contract that it represents. Indeed, the maximum hours law for bakery workers whose constitutionality was being challenged is exactly the kind of law that exceeds the legitimate authority of the state.

In arguing that liberty of contract has been misunderstood, Bernstein seems to believe that there is something intellectually dishonest and illegitimate about how certain widely accepted liberal constitutional doctrines came into being. If we only knew the truth about the lineage of the constitutional right to privacy or the beginnings of equal protection jurisprudence, then we might look at liberty of contract in a more favorable light. Thus, Bernstein has done more than rehabilitate *Lochner* historically and attempt to remove it from the anticanon. He has illustrated how certain constitutional understandings can rise from the dead. Sooner rather than later, liberals will have to come to terms with the reality of libertarian constitutional theory and Tea Party popular constitutionalism. In contemporary constitutional theory, what *Lochner* symbolizes—the normative rejection of the New Deal—is ultimately what matters. Thus, there still is something to be said for continuing to print the legend.

Reference

Gillman, Howard (1993) *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence*. Durham, NC: Duke Univ. Press.

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Perceptions in Litigation and Mediation: Lawyers, Defendants, Plaintiffs, and Gendered Parties. By Tamara Relis. New York: Cambridge University Press, 2009. 279 pp. $90.00 cloth.

Reviewed by Robert Dingwall, Dingwall Enterprises and Nottingham Trent University

This book is based on Relis's PhD thesis for the London School of Economics and displays both the strengths and the weaknesses of its origins. A particular strength is its comprehensive bibliography—Relis has read everything worth reading in the U.S. literature, although, oddly, the UK coverage is a bit thin, with a rather slight treatment of Hazel Genn's work and no reference to the important contributions from Gwyn Davis and various associates. Although Relis might argue that Davis focuses on family mediation, while she

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deals with civil disputes, she makes extensive use of other family mediation research, and Davis's findings about clients' desire for their lawyers to act as their partisans do challenge parts of Relis's argument.

The core data are a set of interviews, questionnaires, and observations of parties and professionals involved in 64 medical injury disputes in the Toronto region. Some of the lawyers were specialist repeat players involved in multiple cases, plaintiffs and defendant physicians could not always be interviewed, and observation was restricted to seven sessions. As a result, Relis's sample of actors is relatively small. None of these difficulties are unfamiliar to mediation researchers using qualitative methods, but they are important in assessing the claims that are made, particularly in the gender analysis. The data are stretched very thinly to sustain this, and they are not well supported by the citations: Relis makes heavy use of early works by Gilligan and by Tannen, which have been subjected to considerable subsequent critical revision and refinement.

The main findings are familiar. Lawyers and parties occupy parallel social worlds in which lawyers are focused on negotiation, money, and settlement and plaintiffs, at least, are concerned with justice, voice, and moral accountability. Lawyers prefer evaluative mediations, in which clients are forced to acknowledge the realities of the civil justice system, while clients prefer facilitative mediations, in which they get to tell their stories and force the lawyers to engage with the emotional dimensions of the dispute. Lawyers come to mediation as a stage in their litigation strategy, frequently to the irritation of plaintiff lawyers, who find they are disclosing their case and getting little information in return. The silence of the defendants frustrates the plaintiffs, who are looking for an explanation of their misfortune and an expression of regret, or an acceptance of fault, that they rarely receive. In part, this silence results from lawyers' mistrust of the degree of confidentiality attached to mediation and their assessment of the risk that concessions will be used against them later. Relis dismisses this concern, but experienced advocates are very good at introducing formally inadmissible evidence by implication or innuendo. Indeed, it could be argued that this is an important courtroom skill.

Relis's recommendations are also familiar. Broadly, she suggests that legal education, practice, and processes need to be reconstructed to bring them closer to the real worlds of their clients—or, more particularly, of plaintiffs. Clearly, lawyers already do a reasonable job of representing the formal economic rationality of defendants' insurers. Relis acknowledges arguments in favor of formality and adjudication but rejects them in favor of a reformed civil justice system in which both trial and settlement give more recognition to the parties' extralegal needs, particularly those of

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the plaintiffs. There is, however, little reflection on whether a public justice system can reasonably be expected to address parties' emotional needs. Indeed, a long line of scholarship would argue that the system's job might be to diffuse the intensity of emotions precisely through its impersonal approach to personal troubles so that settlements, if not resolutions, can be achieved.

One finding that Relis might have pursued further is her observation that her plaintiffs rarely used a language of rights. Given the degree to which the promoters of a "compensation culture" analysis have ascribed this to a shift in the consciousness of claimants to demand monetary reward for their alleged misfortunes as a matter of right, this is potentially an interesting addition to the body of law and society literature that has provided empirical evidence of the hollowness of this analysis.

The book is a useful addition to the mediation literature and will be a valuable starting point for future graduate students. It is certainly worthy of a doctorate for the author's conscientious mapping of the field and her enterprise in compiling a useful set of data, which are, for the most part, handled with due caution, with the exception of the gender analyses. However, the book is heavy going for relatively little news and likely to be of interest mainly to readers with an established specialism in mediation research.

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