

1910, where he displayed a willingness to create an enhanced set of government-ordered rules for the operation of the private marketplace. Wilson's "New Freedom" inaugural address of 1913 somewhat similarly assails the human price of American economic progress and reaffirms a role for government in ensuring equality of opportunity to all citizens. Document 5, the Clayton Anti-Trust Act of 1914, a Wilsonian measure reflecting the antimonopoly philosophy of advisor Louis Brandeis, is perhaps most notable for its attempt (a failure in practice) in Section 6 to shield labor unions (who overwhelmingly supported the Democratic Wilson) from prosecution for restraint of trade.

### 1. The Supreme Court Accepts Limits on Working Women's Hours: *Muller v. Oregon*, 1908

*Justice Brewer.* 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. . . .

. . . 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 [in the brief] 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. . . .

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

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

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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 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.*

## 2. Charles McCarthy Inventories Wisconsin's La Follette-Era Reforms (1909-1911), 1911

The following proposed amendments to the constitution were adopted this year [1911]:

The initiative, referendum.

Providing that the salaries of members of the legislature shall be \$600 per annum, instead of \$500 for each biennial session.

Permitting cities to acquire lands for park purposes.

Permitting the state to install a system of insurance against sickness, death, accident and invalidity.

Permitting the state to appropriate for internal improvements—"for the purpose of acquiring, preserving and developing the water power resources and forests of the state"; limiting the appropriation therefore to a  $\frac{2}{10}$  of a mill tax on the property of the state.

Empowering the legislature to provide for the recall of any public elective officer, except judges.

Declaring "all laces, mineral rights, water powers and other natural resources of natural wealth within the state which are now or may thereafter become the property of the state, shall remain forever the property of the state and shall not be alienated"; permitting the state to lease or rent such resources; and providing that all mineral rights hitherto reserved in contracts, deeds or instruments conveying real estate are abolished after Jan. 1, 1920, and are declared to inhere to the state except where they have been developed in full or in part prior to Jan. 1, 1920.

The following constitutional amendments were adopted at the 1909 and also the 1911 session and will be submitted to the people at the general election in 1912:—

Permitting municipalities to acquire land within or outside their limits, for park or other public purposes and to plat or sell any part of such land for the purpose of adding to a fund for the maintenance of parks, playgrounds, etc.

Charles McCarthy, *The Wisconsin Idea* (New York: Macmillan, 1912).