

Constituting Workers, Protecting Women

Constituting Workers, Protecting Women

Gender, Law, and Labor
in the Progressive Era and
New Deal Years

Julie Novkov

Ann Arbor

THE UNIVERSITY OF MICHIGAN PRESS

Copyright © by the University of Michigan 2001

All rights reserved

Published in the United States of America by

The University of Michigan Press

Manufactured in the United States of America

⊗ Printed on acid-free paper

2004 2003 2002 2001 4 3 2 1

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, or otherwise, without the written permission of the publisher.

A CIP catalog record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Novkov, Julie, 1966–

Constituting workers, protecting women : gender, law, and labor in the progressive era and New Deal years / Julie Novkov.

p. cm.

Includes bibliographical references and index.

ISBN 0-472-11198-1 (cloth : acid-free paper)

1. Women—Employment—Law and legislation—United States—History. 2. Labor laws and legislation—United States—History.

I. Title.

KF3555 .N68 2001

344.7301—dc21

00-012900

*For my most constructive critic, best friend,
and loving partner, Joel D. Bloom*

Contents

List of Tables	ix
Acknowledgments	xi
Chapter	
1. Rethinking the Constitutional Crisis of the 1930s: The Forgotten Doctrinal Roots of the Modern Welfare State	1
2. Generalized Balancing: The Early Struggles over Protective Labor Legislation	37
3. Specific Balancing: Regulating Labor and Laborers	77
4. Laborer-Centered Analysis: The Ascendancy of Women's Legislation	131
5. Gendered Rebalancing: Minimum Wages and the Battle over Equality	183
6. Reflecting on Gender, Due Process, and Constitutional Development	241
Appendix on Data and Methods	275
Bibliography	277
<i>Legal Briefs</i>	
<i>Materials from the Women's Movement and Other Contemporary Sources</i>	
<i>Secondary Sources</i>	
Cases Cited	297
<i>Federal Cases</i>	
<i>State Cases</i>	
<i>Cases Decided after West Coast Hotel v. Parrish</i>	
Index	307

Tables

1. Decisions in All Cases Involving Protective Labor Legislation, 1873–1937	30
2. Decisions in Federal Cases Involving Protective Labor Legislation, 1873–1937	30
3. Decisions in State Cases Involving Protective Labor Legislation, 1873–1937	30
4. Decisions in State Cases, Excluding Cases Dealing with Children, Involving Protective Labor Legislation, 1873–1937	31
5. Decisions in All Cases Involving Protective Labor Legislation, 1873–97	43
6. Decisions in State Cases Involving Protective Labor Legislation, 1873–97	43
7. Decisions in All Cases Involving Protective Labor Legislation, 1898–1910	83
8. Decisions in State Cases Involving Protective Labor Legislation, 1898–1910	84
9. Decisions in State Cases, Excluding Cases Dealing with Children, Involving Protective Labor Legislation, 1898–1910	85
10. Decisions in All Cases Involving Protective Labor Legislation, 1911–23	135
11. Decisions in Federal Cases Involving Protective Labor Legislation, 1911–23	135
12. Decisions in State Cases Involving Protective Labor Legislation, 1911–23	136

13. Decisions in All Cases Involving Protective Labor Legislation, 1923–37	189
14. Decisions in Federal Cases Involving Protective Labor Legislation, 1923–37	189

Acknowledgments

A first book is not, for most people, a solo effort. I have been quite fortunate to have the generous and unstinting support of many individuals since beginning this project as a graduate student at the University of Michigan. Without the help of many of these people and institutions, this book would not exist.

Thanks go to the Gerald R. Ford Fellowship Foundation, which generously funded much of my preliminary research in graduate school. A New Faculty Award from the University of Oregon coupled with a Junior Professorship Development Award enabled me to spend much of the summer of 1997 working on the manuscript.

During my time at Michigan, I relied heavily on the critical insights and support of the members of the Michigan Public Law Reading Group, in particular Paula Denney, Steve Dow, George Lovell, and Joan Sitomer. The members of my dissertation committee, Kim Scheppele, Mark Brandon, Don Herzog, Jackie Stevens, and Sonya Rose, provided me with thoughtful and helpful criticism. Kim Lane Scheppele's early enthusiasm and stalwart support carried me through graduate school, and neither the dissertation nor the book would ever have been completed without Mark Brandon's assistance.

Upon arriving at Oregon, I found a department that was dedicated to helping junior faculty members to succeed. Many of my colleagues from fields and methodological approaches far different from mine were encouraging and supportive. Deborah Baumgold and Ron Mitchell were always available with sage and pragmatic advice, and Deborah was a wonderfully protective chair for a new faculty member. Amy Ash helped me through some frustrating and difficult times. Irene Diamond encouraged me to expand my vision. In Gerry Berk I found a mentor and friend who enabled me to find my critical voice. His support, insight, and willingness to read problematic drafts went far beyond the bounds of duty and probably sanity. If every junior faculty

member were fortunate enough to have a colleague like Gerry, our profession would be a happier and more productive one.

I also had substantial assistance from friends and colleagues outside of Oregon. Barry Friedman generously read the entire manuscript and provided invaluable feedback. Chuck Myers helped me to frame the project more effectively. Judy Baer, Ron Kahn, Howard Gillman, Jim Foster, Lief Carter, and Eileen McDonagh provided encouragement and feedback at various critical stages of the project. The 1998 APSA short course on courts and institutionalism and the 1999 APSA short course on gender, political representation, and civic identity were both quite helpful. The book was also substantially improved through the critical feedback I received at annual meetings of the Law and Society Association, the American Political Science Association, and the Western Political Science Association.

Finally, my family helped me immensely by never losing faith in me, even when I came close to losing faith in myself. My father, Ray Novkov, was always optimistic and supportive. My mother, Diane Novkov, and my aunt, Kristi Derry, inspired me: whenever I think of working women, I think of them. Joel Bloom suffered endless conversations about legal and constitutional doctrine and was always a helpful sounding board for ideas. And Asher Novkov-Bloom helped out in his own special way by being an unbelievably easygoing and delightful baby, keeping his mother grounded and helping her to maintain her sense of humor during the process of turning the dissertation into a book.