Muller v. Oregon (1908)

Dangerous and unhealthy working conditions prevailed in American industry at the turn of the century, and regulating them became a major concern of Progressive reformers. In 1903 the Oregon state legislature passed a law mandating that women employed in laundries could be required to work no more than ten hours a day. It was challenged by conservatives as a violation of the right of contract and an infringement of free enterprise. They cited the Court's ruling in Lochner v. New York *(1905) disallowing a law regulating the hours of bakers. Yet the Supreme Court ruled in favor of the Oregon statute. Evidence presented by attorney Louis Brandeis (who later would become a Supreme Court justice) that documented the sociological and medical effects of long working hours on women proved persuasive to the Court.*

From *Muller v. Oregon*, 208 U.S. 412 (1908).

BREWER, J. . . . The single question is the constitutionality of the statute under which the defendant was convicted so far as affects the work of a female in a laundry. . . .

It is the law of Oregon that women, whether married or single, have equal contractual and personal rights with men. . . .

It thus appears that, putting to one side the elective franchise, in the matter of personal and contractual rights they stand on the same plane as the other sex. Their rights in these respects can no more be infringed than the equal rights of their brothers. We held in *Lochner v. New York*, 198 U.S. 45, that a law providing that no laborer shall be required or permitted

to work in a bakery more than sixty hours in a week or ten hours in a day was not as to men a legitimate exercise of the police power of the State, but an unreasonable, unnecessary and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with, and void under, the Federal Constitution. That decision is invoked by plaintiff in error as decisive of the question before us. But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor.

It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis, for the defendant in error is a very copious collection of all these matters. . . .

The legislation and opinions referred to[1] . . . 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 other-wise 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. . .

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. . . .

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. . . .

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

[1] I.e., in Brandeis's brief.

Constitution, so far as it respects the work of a female in a laundry. . . .

Review Questions

1. According to Justice Brewer, why didn't the decision in *Lochner* invalidate the Oregon statute?
2. What role did women perform that was vital to maintaining the "vigor of the race"? How might harsh working conditions interfere with this role?
3. In the eyes of some feminists how might the Court's opinion that women required special legislation produce negative consequences?