

*The courts' sorry record on economic liberties*

## Our Forgotten Constitutional Right

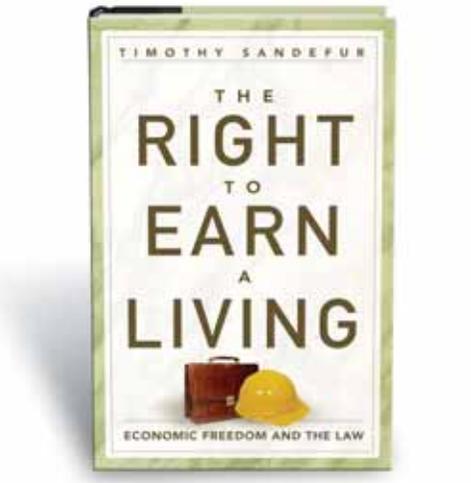
“As is often the case in the law, an error in the past . . . leads not to repentance but to greater confusion and increasingly strained arguments in the present day,” Cato adjunct scholar Timothy Sandefur writes in his new book. That mistake is “the abandonment of serious judicial protection for economic liberty” or, as he calls it, the right to earn a living.

Sandefur, a constitutional expert, attorney at the Pacific Legal Foundation, and author of *Cornerstone of Liberty: Property Rights in 21st Century America*, has made a career defending this right, representing honest, hardworking Americans who want only an honest day’s work, but are kept from it by meddlesome lawmakers and their special-interest supporters. In *The Right to Earn a Living: Economic Freedom and the Law*, Sandefur draws on his experience to tell the story of this often forgotten constitutional right.

Today, many people separate rights into “economic liberties” and “civil liberties.” But as Sandefur shows by looking at the legal evolution of the last 400 years, perceptions didn’t always run this way. The right to earn a living was central to the collapse of feudalism and mercantilism and the rise of liberalism and constitutional republicanism. Respect for the right peaked in the 17th and

18th centuries and then began a rapid decline in the 19th, accelerating with the rise of collectivist political philosophies, when “government power began to gain ascendancy over the individual’s right to pursue happiness.” Sandefur attributes this shift to changing attitudes about the role of the state. “No longer a potential threat to freedom, autonomy, and dignity,” he writes, “the state was seen as the *originator* of these values, and because it created them, the government was allowed to manipulate individual choices.”

Sandefur organizes his book around various legal and constitutional doctrines, explaining how each impacts the right to earn a living and how the courts, when interpreting each, have increasingly acted to erode the right. He describes the death of the Constitution’s privileges or immunities clause in the famous *Slaughterhouse Cases*, when the Supreme Court upheld a state law creating “a monopoly in the slaughtering trade” and “shuttering the businesses of hundreds of Louisiana butchers.” He discusses the much derided—and much misunderstood—*Lochner* decision, a favorite target of ire from progressive legal scholars but, in reality, a carefully considered upholding of the fundamental right to contract. Sandefur agonizes over the emergence of substantive due process and, specifically, the rational basis test, which saw the Court giving



Congress near limitless power to intrude upon American liberties. He addresses the anti-freedom trends in commerce clause doctrine, protection for commercial speech, the enforcement of contracts, tort law, and regulatory takings.

*The Right to Earn a Living* is an important reminder and thorough examination of the basic economic liberties the Constitution—and the amendments made to it in the aftermath of the Civil War—was meant to protect. “Judges will sooner or later have to face the fact that the right to earn a living free from unfair government meddling is an essential component of our cherished right to pursue happiness,” Sandefur writes. “That day must bring about a new birth of freedom.”

Visit [www.catostore.org](http://www.catostore.org) or dial 800-767-1241 to get your copy of *The Right to Earn a Living* today; \$25.95 hardcover.



# P. J. O'ROURKE

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