

# Index

- abortion and substantive due process, 268
- Ackerman, Bruce, 7–8, 242, 246, 254, 265
- ACLU, 17
- activists. *See* feminist activists
- Adams v. Cronin*, 88, 115
- Adkins v. Children's Hospital*
  - arguments used in, 200
  - impact of, 32, 217
  - as landmark case, 82, 233, 235
  - and liberty, 204–6
  - minimum wage for women, 27, 140, 192–95, 228, 234, 245, 250
  - as precedent, 5, 184–85, 253
  - state's authority to protect women, 239
  - and *West Coast Hotel*, 14
  - and women's health, 216
  - and women's liberty of contract, 221–27
- agenda of Supreme Court, 17
- Ah Lim v. Territory*, 54
- alcohol
  - and morality, 113–17
  - service by wives and daughters, 116
  - women's right to serve, 48, 59–60, 69–70, 88, 99
  - workingman's proclivity for, 174
- alcoholism, 174
- American Civil Liberties Union, 179
- American Federation of Labor (AFL), 96, 152n. 4
- American Federation of Labor v. American Sash & Door Co.*, 266
- American Jewish Congress, 179
- anti-immigrant arguments, 153
- assisted suicide and substantive due process, 268
- Associated Industries v. Industrial Welfare Commission*, 234
- Atkins & Co. v. Town of Randolph*, 56n. 6
- Atkin v. Kansas*, 91, 92, 106–9
- attorneys
  - as gatekeepers, 19
  - as political actors, 16
  - roles, 248
- authority to regulate, 104
- Baer, Judith, 271, 272
- Bailey v. Drexel Furniture Co.*, 141, 228
- baker's work week, 87, 106
- baking as a hazardous occupation, 109
- balance between liberty and police power, 77
- balancing, generalized, 32, 37–75, 244, 251, 260
- balancing, specific, 33, 77–129, 244, 247, 249, 251, 263
- bank failures, 38
- barbers and Sunday work, 87
- barber shops, 233n. 4
- Barbier v. Connolly*, 47, 66n. 8
- bargaining power, 225
  - equality of, 219–20, 222–23
  - lack of access, 191
  - relative, of men and women, 212

- bargaining tools, 219
- bargains between employees and employers. *See* employer/employee, relationship
- Bergman v. Cleveland*, 49, 59–60, 69–70
- biological differences between men and women, 213
- Blair v. Kilpatrick*, 48, 69–70
- Bosley v. McLaughlin*, 140, 142, 144, 146, 153, 161
- described, 160
- Braceville Coal Co. v. People*, 56, 58, 61
- Bradwell, Myra, 44, 47–48
- Bradwell v. Illinois*, 14, 37, 43, 45, 48, 49
- Brandeis, Louis
- and Oregon's limit on women's hours, 128–29
- Progressive attorney, 82, 98, 245, 250
- and women's differences, 117–21, 247, 263
- Brandeis brief, 81–82
- Brewer, Justice, 121
- brief
- factual, 81
- legal, 81
- Brown v. Board of Education*, 6
- Bryant v. Skillman Hardware Co.*, 88n. 2, 110n. 7
- Bryn Mawr summer school, 238
- Bunting v. Oregon*, 134, 141, 173, 177–78
- Burcher v. People*, 89, 124
- Butler, Justice, 189n. 1
- cannery workers, 155n. 6
- Carter v. Carter Coal Co.*, 190, 195, 228, 229
- Cascadian Hotel, 3
- cases between 1873 and 1897, 42–44
- cases between 1898 and 1910, 82–84
- cases between 1911 and 1923, 134–35
- cases between 1923 and 1937, 188–90
- Chaires v. City of Atlanta*, 195
- child labor
- legislation, 56, 87, 141, 252
- regulation of, 110
- childbearing, 86, 137, 263
- and labor legislation, 33
- child rearing, 86, 137, 263
- and labor legislation, 33
- Children's Bureau, 214
- Children's Hospital v. Adkins*, 169
- described, 146–47
- choice of employment, 54–55
- citizenship, 177
- men's duties of, 174–75
- City of Cincinnati v. Correll*, 233n. 4
- City of Cleveland v. Clements Bros. Constr. Co.*, 88
- City of Hoboken v. Goodman*, 88, 116
- class-based justice, 133
- class-based oppression, 167–68
- classes of laborers, protecting, 29
- class issues, 112, 216, 258
- class legislation, 9
- coercion in the workplace, 218
- coercive bargains, 208
- collar-starching business, 79
- collective bargaining, 96
- Commonwealth v. Boston & Maine R.R.*, 142
- Commonwealth v. Boston Transcript Co.*, 193
- Commonwealth v. Fisher*, 110n. 7
- Commonwealth v. Hamilton Manufacturing*
- described, 60–62
- influence of, 42, 49, 98–99, 117
- and police power, 71
- and women's hours of labor, 251
- Commonwealth v. Perry*, 57
- Commonwealth v. Riley*, 140, 159
- conditions of work, 29
- conflicts among judges, 17–18, 19
- Conkle, Daniel, 268
- constitutional development, 241–73
- gendered division of, 131

- constitutional protections, 44  
 “constitutional revolution” of 1937, 2  
 construction workers and hours per day of work, 87  
 Consumers’ League of Connecticut, 158, 198n. 2, 209, 211  
 contract  
   freedom of, 89, 90  
   as mutable concept, 7  
 contract, right to. *See* right to contract  
 contracts, ability to make, 52  
 Cooley, Thomas, 41, 50–51  
*Coppage v. Kansas*, 141, 173, 176  
*Court of Industrial Relations v. Charles Wolff Packing Co.*, 142  
 courts as political institutions, 15  
 Cover, Robert, 16  
*Cronin v. Adams*, 83, 88, 99, 113–17  
 Cushman, Barry, 7, 9–10, 243, 259
- dangerous employment, 143–44  
 dangers of overwork, 235  
 debates during early years, 44–50  
 decision making, constitutional, 16  
 defining liberty, 52–59  
 Department of Labor, 229  
 Dewson, Mary, 200, 214  
 differences between men and women, 122–23, 157, 161  
 differences between men’s and women’s labor, 137  
 disagreement within the feminist community. *See* feminist activists  
 disempowered workers, 147  
 divisions between feminist reformers. *See* feminist activists  
 doctrine  
   development of, 29, 131, 246–55  
   production of, 18  
 domestic labor, 155n. 6  
*Dominion Hotel v. Arizona*, 140  
*Dominion Hotel v. State*, 140  
*Donham v. West Nelson Mfg. Co.*, 195, 228  
*Dred Scott* case, 46
- Dreier, Margaret, 80  
 drinking. *See* alcohol  
 due process  
   as concept, 17, 37, 46–47, 50–62  
   and labor regulations, 40, 179  
   and limit on state’s power, 248, 251  
   and women’s protective labor legislation, 138, 139  
 due process, substantive. *See* substantive due process  
 due process clause  
   and economic regulations, 5  
   of Fifth Amendment, 232  
   in Fourteenth Amendment, 4, 24, 72, 82, 244  
   and labor regulations, 40–41  
   liberty under, 23, 89–102, 260  
   use of, 32  
 Dworkin, Ronald, 16
- economic autonomy, 8  
 economic class interests, 160  
*Eden v. People*, 47, 57, 66n. 8  
*Ellis v. U.S.*, 87  
 Ely, James, 41  
 emancipation of women, 204  
 emergency measures in World War I, 133  
 employer/employee  
   bargains between, 33  
   inequity, 172  
   relationship, 73, 78, 90, 136–37, 156, 172, 183  
   unequal bargaining power between, 107  
 employment, dangerous, 143–44  
 employment, state’s interest in, 224  
 employment contracts, minimum standards for, 144  
 employment relationship. *See* laissez-faire model  
 Epp, Charles, 15, 16–17, 242, 243, 248, 266  
 equality, 183–239, 190–91, 202, 245  
   significance of, 234–39

- equal protection, 37, 46, 72, 125, 248  
 equal protection clause, 82, 244  
*Equal Rights*, 210  
 equal rights amendment, 133, 186–87, 248  
 essentialism, 197–98  
*Ex parte Hawley*, 141n. 1  
*Ex parte Hayes*, 48–49, 59–60, 69–70  
*Ex parte Jentzsch*, 55, 66n. 8  
*Ex parte Kazas*, 233n. 4  
*Ex parte Miller*, 140, 155, 162–63  
*Ex parte Spencer*, 88n. 2  
*Ex parte Weber*, 88n. 2  
 exploitation  
     of women employees, 34, 138, 151, 166, 170, 191, 201  
     of workers, 223  
 exploitation, industrial, of women employees, 223, 253  
  
 factual analyses, 105  
 factual brief, 81  
 Fair Labor Standards Act, 1, 229, 230  
 family wage, 96, 237  
*Fatigue and Efficiency*, 133–34  
 fatigue and health, 159  
 fear of immigration, 153  
 federal authority to regulate, 236  
 female-centered mode of analysis, 192  
 female employee. *See* women workers  
 female workers. *See* women workers  
 female workers' hours of labor. *See* women's hours of labor  
 feminine citizenship, 95–96  
 feminist activists  
     conflicts between, 179–80, 192  
     differences among, 133, 138–39, 157, 186–88, 196–200, 245, 248  
     open division among, 235, 270–72  
 feminist opposition, organized, 209  
 Field, Justice, 64  
 Fifth Amendment, 38  
     due process clause, 232  
     First Republic, 8  
*Fiske v. People*, 88  
*Fitzgerald v. International Flax Twine Co.*, 88n. 2  
 formalism, 253  
 Forbath, William, 10, 95n. 4, 243, 259  
*Foster v. Police Commissioners*, 49, 59–60, 69–70  
 “Four Horsemen,” 189  
 Fourteenth Amendment  
     analysis, 37–38, 39, 72  
     due process clause, 4, 24, 244, 248  
     guarantees, 44, 82  
     importance of, 23, 28  
     language of, 45–46  
     limitations under, 243  
     role of, 8, 125, 266  
 Frankfurter, Felix  
     and labor's physical risks, 173–74  
     minimum wage for women, 134, 144–45, 152, 218  
     and Oregon's limits on hours, 245  
     Progressive reformer, 185, 206  
     and substandard wages, 231  
     women's freedom of contract, 200–201  
     women's need for protection, 139, 167–69  
     and women's role in the home, 160  
 freedom of contract, 89  
     lack of, 172  
 Friedman, Barry, 15, 246, 266  
*Frorer v. People*, 47, 57, 61, 65  
  
*G. O. Miller Telephone Co. v. Minimum Wage Commission*, 141n. 1  
*Gasque, Inc. v. Nates*, 233n. 4  
 gay rights and substantive due process, 268  
 gender  
     differences, 28  
     impact on modern welfare state, 241  
     neutrality, 45

- role of, 11–13
- significance of, 255–59
- gendered based analysis, 167–69
- gendered division of constitutional development, 131
- gendered liberty, 52
- gendered rebalancing, 34, 183–239, 250, 253, 257
- gendered versus nongendered arguments, 213
- gendered working class, 165
- gender-neutral protective legislation, 131–32
- gender roles, judges understanding of, 28
- gender-specific legislation, 29–31, 99, 131–32, 218
- generalized balancing, 32, 37–75, 244, 251, 260
- generalizing the gendered arguments, 191–92
- general legislation, 103–11
- general protective labor legislation, 90–95, 138, 171–78, 252, 271
  - constitutionality of, 227
  - See also* protective labor legislation
- Gillespie v. People*, 94n. 3
- Gillman, Howard, 7, 9, 16, 46n. 4, 104, 243, 259
- Godcharles & Co. v. Wigeman*, 57
- Goesaert v. Cleary*, 272
- Goldmark, Josephine
  - Fatigue and Efficiency*, 133–34
  - and labor's physical risks, 173–74
  - minimum wage for women, 144–45, 152, 199, 218
  - and Oregon's limit on women's hours, 128–29
  - Progressive attorney, 98, 198n. 2, 245, 250
  - Progressive reformer, 79, 82, 185, 206
  - and substandard wages, 231
  - and women's differences, 117–21, 247
  - and women's differences from men, 263
  - and women's need for protection, 139, 167–69
  - and women's role in the home, 160
- Goldmark, Pauline, 79
- Gordon, Linda, 23, 241
- Great Depression, 1–2, 34, 204, 224–25, 258
  - economic disruption of, 250, 253
- Hammer v. Dagenhart*, 141, 228, 229
- Hart, Vivian, 247
- Hawley v. Walker*, 139
- hazardous labor, 107
- health
  - of laborers, 233
  - protection of, 106
  - regulations, 126
- Hennington v. Georgia*, 65n. 7
- Henrotin, Ellen, 80
- Hine, Lewis, 79, 104
- historical school, 9
- history, monumental, 254
- Holcombe v. Creamer*, 141
- Holden v. Hardy*
  - as landmark case, 37, 75, 78, 82, 176–77, 223
  - and maximum hours, 232
  - mine worker's hours, 67, 87, 91–92, 119, 255–56
  - and public interest, 99, 105, 262
- Holmes, Justice, 108
- Horwitz, Morton, 10
- hours of labor
  - limits on, 47, 128, 142
  - in work day, 87
  - See also* women's hours of labor
- household appearances, 160
- idealized freedom, 158
- immigration, fear of, 153
- independent woman, 187
- individual employment contracts, 23
- individuality, 94

- industrial commissions, 142  
 industrial conditions, 139  
   impact on workers, 249  
 industrialization, 38, 39, 79, 104, 139, 169  
 Industrial Workers of the World (IWW), 79  
 industry, regulation of, 38  
 infant mortality, 119  
*Inland Steel Co. v. Yedinak*, 88n. 2  
*In re Boyce*, 109  
*In re Considine*, 49, 59–60, 69–70, 272n. 1  
*In re Jacobs*, 47, 55, 57, 66, 68  
*In re Lockwood*, 48  
*In re Maguire*, 48–49, 59–60, 70  
*In re Martin*, 109  
*In re Morgan*, 94n. 3, 108–9  
*In re Opinion of the Justices*, 233n. 4  
  
*Jacobson v. Massachusetts*, 46n. 4  
*Jeffrey Mfg. Co. v. Blagg*, 141  
 judges  
   actions of, 15, 242  
   conflicts among, 17–18, 19  
   and constitutional interpretation, 19  
   as political actors, 16  
   role of, 265, 267  
  
 Kahn, Ronald, 15, 16, 246, 266  
 Kelley, Florence, 80, 81, 82  
 Kens, Paul, 38  
*Keokee Coke Co. v. Taylor*, 141, 172  
 Kessler-Harris, Alice, 23, 115, 155, 272  
  
 labor  
   agitation, 137  
   conditions, 231, 233  
   contracts, 127  
   hazardous, 107  
   politics, 11  
   proper price for, 205  
   risks of, 190–91  
   type of, 107–8  
   *See also specific type of labor*  
 laborer-centered analysis, 131–82, 244, 252  
 laborers, protecting classes of, 29  
 laborers' rights, 183  
 labor legislation  
   gendered nature of, 23  
   legitimacy, 33  
   protective, 25–28  
   women's protective, 33  
 labor/liberty relationship, 54  
 labor market, 225  
   federal intervention in, 1  
 labor's physical risk, 173  
 labor unions, 79  
   protecting members of, 29  
   strikes of, 38  
 lack of endurance in women, 118–19  
 laissez-faire constitutionalism, 10  
 laissez-faire model, 183, 192, 198, 230, 260, 261  
   of employment relationship, 78  
   of male labor, 136  
 laissez-faire philosophy, 90  
*Larsen v. Rice*, 141n. 1  
 laundry workers, female, 117–20  
 law schools, rise of, 17  
 lay activists, as political actors, 16. *See also* feminist activists  
 lay public, influence of, 18–19  
 Lee, Elsie. *See* Parrish, Elsie  
 legal brief, 81  
 legal language  
   expression of, 20  
   of nodes of conflict, 22  
 legal mobilization, 17  
 legal realism, 75, 78, 81, 125–26, 242, 246, 253  
 legal realist reasoning, 128  
 legal system, use of, 44  
 legislation, protective, 37–75  
   of minors, 31  
 legitimacy of protective labor legislation, 33

- Lehman, Justice, 224  
 Leuchtenberg, William, 6  
 liberty  
   of contract, 85, 91–95, 125, 145, 197  
   courts' analyses of, 125–26, 203–7  
   definition of, 52–59, 78  
   under the due process clause, 89–102, 265  
   as a legal concept, 40, 268–69  
   male, 90–95, 142, 202  
   and minimum wages, 196–207  
   as mutable concept, 7  
   new conceptions of, 142–49  
   redefined, 200, 204  
   regulation of, 99  
   right to, 73  
   for women, 34, 142, 244, 250  
   in women's protective labor legislation, 85  
 liberty and police power, 266  
   balance between, 77, 138, 251  
   tension between, 32, 259  
   *See also* police power and liberty  
 liberty-centered analysis, 52  
 limit on labor per day, 141  
 Lipschultz, Sybil, 23, 112, 241  
*Lochner* era, 242, 264  
*Lochner* revisionism, 9  
*Lochner v. New York*  
   demise of, 223, 229, 246  
   as landmark case, 75, 83, 101, 136, 252  
   and liberty of contract, 92, 239  
   political influence of, 4–11  
   and public interest, 108–9  
   significance of, 128, 228  
   sixty-hour work weeks, 87, 98, 106, 117–18  
   and social conditions, 103, 111, 120–21  
   and state's power, 1–2  
 Lockwood, Belva, 44  
 long working days, 173–75  
 lower federal courts, 29  
 low wages, 208  
 Lyons, Willie, 146  
 male-centered mode of analysis, 192  
 male labor, 190  
   as norm, 121  
 male liberty, 90–95, 200  
 male workers, protection of, 74  
 married women's property acts, 52  
 maternalism  
   as ideology, 243, 259, 261, 267, 272  
   tool for activists, 23, 112, 138, 150, 241, 247, 255, 264  
 maximum hours of labor, 29, 81, 229, 232, 233, 257  
   for miners, 67  
   for women, 186, 190  
 McCann, Michael, 242, 243, 248  
*McKay v. Retail Automobile Salesmen's Labor Union*, 266  
*McLean v. Arkansas*, 87  
 McReynolds, Justice, 189n. 1  
 meaning, production of, 20  
 meat-packing plants, 79, 104  
 mechanized labor, 79  
 men's freedom of contract, 220  
 men's hours of labor, 228  
 Middle Republic, 8  
*Miller v. Wilson*, 140, 142, 144, 153, 154, 166  
   described, 159–60  
*Millet v. People*, 67  
 mine worker's hours, 67, 87, 91  
 minimum wage boards, 141, 192  
 minimum wages, 183–239  
   for all workers, 1, 220  
   constitutionality of, 138, 160, 227  
   debate over, 180, 257  
   and gender, 34  
   legal authority to establish, 190  
   legitimacy of, 29, 166, 250  
   mandatory, 152  
   at subsistence level, 167–69  
   for women, 4, 24, 27, 140–41, 144–45, 148, 163, 245

- mining  
     coal, 172  
     as dangerous type of labor, 255  
     health hazards of, 106, 108
- Mink, Wendy, 23, 241, 259, 271, 272
- minors, protective legislation of, 31
- modern welfare state, 241, 242  
     legislative foundations of, 239
- modes of analysis, 132  
     female centered, 192  
     male centered, 192
- monumental history, 254
- moral hazards from low wages, 166
- morality, 115  
     decline in, 168
- moral risks, 174
- Morehead v. New York*, 195, 196, 205, 219, 228
- motherhood, 209, 222  
     significance of, 235
- Muller, Curt, 120
- Muller v. Oregon*  
     and contract of labor, 97  
     described, 119–20  
     and limits on hours, 81, 89, 193, 232  
     and overwork, 82  
     and police power, 114–15  
     and public interest, 111, 260  
     significance of, 128, 154, 222–23, 226, 228, 258  
     as watershed, 136  
     and *West Coast Hotel*, 14  
     and women's differences, 99, 162, 247, 263
- Munn v. Illinois*, 29, 47, 63–65, 67
- Murphy v. Sardell*, 195, 198n. 2, 228
- Nackenoff, Carol, 264, 271, 272
- National Association for the Advancement of Colored People (NAACP), 17, 179
- National Committee on Clarifying the Constitution by Amendment, 229
- National Consumers' League (NCL)  
     middle-class reformers, 111–12  
     and minimum wages, 196, 201, 213  
     and overwork, 82, 177  
     as progressive reformer, 105, 129  
     and protective labor legislation, 81, 96, 98, 150, 186–88, 228, 247  
     and protective measures, 248  
     research by, 117–18, 126, 132–33, 152, 214, 250  
     and trade unions, 80  
     and unionization, 166  
     and women's biological limitations, 157  
     and women's liberty of contract, 197  
     and women's reproductive role, 209
- National Woman's Party  
     beliefs, 220  
     and equality, 197, 199, 212, 213, 226, 248  
     and equal rights amendment, 133, 186–87  
     and minimum wages, 196, 202  
     publisher of *Equal Rights*, 210
- National Women's Trade Union League (NWTUL)  
     middle-class reformers, 112  
     and minimum wages, 196  
     and protective labor legislation, 96, 150, 186–88, 247  
     reforming organization, 80  
     research by, 126  
     and unionization, 212  
     and women's liberty of contract, 197
- Nebbia v. New York*, 9
- negotiation, period of, 14
- New Deal, 1–2, 4, 7–8
- New Deal legislation  
     failure of early, 10  
     impact of *West Coast Hotel*, 5
- Newman, Pauline, 164–66, 238



- night work for women, 124, 140, 194, 226  
 Nineteenth Amendment, 132–33, 180, 185, 204  
   and equality, 226, 253  
   and feminist activity, 33  
*Noble v. Davis*, 233n. 4  
 nodes of conflict  
   benefit of study, 254  
   development of, 15–22, 40, 264–65  
   early, 37  
   factors of, 21  
   importance of, 20  
   language of, 22  
   and women's protective labor legislation, 77, 243–64  
  
*O'Brien v. People*, 93  
*Oklahoma City v. Johnson*, 233n. 4  
 ordered home, 158, 202  
 Orren, Karen, 259  
 overwork  
   effect of, 111  
   risks of, 177, 235  
   and women, 118, 122, 257  
*Owen v. West Lumber Co.*, 195  
  
*Palmer v. Crawford & Tingle*, 57  
 Parrish, Elsie, 3, 5, 194  
*Parrish v. West Coast Hotel*, 194, 225, 226  
 paternalism toward women, 198  
 payment in scrip, 141, 172  
*People v. Charles Schweinler Press*, 140, 154  
*People v. Chicago*, 140  
*People v. Elerding*, 154, 155, 161–62  
*People v. Ewer*, 70  
*People v. Gillson*, 55, 68  
*People v. Havnor*, 47  
*People v. Kane*, 140, 148, 162  
*People v. Lochner*, 256  
*People v. Metz*, 88, 109n. 6  
*People v. Morehead*, 194, 224, 226  
  
*People v. Orange County Road Constr. Co.*, 88  
*People v. Ritchie*, 42  
*People v. Rosenberg*, 68n. 9  
*People v. Taylor*, 88n. 2  
*People v. Warden*, 140  
*People v. Williams*, 89, 101, 124, 194  
 period of negotiation, 14, 183, 260, 265  
   stages in, 25–28  
 period of specific balancing, 85–89  
*Petit v. Minnesota*, 87  
 physical differences, 226  
 physical risks, 252  
   gendered, 161  
   of labor, 156–57, 225, 257  
 planned litigation, 75  
 polarization of feminists' community. *See* feminist activists  
 police power  
   attorneys' arguments about, 213–21  
   and broader arguments, 156–64  
   definition of, 78  
   extent of reach, 74–75, 207–27  
   limits on, 65–66  
   as mutable concept, 7  
   nature of regulations, 62–66  
   particular authority of, 249  
   and the protection of mothers, 150–56  
   and public interest, 86  
   role of, 62–71, 249  
   scope of, 102–25, 149–71, 191  
   of the state, 37, 50–51, 206–7, 251–52, 269  
   in women's protective labor legislation, 69–71  
 police power and liberty  
   balance between, 77  
   tension between, 40, 72, 259  
   *See also* liberty and police power  
 political influence groups, 104  
 Populist Era, 22  
 Post, Robert, 7, 8, 169

- post-*West Coast Hotel* era, 266  
*Powell v. Pennsylvania*, 47, 53, 66n. 8  
 Pregnancy Discrimination Act, 272  
 presumptively questionable, 231  
 prewar balance of power, 133  
 private businesses, regulation of, 38  
 privileges or immunities clause, 40, 46  
 Progressive Era, 1, 4, 150  
     tensions in, 22  
 Progressive legislation, 77  
 Progressive reformers, 79, 105, 110  
 Progressive women, 3  
 Progressivism, 79  
 property, scope of, 57  
 property rights  
     invasion of, 68  
     in labor, 93  
 prostitution, risk of, 166, 168, 209, 257  
 protecting women and children  
     through men's wages, 232  
 protection for women, special, 247  
 protective labor legislation  
     for all wage laborers, 156–64, 187  
     challenges to, 51  
     constitutionality of, 29–31, 42–43, 82–84, 232, 249  
     developments in, 77  
     disputes over, 72  
     early struggles, 37–75  
     as an equalizer, 219  
     general, 47, 49, 85, 103, 134  
     hostility toward, 188  
     for male workers, 195, 270  
     men as beneficiaries of, 212  
     of minors, 31, 84  
     outcome of, 77  
     for women, 69–71, 80, 100, 103, 206  
     *See also* general protective labor legislation; women's protective labor legislation  
 public health  
     described, 121  
     and general protective labor legislation, 175, 247  
     and labor legislation, 33, 78  
     and police power, 103, 177, 262–63  
     protection of, 67–69  
     and women's liberty, 154  
 public interest  
     and general protective labor legislation, 247  
     and police power, 249, 262–63  
     regulations on behalf of, 64–65, 99  
     and women's liberty, 154  
     and women's protective labor legislation, 137  
 public morality, 114–17  
 public space, 102  
 public versus private regulations, 62–66  
 publishing of minimum wage, 193  
  
*Radice v. New York*, 194, 215, 222, 226  
 railroad workers, 230  
 rebalancing, gendered, 34, 183–239, 250, 257  
 reform, legislative, 247  
 reform advocates, 81  
 reformer's role in the legal process, 129  
 regulation of workers' labor, 183  
 regulatory authority of the state, 39  
 rest periods for women, 140  
 revolution of the 1930s, 28  
 rights of women, 80, 97–98  
 right to contract, 57–59, 91–95, 109, 206, 251, 260  
     women's, 101  
 right to liberty, 73  
 Riis, Jacob, 79, 104  
 risks to laborers, 190–91  
*Ritchie v. People*  
     described, 60–62  
     influence of, 117  
     and police power, 66n. 8, 71  
     and women's hours of labor, 49, 251  
*Ritchie v. Wayman*, 122–23

- role of gender, 11–13  
 Rowe, Gary D., 267
- Schechter Poultry Co. v. U.S.*, 189–90, 228
- scientific evidence, growing role of, 266–67
- Seattle v. Smyth*, 88, 109n. 6
- self-ownership, 94, 97
- Semonche, John, 10
- sex segregation in the workplace, 238
- Shaver v. Pennsylvania Co.*, 53
- Simpson v. O'Hara*, 141n. 1
- Sinclair, Upton, 104
- singular moments, 254
- Skocpol, Theda, 23, 150, 241, 247, 259, 272
- Slaughter-House Cases*, 14, 46, 248
- Smith, Ethel, 212
- Smith Brothers Cleaners & Dyers v. People*, 233n. 4
- Smyth, Chief Justice, 147, 169
- Socialist women, 133
- social scientific research, 137
- social understandings of gender, 28
- specific balancing, 33, 77–129, 244, 247, 249, 251, 263
- Spokane Hotel Co. v. Younger*, 141n. 1
- Stanley, Amy Dru, 52, 247
- state
  - as labor union for women, 219
  - as silent third party, 207
- state courts, 29
- state neutrality, 9
- state's authority to regulate, 183, 236, 265
- State v. Atkin*, 88
- State v. Barba*, 142
- State v. Buchanan*, 88, 99–100, 122
- State v. Bunting*, 142, 177–78
- State v. Crowe*, 141n. 1, 155
- State v. Greeson*, 233n. 4
- State v. Howat*, 142
- State v. J. J. Newman Lumber Co.*, 142, 176
- State v. Julow*, 57, 68
- State v. Kreutzberg*, 94
- State v. LeBarron*, 140
- State v. Loomis*, 55n. 5
- State v. Muller*, 88, 99, 122
- State v. Peel Splint Coal Co.*, 47, 57, 58
- State v. Rose*, 88n. 2
- State v. Safeway Stores*, 233
- State v. Shorey*, 88n. 2
- State v. Sommerville*, 155
- status of women, attention to, 243
- statutory living wage, 197. *See also* minimum wages; substandard wages
- Stephens, Francis, 200
- Stettler v. O'Hara*, 134, 140, 141n. 1, 148, 152, 162, 170, 201
  - and substandard wages, 231
- Stevenson v. St. Clair*, 188, 195
- Street v. Varney Electrical Supply Co.*, 88
- strikes, labor, 79
- Strong, Justice, 64
- subsistence wage, 167–68
- substandard wages, 231. *See also* minimum wages; statutory living wage
- substantive due process
  - defined, 12
  - economic, 27
  - evolution of, 13, 25, 50, 264
  - legitimacy of, 77, 235
  - and liberty, 206
  - political influence of, 128
  - scope of, 24, 267–68
  - and women's rights, 28, 252
- substantive rights, protection for, 39
- suffrage, 180
- Sunstein, Cass, 7, 8, 145, 174, 265, 268
- Supreme Court and New Deal, 5
- Supreme Court's agenda, 17
- Sutherland, Justice, 189n. 1, 226, 227
- Taft Court, 8, 133
- Tepel v. Sima*, 233

- The Jungle*, 104  
 Third Republic, 8  
 Tipaldo, Joseph, 194–95  
 Title VII, 272  
*Topeka Laundry Co. v. Court of Industrial Relations*, 193  
*Treatise on the Constitutional Limitations*, 50  
  
 unemployment, 211  
 union attitudes, 152n. 4  
 union dues as a financial hardship, 211  
 unionization  
   membership, 79  
   women's lack of, 170, 173, 257, 261, 271  
   of working women, 112, 165–66, 199, 211, 238  
 union-only workplaces, 266  
*U.S. v. Darby*, 229, 232, 251  
*U.S. v. Northern Commercial Co.*, 142  
  
 Van Devanter, Justice, 189n. 1  
 vulnerable groups of individuals, 70  
 vulnerable workers, women as, 103, 224  
  
*W. C. Ritchie & Co. v. Wayman*, 88–89, 100–101  
 wage contract, 90  
 wage-labor sector, 79  
*Walker v. Chapman*, 195, 205  
*Washington v. Somerville*, 140, 162n. 8  
 welfare of the community, 105  
 welfare state, modern, 1, 7, 259  
   origins of, 2  
*Wenham v. State*, 88, 99, 100, 122  
*West Coast Hotel v. Parrish*  
   the case, 3–4  
   and gendered arguments, 258  
   impact of, 5, 32, 227–34  
   interpretations of, 5–7, 13, 251  
   and liberty of contract, 202, 206–7  
   minimum wage for women, 192, 195, 245–46  
   and modern welfare state, 242  
   and New Deal, 5–7  
   role of gender, 11–13  
   the ruling, 221–27  
   tensions of, 24  
   as watershed, 1–3, 5, 10, 253  
 Whittington, Keith, 15  
*Williams v. Evans*, 141n. 1, 148, 215  
 Wilson, Jeremiah, 105  
*Wilson v. New*, 141, 230  
*Withey v. Bloem*, 88, 122  
 wives and daughters serving alcohol, 116  
 women  
   effects of labor on, 132, 134  
   as laborers, 95–97, 98, 111–13, 123, 252  
   minimum wages for, 24  
   as mothers, 250, 252  
   as night workers, 215  
   as problematic laborers, 150, 152, 155, 157  
   as a separate class of laborers, 244  
   serving alcohol, 99, 111  
   as temporary workers, 211  
   as translators of culture, 214  
   as victimized workers, 166, 250  
   as vulnerable workers, 103, 224  
   as weaker sex, 123, 217  
   women in the workplace, 12  
   protection of, 244  
   role of, 34  
   women's bargaining power, 217–18  
   imbalances in, 191  
   women's biological limitations, 157  
   women's capabilities, 102  
   women's capacities, 101, 209–13  
   women's choices of occupation, social restrictions on, 168  
 Women's Christian Temperance Union, 113  
 women's conditions of labor, 82, 222  
 women's connection to children, 119

- women's contribution to society, 153
- women's differences from men  
 and childbearing, 117–18, 150, 256  
 debate over, 190, 208, 244, 250  
 essentialist conceptions, 227  
 and police power, 124, 221–27  
 and protective labor legislation,  
 261  
 vulnerable physically, 139, 171,  
 263  
 and women's protective labor leg-  
 islation, 156
- women's disempowerment as work-  
 ers, 237
- women's duties in the home, 123,  
 155, 201–2
- women's economic risks, 209
- women's employment in World War  
 I, 132–33
- women's equality, 101, 190–91, 196,  
 210, 225–27  
 with men, 185  
 as workers, 120
- women's failure to organize, 164–66
- women's fragility, 210
- women's health, 98, 205, 216  
 role of, 158, 209
- women's health risks, 209, 210
- women's hours of labor  
 battles over, 88–89, 111  
 and liberty, 204–5  
 limits on, 99, 101, 139–40, 163, 165,  
 190, 203  
 and special risks of workers,  
 117–25
- women's individual rights, 133
- women's lack of bargaining power,  
 139
- women's lack of endurance, 118–19
- women's liberty, 100, 102, 170, 179,  
 184  
 of contract, 204  
 as an independent legal category,  
 97–102  
 and minimum wages, 190–91  
 and protective labor legislation,  
 143–44
- women's need for protection, 96
- women's participation in labor and  
 civic life, 132
- women's physical differences, 161–62
- women's physical fragility, 138–39,  
 154, 222
- women's protective labor legislation  
 cases involving, 59  
 central role of, 241  
 and development of doctrine,  
 131–82  
 early absence of, 41–42  
 justification, 150  
 police power in, 69–71  
 rise of, 242  
 as separate category, 78, 111–13
- women's reentry into the home, 153
- women's relationships with employ-  
 ers, 100, 157
- women's reproductive health, 86
- women's reproductive roles, 132, 209
- women's roles as laborers, 12, 132
- women's roles as mothers, 138–39,  
 150, 214, 225, 239, 257, 263,  
 269–70
- women's roles as workers, 271
- women's roles in society, 235
- women's roles in the home, 162, 181
- women's socioeconomic position, 139
- women's subordinate position in the  
 labor market, 164
- women's substantive liberty, 199
- women's suffrage, 132
- Women's Trade Union League of  
 Chicago, 151
- women's trade unions, 133
- women's vulnerabilities, 181, 201,  
 236, 257  
 in the labor market, 197, 252
- women's work, 77  
 limitations on, 89  
 public significance of, 222  
 regulation of, 23, 134

- women's work day, 97–98
- women's work laws, 125–29
- women's work week, 49, 60–62
- women workers
  - and duties to her family, 137
  - and physical infirmities, 137
- workers
  - focus on, 34
  - gender of, 3
  - protection of, 28
  - state protection of, 8
- workers' compensation, 141, 229
- workers' victimization, 164–71
- workers' vulnerability, 104
- working mothers, 215
- workplace, women in the, 12
- workplace injuries, 158
- work week, sixty-hour, 106
- World War I and women's employment, 132–33
- Wright v. Hart*, 93
- Wynehamer v. People*, 56n. 6
- yellow-dog contracts, 141, 173
- youthful women workers, 211