thirty days from the time of their removal from the factory. When offered for shipment, and before transportation begins, the labor of their production is over, and the mere fact that they were intended for interstate commerce transportation does not make their production subject to federal control under the commerce power.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

When the commerce begins is determined, not by the character of the commodity, nor by the intention of the owner to transfer it to another state for sale, nor by his preparation of it for transportation, but by its actual delivery to a common carrier for transportation, or the actual commencement of its transfer to another state. . . . If it were otherwise, all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States. *Kidd v. Pearson*, 128 U.S. 1, 21.

It is further contended that the authority of Congress may be exerted to control interstate commerce in the shipment of child-made goods because of the effect of the circulation of such goods in other States where the evil of this class of labor has been recognized by local legislation, and the right to thus employ child labor has been more rigorously restrained than in the State of production. In other words, that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.

There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may cooperate to

give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions. In some of the States laws have been passed fixing minimum wages for women, in others the local law regulates the hours of labor of women in various employments. Business done in such States may be at an economic disadvantage when compared with States which have no such regulations; surely, this fact does not give Congress the power to deny transportation in interstate commerce to those who carry on business where the hours of labor and the rate of compensation for women have not been fixed by a standard in use in other States and approved by Congress.

The grant of power to Congress over the subject of interstate commerce was to enable it to regulate such commerce, and not to give it authority to control the States in their exercise of the police power over local trade and manufacture.

The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth Amendment to the Constitution.

In the judgment which established the broad power of Congress over interstate commerce, Chief Justice Marshall said (9 Wheat. 203); "They [inspection laws] act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation, which embraces everything within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike-roads, ferries, & c., are component parts of this mass."

And in *Dartmouth College v. Woodward*, 4 Wheat. 518, 629, the same great judge said:

"That the framers of the constitution did not intend to restrain the states in the regulation of their civil institutions, adopted for internal government, and that the instrument they have given us is not to be so construed may be admitted."

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit. That such employment is generally deemed to require regulation is shown by the fact that the brief of counsel states that every State in the Union has a law upon the subject, limiting the right to thus employ children. In North Carolina, the State wherein is located the factory in which the employment was had in the present case, no child under twelve years of age is permitted to work.

In interpreting the Constitution it must never be forgotten that the Nation is made up of States to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the National Government are reserved. *Lane County v. Oregon*, 7 Wall. 71, 76. The power of the States to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government. *New York v. Miln*, 11 Pet. 102, 139; *Slaughter House Cases*, 16 Wall. 36, 63; *Kidd v. Pearson, supra*. To sustain this statute would not be in our judgment a recognition of the lawful exertion of congressional authority over interstate ommerce, but would sanction an invasion by the federal power of the control of a matter

purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States.

We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations and not by an invasion of the powers of the States. . . . Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce but also exerts a power as to a purely local matter to which the federal authority does not extend. The far reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters entrusted to local authority by prohibition of the movement of commodities in interstate commerce, all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of government be practically destroyed.

For these reasons we hold that this law exceeds the constitutional authority of Congress. It follows that the decree of the District Court must be *Affirmed*.

DISSENT BY: HOLMES

DISSENT: MR. JUSTICE HOLMES, dissenting.

The single question in this case is whether Congress has power to prohibit the shipment in interstate or foreign commerce of any product of a cotton mill situated in the United States, in which within thirty days before the removal of the product children under fourteen have been employed, or children between fourteen and sixteen have been employed more than eight hours in a day, or more than six days in any week, or between seven in the evening and six in the morning. The objection urged against the power is that the States have exclusive control over their methods of production and that Congress cannot meddle with them, and taking the proposition in the sense of direct intermeddling I agree to it and suppose that no one denies it. But if an act is within the powers specifically conferred upon Congress, it seems to me that it is not made any less constitutional because of the indirect effects that it may have, however obvious it may be that it will have those effects, and that we are not at liberty upon such grounds to hold it void.

The first step in my argument is to make plain what no one is likely to dispute — that the statute in question is within the power expressly given to Congress if considered only as to its immediate effects and that if invalid it is so only upon some collateral ground. The statute confines itself to prohibiting the carriage of certain goods in interstate or foreign commerce. Congress is given power to regulate such commerce in unqualified terms. It would not be argued today that the power to regulate does not include the power to prohibit. Regulation means the prohibition of something, and when interstate commerce is the matter to be regulated I cannot doubt that the regulation may prohibit any part of such commerce that Congress sees fit to forbid.

The question then is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the States in a matter upon which I have admitted that they are free from direct control.

The notion that prohibition is any less prohibition when applied to things now thought evil I do not understand. But if there is any matter upon which civilized countries have agreed—far more unanimously than they have with regard to intoxicants and some other matters over which this country is now emotionally aroused—it is the evil of premature and excessive child labor. I should have thought that if we were to introduce our own moral conceptions where in my opinion they do not belong, this was preeminently a case for upholding the exercise of all its powers by the United States.

But I had thought that the propriety of the exercise of a power admitted to exist in some cases was for the consideration of Congress alone and that this Court always had disavowed the right to intrude its judgment upon questions of policy or morals. It is not for this Court to pronounce when prohibition is necessary to regulation if it ever may be necessary—to say that it is permissible as against strong drink but not as against the product of ruined lives.

The act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the nation as a whole. If, as has been the case within the memory of men still living, a State should take a different view of the propriety of sustaining a lottery from that which generally prevails, I cannot believe that the fact would require a different decision from that reached in *Champion v. Ames*. Yet in that case it would be said with quite as much force as in this that Congress was attempting to intermeddle with the State's domestic affairs. The national welfare as understood by Congress may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command.

MR. JUSTICE McKENNA, MR. JUSTICE BRANDEIS and MR. JUSTICE CLARKE concur in this opinion.

Source: 247 U.S. 251; 38 S. Ct. 529; 1918 U.S. LEXIS 1907; 62 L.Ed. 1101; 3 A.L.R. 649

Questions to be Addressed:

1. What are the basic facts of the case?
2. What are the key points of the majority of the court?
3. Why do the majority on the court seem to draw a line in this case between significant economic concerns and the moral dimensions of child labor?
4. What are the points made by the minority dissenters?
5. How might the decision in this case be viewed as a step backward for women laborers?

Spinners and doffers in Lancaster, South Carolina Cotton Mills
National Archives, NWDNS-102-LH-348
Department of Commerce and Labor. Children's Bureau, 1908

Adkins v. Children's Hospital (1923)
5–3 Decision, Judge Brandeis not participating

Prior History

Appeals from the Court of Appeals of the District of Columbia

APPEALS from decrees of the Court of Appeals of the District of Columbia, affirming two decrees, entered, on mandate from that court, by the Supreme Court of the District, permanently enjoining the appellants from enforcing orders fixing minimum wages under the District of Columbia Minimum Wage Act.

Case Summary

Procedural Posture: Appellant challenged a Court of Appeals for the District of Columbia decision which held that the Act of September 19, 1918, ch. 174, 40 Stat. 960, providing a fixed wage for female employees, was an unconstitutional exercise of state police power as it interfered with labor contracts involving private parties.

Overview: Appellant sought review of a lower court's determination that the Act of September 19, 1918, which fixed minimum wages for female employees in private employment, was an unconstitutional interference with the freedom to contract. The decision of the lower court was affirmed on appeal. The court held that the Act interfered with U.S. Const. Amend. V guaranties, as the Act prevented private employers and Employees from bargaining for the best contractual terms. The court also held that wage fixed by the Act had no relation to the capacity of female employees but was rather an invalid exercise of state police power by attempting to establish an arbitrary amount necessary to provide a living for women. Further, the Act required an employer to make an arbitrary payment to female employees without any casual connection to his business or the type of work the employee performed.

Outcome: Appellate court affirmed the lower court's decision, holding that an act providing fixed minimum wages for female employees was an unconstitutional interference with the freedom to contract as the amount had no relation to the type of work involved or employee capacity and unjustly prevented bargaining for contractual terms.

Opinion: MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The question presented for determination by these appeals is the constitutionality of the Act of September 19, 1918, providing for the fixing of minimum wages for women and children in the District of Columbia. 40 Stat. 960, c. 174.

The act provides for a board of three members, to be constituted, as far as practicable, so as to be equally representative of employers, employees and the public. The board is authorized to have public hearings, at which persons interested in the matter being investigated may appear and testify, to administer oaths, issue subpoenas requiring the attendance of witnesses and production of books, etc., and to make rules and regulations for carrying the act into effect.

By § 8 the board is authorized—

"(1), To investigate and ascertain the wages of women and minors in the different occupations in which they are employed in the District of Columbia; (2), to examine, through any member or authorized representative, any book, pay roll or other record of any employer of women or minors that in any way appertains to or has a bearing upon the question of wages of any such women or minors; and (3), to require from such employer full and true statements of the wages paid to all women and minors in his employment."

And by § 9, "to ascertain and declare, in the manner hereinafter provided, the following things: (a), Standards of minimum wages for women in any occupation within the District of Columbia, and-what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; and (b), standards of minimum wages for minors in any occupation within the District of Columbia, and what wages are unreasonably low for any such minor workers."

The act then provides (§ 10) that if the board, after investigation, is of opinion that any substantial number of women workers in any occupation are receiving wages inadequate to supply them with the necessary cost of living, maintain them in health and protect their morals, a conference may be called to consider and inquire into and report on the subject investigated, the conference to be equally representative of employers and employees in such occupation and of the public, and to include one or more members of the board.

The conference is required to make and transmit to the board a report including, among other things, "recommendations as to standards of minimum wages for women workers in the occupation under inquiry and as to what wages are inadequate to supply the necessary cost of living to women workers in such occupation and to maintain them in health and to protect their morals." § 11.

The board is authorized (§ 12) to consider and review these recommendations and to approve or disapprove any or all of them. If it approves any recommendations it must give public notice of its intention and hold a public hearing at which the persons interested will be heard. After such hearing, the board is authorized to make such order as to it may appear necessary to carry into effect the recommendations, and to require all employers in the occupation affected to comply therewith. It is made unlawful for any such employer to violate in this regard any provision of the order or to employ any women worker at lower wages than are thereby permitted.

There is a provision (§ 13) under which the board may issue a special license to a woman whose earning capacity "has been impaired by age or otherwise," authorizing her employment at less than the minimum wages fixed under the act.

All questions of fact (§ 17) are to be determined by the board, from whose decision there is no appeal; but an appeal is allowed on questions of law.

Any violation of the act (§ 18) by an employer or his agent or by corporate agents is declared to be a misdemeanor, punishable by fine and imprisonment.

Finally, after some further provisions not necessary to be stated, it is declared (§ 23) that the purposes of the act are "to protect the women and minors of the District from conditions detrimental to their health and morals, resulting from wages which are inadequate to maintain decent standards of living; and the Act in each of its provisions and in its entirety shall be interpreted to effectuate these purposes."

The appellee in the first case is a corporation maintaining a hospital for children in the District. It employs a large number of women in various capacities, with whom it had agreed upon rates of wages and compensation satisfactory to such employees, but which in some instances were less than the minimum wage fixed by an order of the board made in pursuance of the act. The women with whom appellee had so contracted were all of full age and under no legal disability. The instant suit was brought by the appellee in the Supreme Court of the District to restrain the board from enforcing or attempting to enforce its order on the ground that the same was in contravention of the Constitution, and particularly the due process clause of the Fifth Amendment.

In the second case the appellee, a woman twenty-one years of age, was employed by the Congress Hall Hotel Company as an elevator operator, at a salary of $35 per month and two meals a day. She alleges that the work was light and healthful, the hours short, with surroundings clean and moral, and that she was anxious to continue it for the compensation she was receiving and that she did not earn more. Her services were satisfactory to the Hotel Company and it would have been glad to retain her but was obliged to dispense with her services by reason of the order of the board and on account of the penalties prescribed by the act. The wages received by this appellee were the best she was able to obtain for any work she was capable of performing and the enforcement of the order, she alleges, deprived her of such employment and wages. She further averred that she could not secure any other position at which she could make a living, with as good physical and moral surroundings, and earn as good wages, and that she was desirous of continuing and would continue the employment but for the order of the board. An injunction was prayed as in the other case.

The Supreme Court of the District denied the injunction and dismissed the bill in each case. Upon appeal the Court of Appeals by a majority first affirmed and subsequently, on a rehearing, reversed the trial court. Upon the first argument a justice of the District Supreme Court was called in to take the place of one of the Appellate Court justices, who was ill. Application for rehearing was made and, by the court as thus constituted, was denied. Subsequently, and during the term, a rehearing was granted by an order concurred in by two of the Appellate Court justices, one being the justice whose place on the prior occasion had been filled by the Supreme Court member. Upon the rehearing thus granted, the Court of Appeals, rejecting the first opinion, held the act in question to be unconstitutional and reversed the decrees of the trial court. Thereupon the cases were

remanded, and the trial court entered decrees in pursuance of the mandate, declaring the act in question to be unconstitutional and granting permanent injunctions. Appeals to the Court of Appeals followed and the decrees of the trial court were affirmed. It is from these final decrees that the cases come here.

Upon this state of facts the jurisdiction of the lower court to grant a rehearing, after first denying it, is challenged. We do not deem it necessary to consider the matter farther than to say that we are here dealing with the second appeals, while the proceedings complained of occurred upon the first appeals. That the lower court could properly entertain the second appeals and decide the cases does not admit of doubt; and this the appellants virtually conceded by having themselves invoked the jurisdiction. . . .

We come then, at once, to the substantive question involved.

The judicial duty of passing upon the constitutionality of an act of Congress is one of great gravity and delicacy. The statute here in question has successfully borne the scrutiny of the legislative branch of the government, which, by enacting it, has affirmed its validity; and that determination must be given great weight. This Court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an act of Congress until overcome beyond rational doubt. But if by clear and indubitable demonstration a statute be opposed to the Constitution we have no choice but to say so. The Constitution, by its own terms, is the supreme law of the land, emanating from the people, the repository of ultimate sovereignty under our form of government. A congressional statute, on the other hand, is the act of an agency of this sovereign authority and if it conflict with the Constitution must fall; for that which is not supreme must yield to that which is. To hold it invalid (if it be invalid) is a plain exercise of the judicial power — that power vested in courts to enable them to administer justice according to law. From the authority to ascertain and determine the law in a given case, there necessarily results, in case of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of no effect and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the court, to the determination of which must be brought the test and measure of the law.

The statute now under consideration is attacked upon the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment. That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause, is settled by the decisions of this Court and is no longer open to question. . . . In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining.

In *Adair v. United States, supra*, Mr. Justice Harlan, speaking for the Court, said:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. . . . In all such particulars the employer and employe have equality of right, and any legislation that disturbs that

equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

In *Coppage v. Kansas, supra* (p. 14), this Court, speaking through Mr. Justice Pitney, said:

"Included in the right of personal liberty and the right of private property — partaking of the nature of each — is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense. . . .

There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances. Whether these circumstances exist in the present case constitutes the question to be answered. It will be helpful to this end to review some of the decisions where the interference has been upheld and consider the grounds upon which they rest.

(1) Those dealing with statutes fixing rates and charges to be exacted by businesses impressed with a public interest. There are many cases, but it is sufficient to cite *Munn v. Illinois*, 94 U.S. 113. The power here rests upon the ground that where property is devoted to a public use the owner thereby, in effect, grants to the public an interest in the use which may be controlled by the public for the common good to the extent of the interest thus created. . . .

(2) Statutes relating to contracts for the performance of public work. . . .

(3) Statutes' prescribing the character, methods and time for payment of wages. Under this head may be included *McLean v. Arkansas*, 211 U.S. 539, sustaining a state statute requiring coal to be measured for payment of miners' wages before screening. . . .

(4) Statutes fixing hours of labor. It is upon this class that the greatest emphasis is laid in argument and therefore, and because such cases approach most nearly the line of principle applicable to the statute here involved, we shall consider them more at length. In some instances the statute limited the hours of labor for men in certain occupations and in others it was confined in its application to women. No statute has thus far been brought to the attention of this Court which by its terms, applied to all occupations. In *Holden v. Hardy*, 169 U.S. 366, the Court considered an act of the Utah legislature, restricting the hours of labor in mines and smelters. This statute was sustained as a legitimate exercise of the police power, on the ground that the legislature had determined that these particular employments, when too long pursued, were injurious to the health of the employees, and that, as there were reasonable grounds for supporting this determination on the part of the legislature, its decision in that respect was beyond the reviewing power of the federal courts.

That this constituted the basis of the decision is emphasized by the subsequent decision in *Lochner v. New York*, 198 U.S. 45, reviewing a state statute which restricted the employment of all persons in bakeries to ten hours in any one day. The Court referred to *Holden v. Hardy, supra*, and, declaring it to be inapplicable, held the statute unconstitutional as

an unreasonable, unnecessary and arbitrary interference with the liberty of contract and therefore void under the Constitution.

Subsequent cases in this Court have been distinguished from that decision, but the principles therein stated have never been disapproved.

In the Muller Case the validity of an Oregon statute, forbidding the employment of any female in certain industries more than ten hours during any one day was upheld. The decision proceeded upon the theory that the difference between the sexes may justify a different rule respecting hours of labor in the case of women than in the case of men. It is pointed out that these consist in differences of physical structure, especially in respect of the maternal functions, and also in the fact that historically woman has always been dependent upon man, who has established his control by superior physical strength. The cases of Riley, Miller and Bosley follow in this respect the Muller Case. But the ancient inequality of the sexes, otherwise than physical, as suggested in the Muller Case (p. 421) has continued "with diminishing intensity." In view of the great—not to say revolutionary—changes which have taken place since that utterance, in the contractual, political and civil status of women, culminating in the Nineteenth Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point. In this aspect of the matter, while the physical differences must be recognized in appropriate cases, and legislation fixing hours or conditions of work may properly take them into account, we cannot accept the doctrine that women of mature age, *sui juris*, require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances. To do so would be to ignore all the implications to be drawn from the present day trend of legislation, as well as that of common thought and usage, by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships. In passing, it may be noted that the instant statute applies in the case of a woman employer contracting with a woman employee as it does when the former is a man.

If now, in the light furnished by the foregoing exceptions to the general rule forbidding legislative interference with freedom of contract, we examine and analyze the statute in question, we shall see that it differs from them in every material respect. It is not a law dealing with any business charged with a public interest or with public work, or to meet and tide over a temporary emergency. It has nothing to do with the character, methods or periods of wage payments. It does not prescribe hours of labor or conditions under which labor is to be done. It is not for the protection of persons under legal disability or for the prevention of fraud. It is simply and exclusively a price-fixing law, confined to adult women (for we are not now considering the provisions relating to minors), who are legally as capable of contracting for themselves as men. It forbids two parties having lawful capacity—under penalties as to the employer—to freely contract with one another in respect of the price for which one shall render service to the other in a purely private employment where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement and the other to dispense with the services of a desirable employee. n1 The price fixed by the board need have no relation to the capacity or earning power of the employee, the number of hours which may happen to constitute the day's work, the character of the place where the work is to be done, or the circumstances or surroundings of the employment; and, while it has no other basis to

support its validity than the assumed necessities of the employee, it takes no account of any independent resources she may have. It is based wholly on the opinions of the members of the board and their advisers— perhaps an average of their opinions, if they do not precisely agree—as to what will be necessary to provide a living for a woman, keep her in health and preserve her morals. It applies to any and every occupation in the District, without regard to its nature or the character of the work.

The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals. The ethical right of every worker, man or woman, to a living wage may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and with every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound at all events to furnish it. The moral requirement implicit in every contract of employment, viz, that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the employee are alone considered and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. . . .

Finally, it may be said that if, in the interest of the public welfare, the police power may be invoked to justify the fixing of a minimum wage, it may, when the public welfare is thought to require it, be invoked to justify a maximum wage. The power to fix high wages connotes, by like course of reasoning, the power to fix low wages. If, in the face of the guaranties of the Fifth Amendment, this form of legislation shall be legally justified, the field for the operation of the police power will have been widened to a great and dangerous degree. . . .

It has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint.The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise as well as futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare. To sustain the individual freedom of action contemplated by the Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.

Affirmed.

DISSENT: MR. CHIEF JUSTICE TAFT, dissenting.

I regret much to differ from the Court in these cases.

The boundary of the police power beyond which its exercise becomes an invasion of the guaranty of liberty under the Fifth and Fourteenth Amendments to the Constitution is not easy to mark. Our Court has been laboriously engaged in pricking out a line in successive cases. We must be careful, it seems to me, to follow that line as well as we can and not to depart from it by suggesting a distinction that is formal rather than real.

Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full level of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. Now, I agree that it is a disputable question in the field of political economy how far a statutory requirement of maximum hours or minimum wages may be a useful remedy for these evils, and whether it may not make the case of the oppressed employee worse than it was before. But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound.

Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.

The right of the legislature under the Fifth and Fourteenth Amendments to limit the hours of employment on the score of the health of the employee, it seems to me, has been firmly established. As to that, one would think, the line had been pricked out so that it has become a well formulated rule. In *Holden v. Hardy*, 169 U.S. 366, it was applied to miners and rested on the unfavorable *environment of employment in mining and smelting. In Lochner* v. New York, 198 U.S. 45, it was held that restricting those employed in bakeries to ten hours a day was an arbitrary and invalid interference with the liberty of contract secured by the Fourteenth Amendment. Then followed a number of cases beginning with *Muller v. Oregon*, 208 U.S. 412, sustaining the validity of a limit on maximum hours of labor for women to which I shall hereafter allude, and following these cases came *Bunting v. Oregon*, 243 U.S. 426. In that case, this Court sustained a law limiting the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment to ten hours a day with a proviso as to further hours to which I shall hereafter advert. The law covered the whole field of industrial employment and certainly covered the case of persons employed in bakeries. . . .

However, the opinion herein does not overrule the Bunting Case in express terms, and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum of hours in the limiting of liberty to contract. I

regret to be at variance with the Court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand.

If it be said that long hours of labor have a more direct effect upon the health of the employee than the low wage, there is very respectable authority from close observers, disclosed in the record and in the literature on the subject quoted at length in the briefs, that they are equally harmful in this regard. Congress took this view and we can not say it was not warranted in so doing.

With deference to the very able opinion of the Court and my brethren who concur in it, it appears to me to exaggerate the importance of the wage term of the contract of employment as more inviolate than its other terms. Its conclusion seems influenced by the fear that the concession of the power to impose a minimum wage must carry with it a concession of the power to fix a maximum wage. This, I submit, is a non sequitur. A line of distinction like the one under discussion in this case is, as the opinion elsewhere admits, a matter of degree and practical experience and not of pure logic. Certainly the wide difference between prescribing a minimum wage and a maximum wage could as a matter of degree and experience be easily affirmed.

Moreover, there are decisions by this Court which have sustained legislative limitations in respect to the wage term in contracts of employment. . . . While these did not impose a minimum on wages, they did take away from the employee the freedom to agree as to how they should be fixed, in what medium they should be paid, and when they should be paid, all features that might affect the amount or the mode of enjoyment of them. The first two really rested on the advantage the employer had in dealing with the employee. The third was deemed a proper curtailment of a sailor's right of contract In his own interest because of his proneness to squander his wages in port before sailing. In *Bunting v. Oregon, supra*, employees in a mill, factory or manufacturing establishment were required if they worked over ten hours a day to accept for the three additional hours permitted not less than fifty per cent, more than their usual wage. This was sustained as a mild penalty imposed on the employer to enforce the limitation as to hours; but it necessarily curtailed the employee's freedom to contract to work for the wages he saw fit to accept during those three hours. I do not feel, therefore, that either on the basis of reason, experience or authority, the boundary of the police power should be drawn to include maximum hours and exclude a minimum wage.

Without, however, expressing an opinion that a minimum wage limitation can be enacted for adult men, it is enough to say that the case before us involves only the application of the minimum wage to women. If I am right in thinking that the legislature can find as much support in experience for the view that a sweating wage has as great and as direct a tendency to bring about an injury to the health and morals of workers, as for the view that long hours injure their health, then I respectfully submit that *Muller v. Oregon*, 208 U.S. 412, controls this case. The law which was there sustained forbade the employment of any female in any mechanical establishment or factory or laundry for more than ten hours. This covered a pretty wide field in women's work and it would not seem that any sound distinction between that case and this can be built up on the fact that the law

before us applies to all occupations of women with power in the board to make certain exceptions. Mr. Justice Brewer, who spoke for the Court in Muller v. Oregon, based its conclusion on the natural limit to women's physical strength and the likelihood that long hours would therefore injure her health, and we have had since a series of cases which may be said to have established a rule of decision. . . .

I am not sure from a reading of the opinion whether the Court thinks the authority of *Muller v. Oregon* is shaken by the adoption of the Nineteenth Amendment. The Nineteenth Amendment did not change the physical strength or limitations of women upon which the decision in *Muller v. Oregon* rests. The Amendment did give women political power and makes more certain that legislative provisions for their protection will be in accord with their interests as they see them. But I don't think we are warranted in varying constitutional construction based on physical differences between men and women, because of the Amendment.

I am authorized to say that MR. JUSTICE SANFORD concurs in this opinion.

MR. JUSTICE HOLMES, dissenting.

The question in this case is the broad one, Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special circumstances, or whether we must say that Congress has no power to meddle with the matter at all. To me, notwithstanding the deference due to the prevailing judgment of the Court, the power of Congress seems absolutely free from doubt.The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one would deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States, and of those governments from which we have learned our greatest lessons. When so many intelligent persons, who have studied the matter more than any of us can, have thought that the means are effective and are worth the price, it seems to me impossible to deny that the belief reasonably may be held by reasonable men. If the law encountered no other objection than that the means bore no relation to the end or that they cost too much I do not suppose that anyone would venture to say that it was bad. I agree, of course, that a law answering the foregoing requirements might be invalidated by specific provisions of the Constitution. For instance it might take private property without just compensation. But in the present instance the only objection that can be urged is found within the vague contours of the Fifth Amendment, prohibiting the depriving any person of liberty or property without due process of law. To that I turn.

The earlier decisions upon the same words in the Fourteenth Amendment began within our memory and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts. Without enumerating all the restrictive laws that have been upheld I will mention a few that seem to me to have interfered with liberty of contract quite as seriously and directly as the one before us. Usury laws prohibit contracts by which a man receives more than so much interest for the money that he lends. Statutes of frauds restrict many contracts to certain

forms. Some Sunday laws prohibit practically all contracts during one-seventh of our whole life. Insurance rates may be regulated.

I confess that I do not understand the principle on which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. I fully assent to the proposition that here as elsewhere the distinctions of the law are distinctions of degree, but I perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate. . . .

This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been upheld. I see no greater objection to using a Board to apply the standard fixed by the act than there is to the other commissions with which we have become familiar, or than there is to the requirement of a license in other cases. The fact that the statute warrants classification, which like all classifications may bear hard upon some individuals, or in exceptional cases, notwithstanding the power given to the Board to issue a special license, is no greater infirmity than is incident to all law. But the ground on which the law is held to fail is fundamental and therefore it is unnecessary to consider matters of detail.

The criterion of constitutionality is not whether we believe the law to be for the public good. . . . I could not pronounce an opinion with which I agree impossible to be entertained by reasonable men. If the same legislature should accept his further opinion that industrial peace was best attained by the device of a Court having the above powers, I should not feel myself able to contradict it, or to deny that the end justified restrictive legislation quite as adequately as beliefs concerning Sunday or exploded theories about usury. I should have my doubts, as I have them about this statute—but they would be whether the bill that has to be paid for every gain, although hidden as interstitial detriments, was not greater than the gain was worth: A matter that it is not for me to decide.

I am of opinion that the statute is valid and that the decree should be reversed.

Source: 261 U.S. 525; 43 S. Ct. 394; 1923 U.S. LEXIS 2588; 67 L.Ed. 785; 24 A.L.R. 1238

Questions to be Addressed:

1. What are the basic facts of the case?
2. What are the key points of the majority of the court?
3. What are the key points made by the dissenters of the court?
4. What did the court majority mean when they claimed the Nineteenth Amendment "destroyed the ancient inequality of the sexes?"
5. Why would some women's organizations begin working more vigorously for the passage of an Equal Rights Amendment as a result of this decision?

Working Woman's Need of the Ballot

Florence Kelley was the daughter of a Republican congressman, William Darrod "Pig Iron" Kelley, of Philadelphia, a supporter of Reconstruction and the eight-hour day. She was a graduate of Cornell University in 1882 and received a law degree at night from Northwestern University in Chicago in 1894 after affiliating with Jane Addams at Hull House. A marriage to a Polish Jewish socialist medical student resulted in three children and, ultimately, a divorce. She studied law and government, for a period, in Zurich. In Illinois she quickly became involved in progressive reform where she worked as State Factory Inspector. She wrote a brief defending maximum hours for women in 1893 and became the major power behind the National Consumers' League. (NCL)

In February 1898, Kelley delivered the following speech to the National American Woman Suffrage Association (NAWSA) Convention held in Washington, D.C.

"No one needs all the powers of the fullest citizenship more urgently than the wage-earning woman, and from two different points of view—that of actual money wages and that of her wider needs as a human being and a member of the community.

"The wages paid any body of working people are determined by many influences, chief among which is the position of the particular body of workers in question. Thus the printers, by their intelligence, their powerful organization, their solidarity and united action, keep up their wages in spite of the invasion of their domain by new and improved machinery. On the other hand, the garment workers, the sweaters' victims, poor, unorganized, unintelligent, despised, remain forever on the verge of pauperism, irrespective of their endless toil. If, now, by some untoward fate the printers should suddenly find themselves disfranchised, placed in a position in which their members were politically inferior to the members of other trades, no effort of their own short of complete enfranchisement could restore to them that prestige, that good standing in the esteem of their fellow-craftsmen and the public at large which they now enjoy, and which contributes materially in support of their demand for high wages.

"In the garment trades, on the other hand, the presence of a body of the disfranchised, of the weak and young, undoubtedly contributes to the economic weakness of these trades. Custom, habit, tradition, the regard of the public, both employing and employed, for the people who do certain kinds of labor, contribute to determine the price of that labor, and no disfranchised class of workers can permanently hold its own in competition with enfranchised rivals. But this works both ways. It is fatal for any body of workers to have forever hanging from the fringes of its skirts other bodies on a level just below its own; for that means continual pressure downward, additional difficulty to be overcome in the struggle to maintain reasonable rates of wages. Hence, within the space of two generations there has been a complete revolution in the attitude of the trades-unions toward the women working in their trades. Whereas forty years ago women might have knocked in vain at the doors of the most enlightened trade-union, today the Federation of Labor

keeps in the field paid organizers whose duty it is to enlist in the unions as many women as possible. The workingmen have perceived that women are in the field of industry to stay; and they see, too, that there can not be two standards of work and wages for any trade without constant menace to the higher standard. Hence their effort to place the women upon the same industrial level with themselves in order that all may pull together in the effort to maintain reasonable conditions of life.

"But this same menace holds with regard to the vote. The lack of the ballot places the wage-earning woman upon a level of irresponsibility compared with her enfranchised fellow workingman. By impairing her standing in the community the general rating of her value as a human being, and consequently as a worker, is lowered. In order to be rated as good as a good man in the field of her earnings, she must show herself better than he. She must be more steady, or more trustworthy, or more skilled, or more cheap in order to have the same chance of employment. Thus, while women are accused of lowering wages, might they not justly reply that it is only by conceding something from the pay which they would gladly claim that they can hold their own in the market, so long as they labor under the disadvantage of disfranchisement? . . .

"Finally, the very fact that women now form about one-fifth of the employees in manufacture and commerce in this country has opened a vast field of industrial legislation directly affecting women as wage-earners. The courts in some of the States, notably in Illinois, are taking the position that women can not be treated as a class apart and legislated for by themselves, as has been done in the factory laws of England and on the continent of Europe, but must abide by that universal freedom of contract which characterizes labor in the United States. This renders the situation of the working woman absolutely anomalous. On the one hand, she is cut off from the protection awarded to her sisters abroad; on the other, she has no such power to defend her interests at the polls, as is the heritage of her brothers at home. This position is untenable, and there can be no pause in the agitation for full political power and responsibility until these are granted to all the women of the nation."

Source: Florence Kelley, "Working Woman's Need of the Ballot," NAWSA Convention, Washington, D.C., February 13-19, 1898

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