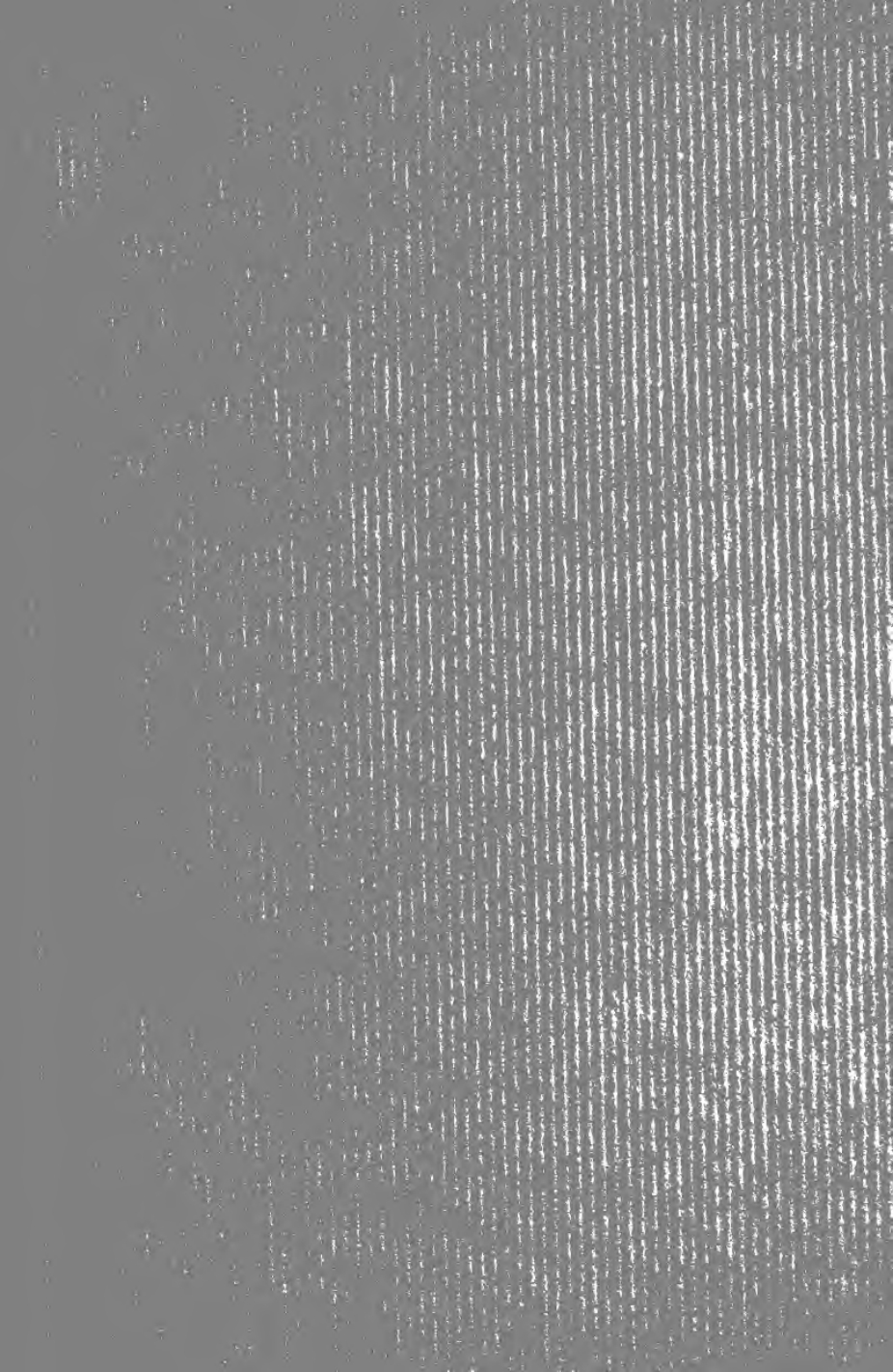

PUBLIC REGULATION OF THE RATE OF WAGES

SWENSON

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BY
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PREFACE

Governmental regulation of rates of wages is a topic of increasing importance. There is a great deal of literature on the subject, much of which is rather bewildering to the student. An attempt has been made here to give a fairly complete historical résumé, and the logical deductions arising therefrom with full references to authorities.

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RINEHART J. SWENSON

September, 1916

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CHAPTER I.

HISTORICAL DEVELOPMENT OF PUBLIC REGULATION OF THE RATE OF WAGES

"Law will be forced to adapt itself to new conditions of society, and particularly to new relations between employers and employees as they arise."[1] In other words, law is a progressive science and adaptable to changing conditions. This is the intelligent principle of expediency and humanity underlying all our labor legislation, enacted in the mutual interest of the employer and the employed, and of society as the ultimate benefactor. The expression of the principle as a legal dictum is a comparatively recent development, but its practical influence can be traced back more than a century in the history of the English speaking peoples, to the year 1802 when the English Parliament passed the first of a series of Factory Acts, which have grown to embrace a large field of remedial legislation in the interest of labor. One of the latest, and perhaps the most controverted, extensions of the principle of the Factory Acts has been the establishment by law of a living wage for certain classes of employees, or for the employees in certain trades and industries.[2] A great deal of legal and historical fiction has been cited by those who oppose the establishment by law of a minimum wage, in their effort to maintain their proposition that legal regulation of the rate of wages is an unwarranted and an unprecedented extension of governmental activity. The many legal and economic objections to legislative interference with the payment of wages will be considered later and in their proper places; it is necessary, first of all, to dispel, if possible, the popular notion that minimum wage legislation is a radical modern experiment without historical precedent. A brief survey of the history of labor legislation in England, Australasia, and the United States—the only coun-

[1] Slaughter House cases, 16 Wallace, 97.

[2] "In 1802 there was enacted the first of the long list of industrial and social measures, which in principle are the same as the demand for the Living Wage, p. 13. . . . The Living Wage is the inevitable outcome, and the natural complement, of the industrial and social legislation of the last hundred years." p. 24, Philip Snowdon, "The Living Wage."

tries that have enacted minimum wage laws[1]—will bear out the earlier statements that law is a progressive science, and that the modern minimum wage law is properly an extension of the English Factory Acts, and, therefore, not a radical departure from the established practices of the past century.

IN ENGLAND

The legal regulation of the rate of wages in England began in 1349 with the first of the long series of Statutes of Laborers. Since August of the preceding year the island had suffered severely from a visitation of the Black Death. It has been estimated that probably one-third of the population of England perished as a result of this dreaded visit.[2] The immediate economic effects—a dearth of labor, an excessive enhancement of wages, and a serious difficulty in gathering the harvest—were, on the face of them, appallingly ruinous; but in truth, the Plague practically emancipated the remaining feudal serfs in England and inaugurated a golden age for English laborers, for during the fifteenth, and the first quarter of the sixteenth centuries wages rose and prices fell in spite of the frantic efforts of the government to frustrate by statute the natural operation of economic laws. In general, the effect of the Plague upon labor was to decrease the supply, increase the demand, and raise the price so high that the land owners were forced to release their tenants from their feudal obligations in order to induce them to remain on the lands and to cultivate them. In consequence of this dearth of labor, harvests were left to rot in the fields and cattle and sheep to roam at large. The King, thereupon, issued a proclamation directing all officers that no higher than customary wages should be paid, under penalty of amercement.[3] As soon as Parliament met, this proclamation was reduced to the form of a statute—the first of the series of Statutes of Laborers that remained laws until the days of Elizabeth. Not only were wages fixed by these statutes, but laborers were forbidden to combine in order to sell their services collectively on the best markets, as the agricultural laborers did after the Plague.

[1] France enacted a minimum wage law applicable to women home workers in 1913. See Appendix, p. 1.
[2] Thorold Rogers, "Work and Wages," p. 223.
[3] Thorold Rogers, "Work and Wages," p. 227.

This was the beginning of formal legal regulation of wages in England. But it should be noted here that this was not the establishment of a legal minimum, but a legal maximum; it was a law for the benefit of the employer, not for the benefit of the employee. Maximum wages were fixed by law until 1824. In fact, the charge has been made that between 1349 and 1824 there was a deliberate conspiracy between the government and those financially interested in its success, to rob, by law, the laborer of the advantage he had gained as a result of the Plague, to cheat him of his wages, to shackle him to the soil, and to degrade him into hopeless penury.[1] Whether the process of debasement was conscious and deliberate or merely the unfortunate result of mistaken governmental policies, as were the Poor Laws of Elizabeth, is not important in this connection; it is sufficient to point out that a long series of governmental acts, beginning with the Statutes of Laborers in 1349 and ending, perhaps, during the first quarter of the nineteenth century, had this demoralizing effect, and our modern social legislation is an attempt, in a great measure, to undo these mistakes of the past.

During the fifteenth century the Statutes of Laborers were openly violated, and, in truth, they had little economic effect until the debased currency of Henry VIII[2] and Edward VI came to their assistance.[3] When labor was paid for in depreciated money, no matter how high the wage, it is easy to anticipate the result: prices rose and real or effective wages fell, and the present labor problem of England emerged.

As if to follow up an advantage gained, Henry VIII destroyed the guilds and confiscated their property, thus taking away from the laborer his one source of assistance in times of difficulty, for in times of need the guilds had loaned him money without interest, had apprenticed his son, or had pensioned his widow.[4] Elizabeth substituted for the Statute of Laborers a similar act, the Statute of Apprenticeship,[5] which empowered the justices in Quarter Sessions to fix the rate of wages in husbandry and the handicraft trades. The abasement of the laborer was now so complete that Elizabeth found it necessary to adopt palliatives to mitigate the most intolerable conditions of the worker's life—

[1] Thorold Rogers, "Work and Wages," p. 398.
[2] Henry put out his first debased money in 1543. Elizabeth restored the old standard in 1560.
[3] Thorold Rogers, "Work and Wages," p. 342-346.
[4] Ibid., p. 346-349.
[5] 5 Eliz., cap. 4.

palliative which, in the opinion of Thorold Rogers, "were rendered necessary by no fault of his, but by the deliberate malignity of Governments and Parliaments.[1] In 1601, therefore, Elizabeth caused to be enacted the famous Poor Law[2] of that year, the first law to supplement wages (for that is what it really did) by taxation. In 1697, in the reign of William III, the law of Parochial Settlement[3] practically finished the work of debasement. This Act required a laborer moving from one parish to another to produce security that he would not be chargeable to the parish of his new residence, thus practically annexing him to the parish of his old residence and making him a serf, as he seldom could furnish the desired security.

The general principles of these acts remained in force until 1824, when the most objectionable were repealed, thus relaxing the strangling grip that law had first placed upon the throat of labor in 1349, and which had tightened with apparent criminal intent for four and three quarters centuries. However, the period of constructive labor legislation may be said to date from the Factory Act of 1802, and, strange as it may seem, just as the Plague in 1348 set labor free, so another epidemic in the closing years of the eighteenth century was destined to turn again the tide in labor's favor by forcing upon a reluctant government in 1802 the first of a progressive series of Factory Acts regulating the hours and conditions of labor. In 1784 an infectious fever broke out among the factory children in Radcliffe, due to the intolerable conditions of the factories.[4] Investigations were made, and as a result Sir Robert Peel put through Parliament the "Health and Morals Apprentices Act, 1802," regulating the employment of apprentices in textile mills and factories. In 1819 another forward step was taken by the passage of a similar act applying to child laborers in the cotton or textile industry.[5] Then in 1824 and 1825 came the repeal of the Combination Laws and the Elizabethan Quarter Sessions assessment of wage law,[6] that is, repressive legislation was henceforth discontinued, but it is to be noted that trade unions were first legalized in the seventies.[1] As it was no longer a

[1] Thorold Rogers, "Work and Wages," p. 398.
[2] 43 Eliz., cap. 3.
[3] William III, 8 & 9 cap. 30.
[4] B. L. Hutchins and A. Harrison, "A History of Factory Legislation," p. 7.
[5] 59 Geo. III., cap. 66. An Act for the Regulation of Cotton Mills and Factories.
[6] Thorold Rogers, "Work and Wages," p. 438.

criminal offence for laborers to combine, unions sprang up in the various trades; and as legal regulation of wages was also discontinued, the unions, through collective bargaining, commenced the modern fight for a living wage.

In 1833 the Factory Acts were extended to include young persons.[2] They were extended to any "Cotton, Woolen, Worsted, Hemp, Flax, Tow, Linen or Silk Mill." The agitation for regulation then turned to adults, particularly to women, and the act of 1844[3] fixed hours of young persons and women at twelve hours a day, and required the owner of factories to fence the gearings and shafts for the employee's protection. In 1847 a ten hour law for "young persons and females" was passed.[4] An Act of 1867[5] extended regulation to a large number of new industries such as iron and copper foundries, steel works, tobacco factories, etc. The Workshops Act of 1867[6] extended the regulation formerly applicable only to factories to workshops; and the consolidated Act of 1878[7] repealed and consolidated the two acts of 1867.

Thus, "beginning with a tentative and imperfect measure of control intended only for the benefit of poor law apprentices for whom the State was already in a measure responsible, the government has been itself compelled by the modest precedent to take first children, then young persons, then women under its protection, and to extend the operation of the acts to one industry after another till nearly the whole field of manufacture has been covered."[8]

From 1878 until 1906—through the Liberal government of Mr. Gladstone and the Conservative government of Mr. Balfour—only a few minor acts were passed to conciliate the working classes; but in the election of 1906 the demands of labor had become so strong that the determining issue in that campaign

[1] The Acts that legalized trade unions: 34 & 35 Vict. ch. 31, Trade Unions act, 1871; 38 & 39 Vic. ch. 86, Conspiracy and Protection of Property Act, 1875; 39 & 40 Vic. ch. 22, Trade Unions Act, 1876. See Hayes, "British Social Politics," p. 87-101.

[2] 314 Will IV. cap. 103, An Act to Regulate the Labor of children and young persons in the mills and factories of the United Kingdom.

[3] 7 & 8 Vict., cap. 15, An Act to Amend the Laws Relating to Labor in Factories.

[4] 8 & 9 Vict., cap. 29, An Act to Limit the Hours of Labor of Young Persons and Females in Factories.

[5] 30 & 31 Vict., cap. 103, The Factory Acts Extension Act.

[6] 30 & 31 Vict., cap. 146, The Workshops Regulation Act.

[7] 41 & 42 Vict., cap. 16, An Act to Consolidate and Amend the Law relating to Factories and Workshops.

[8] B. L. Hutchins and A. Harrison, "A History of Factory Legislation," p. 251.

was social legislation. The Liberal Party, under the leadership of Sir Henry Campbell-Bannerman, came into power, pledged to "a policy of social reconstruction looking toward a greater equality of wealth, and the destruction of the oppressive monopolies of the land and of liquor."[1] In the years since 1896 the Liberal Party has followed a consistent program of social reform, abandoning the familiar high sounding "laissez-faire" theories of individual liberty. The right and duty of the government to interfere with the liberty of the individual, to the extent of prescribing the conditions and terms under which he shall contract for and employ the labor of another, have been asserted in no uncertain manner.

In 1880 was passed the first and rather unsatisfactory Employers' Liability Act, making liability dependent upon negligence. This was superseded, in 1897, by the Workmen's Compensation Act, which asserted, rather timidly, it is true, the new doctrine that the employer must be held personally responsible for the risks he creates for his employees, limiting its application, however, to those employers who were engaged in the most dangerous employments and who could afford to pay. This Act was, in turn, revised in 1900, and made to extend to agricultural laborers and gardeners. In 1906 a new and liberal Workingmen's Compensation Act was passed.[2] The Act of 1897 had excluded all classes of workmen not expressly included; the Act of 1906 reversed the order and included all not expressly excluded.[3] This was a sweeping extension of the law.

In 1909 the Labor Exchanges Act was enacted, "An Act to provide for the establishment of Labor Exchanges and for other purposes incidental thereto.[4] Its purpose was to render assistance to the unemployed. In that same year, on October 20th, Parliament reversed its policy, now nearly one century old, of non-interference directly with the rate of wages, and passed the Trade Boards Act, providing for the establishment of Trade Boards for certain trades in which sweating was prevalent.

This is admittedly but an imperfect sketch of the evolution of the English Trade Boards Act, or Minimum Wage Law; but enough has perhaps been said to establish the earlier statement that minimum wage legislation, as but one phase of legal regula-

[1] Carlton Hayes, "British Social Politics," p. 18.
[2] 6 Edw. VII, ch. 58, Dec. 21, 1906.
[3] Carlton Hayes, "British Social Politics," p. 22-23. Parliamentary Debates, Fourth Series, Vol. 154, cal. 886. Sqq.
[4] 9 Edw. VII, ch. 7, Sept. 20, 1909.

tion of employment, is an old legal principle adapted to present day conditions. We have seen how from 1349 until 1824 a maximum rate of wages was fixed by law in certain industries; we have seen how in the beginning of the nineteenth century the attitude of the government towards labor changed,[1] and how the subsequent development of social legislation demonstrated the proposition that law is a progressive science and adaptable to changing conditions. That the law has moved slowly and at times with unnecessary caution, it would be difficult to controvert; but the progress has been sure if not swift, and he who cannot see from whence and whither the trail leads must needs lack the gift of a clear vision. Indeed it requires no appeal to the imagination to see how short is the step from a maximum to a minimum rate; or from a law fixing the hours of labor, or an act fixing the manner of payment (Truck Act),[2] to a law fixing the rate of payment. Indirectly, too, the need of a living wage was recognized by the Poor Laws; and the Allowance System, which was implied by two statutes near the close of the eighteenth century,[3] virtually provided for a minimum living wage, since "able-bodied laborers should have their wages supplemented by allowances from the overseer, proportionate to the number of their children or the general charges of their family."[4]

AUSTRALASIA[5]

It is necessary to refer but briefly to the development of factory legislation in Australasia. In general the development was along English lines, differing in degree rather than in character. In New Zealand and Victoria the first Factory Acts, in each case, were passed in 1873. In 1894 New Zealand took the first

[1] This was the period of republican ideas and experiments in America and in France, and it was not without its influence on the English public and the English Government.

[2] The Truck Acts dated back to 1464. These Acts forbid the payment of wages otherwise than in the current coin of the realm, that is to say in goods of any kind, either in full or part payment. George Howell, "Handbook of Labor Laws."

[3] 9 Geo. I. cap. 7, and 22 Geo. III., cap. 83.

[4] Rogers, Thorold, "Work and Wages," p. 437. "It is obvious," said John Stuart Mill, "that this (Allowance System) is merely another mode of fixing a minimum of wages; not otherwise differing from the direct mode, than in allowing the employer to buy the labour at its market price, the difference being made up to the labourer from a public fund." Principles of Political Economy, Book II, Chapter XII, 3.

[5] Reeves, William P., "State Experiments in Australia and New Zealand," Vol. II, p. 7-47. Irene Osgood Andrews, "Minimum Wage Legislation," p. 53.

step toward modern minimum wage legislation. In that year the Parliament passed the Industrial Conciliation and Arbitration Act, which went into effect the following year. In Victoria the conditions which inspired the enactment of a minimum wage law were more acute than the conditions in New Zealand, due to a serious industrial depression which grew out of a period of almost unprecedented speculation, following the discovery of gold in Victoria in the fifties; and because the conditions were more acute, the Victorian law was made more effective. The Victorian minimum wage law, the Wage Boards or Special Boards Act, was enacted in 1896.

The difference in the effectiveness of the New Zealand and Victorian Act is due to a really fundamental difference in their nature. The New Zealand Act is aimed primarily at the settlement of trade disputes, whereas the Victorian Act aimed at the evils of the sweating system. Thus there are two types of minimum wage laws in Australasia: The New Zealand type, adopted later by New South Wales,[1] Western Australia, and by the Commonwealth of Australia where the trade disputes are interstate; and the Victorian type, adopted by South Australia, Queensland and Tasmania.[2] It was the Victorian type that was followed by England in the Trade Boards Act of October 20, 1909, and by the eleven American States in 1912, 1913 and 1915.

That these Minimum Wage Acts of Australasia are but an extension of the policy of the Factory Acts is the testimony of Ernest Aves in his "Report to the Secretary for the Home Department on the Wages Boards and Industrial Conciliation Acts of Australia and New Zealand" in 1908. On page 11 of that report he says: "The Special Boards system of Victoria is an extension of the factory legislation of that State, and the legal sanction for the establishment of these Boards is still found in the same act that regulates conditions as regards health and safety. Thus, alike in enactment and in administration, the Special Boards form part of the general system of factory regulation."

[1] Modifications. See Appendix, page 5.

[2] Commonwealth of Australia: Commonwealth conciliation and arbitration act, December 15, 1904. New South Wales: Industrial arbitration act, December 10, 1901. South Australia: Factories act, December 5, 1900, became effective with act of 1906. Tasmania: Wages board act, January 13, 1911. Western Australia: Conciliation and arbitration act, February 19, 1902. Queensland: Wages board act, April 15, 1908. Repealed in 1912 and replaced by the Industrial Peace Act.

THE UNITED STATES

In the several States of the American Union a mass of labor legislation has developed similar to the legislation in England growing out of the Factory Acts. It is necessary to refer to only a few of these acts, such as Employers' Liability, Workingmen's Compensation, and Ten and Eight Hour Laws, to recall to the mind of the reader a great many police regulations directly affecting the relations between the employer and the employed. The United States have moved more cautiously in the direction of social legislation than have England and Australasia. We have been so imbued with the individualistic philosophy that we have permitted the lower stratum of laborers to degenerate into virtual serfs, rather than interfere with the individual's liberty to sell his labor in the market of his own choice, and on his own terms. Society has been criminally negligent in refusing to prevent, earlier, this economic exploitation of these helpless classes. However, the State and Federal police powers are now being invoked for their protection, and this is one of the most hopeful tendencies in American politics today. Under authority of this dynamic power, all our liberal social legislation, looking to the alleviation of the burden of want, is justified. In the United States the step from regulation of the hours and the conditions of labor to the regulation of the rate of wages has been made peculiarly difficult by virtue of the combined opposition of labor unions, who have almost unanimously opposed a legal minimum wage for men, and legalists, who hold that the step is not constitutional. The organized workers have insisted from the beginning upon establishing their own minimum wage scale through organized effort; but they have favored a legal minimum wage for women and minors, since these are not effectively organized, and can, therefore, be easily exploited.[1] Furthermore, it has been generally conceded that the constitutional case against a minimum wage law for women would not be so strong as it would be if men were included. In fact, the Supreme Court of Oregon, in upholding the minimum wage law of that State,[2] hinted that

[1] Official Report of the Executive Council of the American Federation of Labor to the thirty-third annual convention, 1913. Andrews, Minimum Wage Legislation, p. 82.

[2] Stettler v. O'Hara, 69 Ore. 519; 139 Pac. 793 (1914).

a similar law for men might not be upheld. The result has been that of the eleven States that have adopted minimum wage laws not one has included men.

The eleven States are: Massachusetts, Oregon, California, Colorado, Minnesota, Utah, Washington, Nebraska, Wisconsin, Kansas and Arkansas.

These states have not evaded the constitutional difficulties, however, by excluding adult males from the operation of their laws. The right of Oregon to enforce her act was immediately contested in the now famous case of Stettler v. O'Hara.[1] As the Supreme Court of the State upheld the law as a proper exercise of the State's police power, an appeal was taken by the appellant to the Supreme Court of the United States. The case was argued before that court in December, 1914, and the country is awaiting the decision with a great deal of interest. In Minnesota constitutional objections have successfully blocked the enforcement of the law. On November 23, 1914, Judge Catlin of the Ramsey County District Court declared the act unconstitutional on the grounds that it violated the Fourteenth Amendment to the Federal Constitution and delegated legislative power to the Minimum Wage Commission.[2] The case is now before the Supreme Court of the State.

[1] Stettler v. O'Hara, 69 Ore. 519; 139 Pac. 793 (1914).
[2] Ramer Co. v. Evans, District Court, Second Judicial District.

CHAPTER II.

CONSTITUTIONAL ASPECTS OF MINIMUM WAGE LEGISLATION IN THE UNITED STATES

The principal constitutional objections urged to a minimum wage law are: first, it violates the Fourteenth Amendment to the Federal Constitution in that it denies to citizens the right to freedom of contract, it takes property without due process of law and without compensation, and it is not uniform in its operation, and hence is class legislation; secondly, it delegates legislative power to an appointive commission.

The answers to these objections are: first, that the regulation of wages is properly within the police power of a State, and that since the Fourteenth Amendment does not impair or interfere with a State's police power,[1] minimum wage legislation cannot come into conflict with that Amendment; secondly, since the Minimum Wage Commission in no case has discretionary power to make the law, but only to determine when the facts or contingencies, upon which the action of the act is made to depend, exist, such commission does not exercise delegated legislative powers.

THE POLICE POWER

The activities of a government, whatever its form, logically fall under five heads: foreign, military, judicial, financial, and internal affairs. Most important of these is the department of internal affairs, considered from the point of view of the modern conception of a state; and chief among the sovereign powers relied upon by the state for the performance of the duties of this department, is the so-called police power. This power cannot be specifically defined as it is an exceedingly dynamic power growing to fit the social need. The courts have wrestled with

[1] Slaughter House Case, 16 Wallace, 97.

it, but all they have been able to do, beyond giving a very general definition, has been to determine whether or not the matter under consideration in each specific case considered has been a proper exercise of the police power. They have, as intimated, repeatedly defined it in broad and general terms. The Supreme Court of the United States has said: "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage as held by the prevailing morality or strong preponderant opinion to be greatly and immediately necessary to the public welfare."[1] Professor Tucker defines it thus:[2] "Police power is the name given to the inherent sovereignty which it is the right and duty of the government or its agents to exercise whenever public policy, in a broad sense, demands for the benefit of society at large, regulations to guard its morals, safety, health, order or to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires."

According to Professor Ernst Freund,[3] the police power is one of the inherent functions of government; the restraining and compelling power of the government which is exercised for the protection and the furtherance of the public welfare, or the internal public policy. He classifies the interests embraced under the public welfare under three heads: first, the primary social interests of safety, order and morals; secondly, the economic interests; and thirdly, the non-material or ideal and political interests. Of these three spheres of activities, conditions and interests, the first is conceded to fall within the police power, the second is debatable, and the third exempt. If, then, minimum wage legislation can be brought within the first or second of these spheres of the internal public policy, such legislation clearly falls within the police power, being enacted in the interest of the public welfare.

Health and Safety: In all well ordered States the power and the duty of the government to take all proper and needful measures for the protection of the public health is no longer seriously questioned; and, as the whole is no greater and no better than the sum of all its parts, it is clear that the health of the individual is affected with a public interest from which the

[1] Nobel State Bank v. Haskell, 219 U. S., 104.
[2] 8 Cyc. 863, quoted by the Oregon Supreme Court in its opinion in Stettler v. O'Hara, delivered March 17, 1914, and upholding the Oregon minimum wage law.
[3] Freund, Ernst, "The Police Power."

individual cannot even voluntarily dissociate himself.[1] In the interest of the public health, the State has come more and more to interfere in the relations between the employer and the employee, even to the extent of protecting the individual worker against himself. The employer is required to take proper precautions for the safety and health of his employees; and, on the other hand, the employee is not allowed to labor in certain dangerous or responsible employments more than a prescribed number of hours each day. The public health is to be guarded with jealous care, and to this end the protection of the State shall extend even to the generations yet unborn. If, as Professor Freund says, a community may justly assume, under the police power, the guardianship of the health of the unborn generations by forbidding the marriage of persons of near kin, of inebriates, and of persons afflicted with diseases that are likely to affect their progeny, why should not such protection also forbid the maintenance of economic conditions that are seriously impairing the health of whole classes of laborers, and making them wholly unfit for parenthood? Low wages, in the first place, undermine the health of a very considerable number of female[2] workers of the present generation. An insufficient wage means cheap and insufficient food and clothing, unsanitary lodgings, little if any recreation, and little or no medical aid however necessary it may be. Ill health is the inevitable result, and ill health leads to inefficiency, and inefficiency to still lower wages; and so these unfortunate women go the weary rounds of this vicious circle whose final stages too often are some public institution and a pauper's grave. And the mischief does not end here, no, not even with death, for the sins of society are visited upon posterity. Low wages, therefore, in the second place, affect the health of the next generation, for the health of the race is conditioned upon the preservation of the health of our potential mothers, the toilers of today but the mothers of tomorrow. Following are a few representative conclusions of social workers in different parts of the country.[3]

"The wages paid to women workers in most occupations are miserably inadequate to meet the cost of living at the lowest

[1] Holden v. Hardy, 169 U. S., 397.

[2] As American minimum wage legislation applies only to women and minors, the discussion is confined primarily to women workers.

[3] See also Louis D. Brandeis' Appendix to the Briefs Filed on Behalf of the Respondents in the Case of Stettler v. O'Hara, in the Supreme Court of Oregon, p. 5-40.

standard consistent with the maintenance of the health and morals of the workers."[1]

"Low wages means insufficient food, insufficient food unfitness for labor, so that the vicious circle is complete. The children of such parents have to share their privations, and even if healthy when born the lack of sufficient food soon tells upon them. Thus they often grow up weak and diseased and so tend to perpetuate the race of the unfit."[2]

"For health's sake, the community cannot afford to permit its girl members to receive a wage too low for nutrition, or for the refreshment of exhausted strength. It reacts ultimately to the harm of society when a garment worker has weak coffee for breakfast, goes without lunch altogether, and eats two or three sandwiches for dinner, as her habitual diet. She may keep up through her working life, but in her domestic relations she leaves a heritage of weakness and inefficiency. We are all the sufferers when a shop girl continues at her work after vitality has ebbed because her wages are too low to permit treatment or rest."[3]

The findings of these and other investigators more than bear out their conclusions. The Social Survey Committee of Oregon reports that $10 a week "is the very least on which the average self-supporting woman can live decently and keep herself in health in Portland."[4] And yet the committee found that out of 4,523 wage schedules in the various industries of Portland, 2,573, or 56.8 per cent., received less than $10 a week; and information for 1,133 women wage earners in the various industries of twenty-six towns in Oregon, outside of Portland, shows that only the stenographers receive an average wage of $10 a week or more.[5] Conditions in Washington are much the same as in Oregon. The Industrial Welfare Commission, which commenced work in July 1913 and reported in March 1914, found that "$10 a week is approximately the minimum for decent subsistence and that 67 per cent. get less than that amount."[6] The data collected was taken from all parts of the State, and it was found that the average wage rate was approximately $8.00 per week, and that 55.6 per cent. of the mercantile store employees,

[1] Report of the Social Survey Committee of the Consumer's League of Oregon, p. 6.
[2] B. S. Rowntree, in "Poverty—A Study of Town Life," p. 46.
[3] Elizabeth B. Butler, "Women and the Trades," p. 349.
[4] Report of the Social Survey Committee of the Consumers' League of Oregon, p. 67, 1913.
[5] Ibid., p. 22-23.
[6] Report of Industrial Welfare Commission of Washington, p. 77. 1914.

71.2 per cent. of the factory employees, and 72.4 per cent. of the laundry employees received less than $10 a week.[1] According to the report of the Massachusetts Commission on Minimum Wage Boards for 1912, from $9 to $11 is believed to be the living minimum wage for women in that State.[2] The average weekly earnings of the 1,694 women investigated in the candy industry were $5.40. Of the 1,218 women over eighteen years who reported both their earnings and their age, 41 per cent averaged less than $5 and 65 per cent. less than $6 a week. Of the 301 minors employed, 79.8 per cent. averaged less than $5 per week and 93 per cent. less than $6.[3] Of the 2,861 women, over eighteen years, in the retail stores, who reported both their age and their earnings, 10.2 per cent. averaged less than $5 a week and 29.5 per cent. less than $6. Of the 467 minors, 66.4 per cent. averaged less than $4 a week and 96.3 per cent. less than $5.[4] In the laundries the average weekly earnings of the 1,636 women reported on was $6.52. 16 per cent. of the adults earned less than $5 a week; 24.7 per cent. from $5 to $5.99; 19.4 per cent. from $6 to $6.99; and 38.9 per cent. $7 or more.[5] Of the 14,585 female operatives in the New England cotton mills, 40.2 per cent. received less than $6 a week, and 15.3 per cent. received between $6 and $6.99.[6]

In 1911 the Connecticut legislature appointed a commission to investigate the condition of women and children wage earners in Connecticut. The report of the commission, after pointing out that $7 a week is "barely a living wage" for a self-supporting woman or girl, proceeds to show that approximately one-half of the women employed in the cotton, metal, corset, rubber and silk industries receive less than $7 a week for their labor. The percentages given are as follows: cotton, 27.57 per cent.; metal, 46 per cent.; corset, 49.15 per cent.; rubber, 49.65 per cent.; and silk, 56.6 per cent.[7] The National Civic Federation, after an investigation in New York City, made a report in April 1913, in which is found these significant figures. Having determined that $9 a week is the minimum for self-supporting girls in New York, the report goes on to say: "38.65 per cent., or 3,427 of the 8,867 saleswomen, and 51.33 per cent. or 10,073 of all the women em-

[1] Report of Industrial Welfare Commission of Washington, p. 17. 1914.
[2] Report of the Commission on Minimum Wage Boards, Massachusetts, p. 220. 1912.
[3] Ibid., p. 5.
[4] Ibid., p. 113.
[5] Ibid., p. 157.
[6] Ibid., p. 201.
[7] Survey, Vol. 30, p. 736.

ployees, totalling 19,627, in 17 New York stores get less than $8 a week. One store has none selling under $8 and only 64 under $9; while another having two at less than $8 has only five under $9. On the other hand, there are 654 of the total number of feminine employees receiving under $4 and 2,603 getting less than $5."[1] In the District of Columbia, according to the testimony of Miss Obenauer, special agent of the Federal Bureau of Labor, the average weekly pay for saleswomen in department stores, as reported by the pay rolls covering 1,760 women, was $6.55. Cash girls received only $2.[2] Lieutenant Governor Barrat O'Hara of Illinois, and Chairman of the Senate Vice Investigating Committee, issued the following statement on March 6, 1913. The first part is quoted. "The report of our investigators show that there are more than 50,000 girls and women in the city of Chicago who are receiving a salary of $5 a week or less. On this stipend these 50,000 women are struggling for existence with practically no advance or chance for relief in sight. These women are living in furnished rooms and are underfed, according to our investigators. It is safe to say that the great majority of them since they have become wage earners do not know what a full meal means. Half of them live on two meals a day and these meals of the ten or fifteen cent variety. Many of them have to depend for clothes on what more successful friends are willing to give them of cast off garments."[3] Another investigator, Ester Packard, chose at random, from the payrolls of the factories and department stores all over the State of New York, three hundred girls who were receiving less than $10 a week. In her investigation, Miss Packard saw every one of these girls personally and individually. She summarizes her report as follows: "Just keep still," and "Trying to get along." It was this which the three hundred budgets revealed. To one girl, $6 meant "lack of food," to another "poor living quarters," and to yet another "no savings for the rainy day." But invariably it meant to all a cramped subnormal way of life—a mere existence, not a real living.[4]

[1] Survey, Vol. 31, p. 50.

[2] Ibid., Vol. 29, p. 659. "The Report on Condition of Women and Child Wage Earners in the United States (Vol. XVIII, page 23; Vol. I, pages 433 and 436; Vol. II, pages 365, 368; Vol. III, pages 525, 527; Vol. IV, pages 259, 261; Vol. V, pages 41, 45 and 56) shows that of 86,000 women wage earners sixteen years of age and older, over 40 per cent. were receiving less than $6.00 a week and approximately three-fourths were receiving less than $8.00 per week."—Marie L. Obenauer, in Report by A. J. Porter, National Civic Federation, Sixteenth Annual Meeting, Washington, D. C., January 17, 1916. p. 31.

[3] Chicago Daily Newspapers.

[4] Survey, February 6, 1915.

But, says the employer who objects to paying a living wage, a great many of my employees live at home and do not depend upon their earnings for their support; they are working for "pin money," not for a living. It is undoubtedly true that in our towns and villages some girls do work for "pin money," but that is not the case in our large cities, from which the foregoing figures are taken. All the investigators whose reports are familiar to the writer, declare that the number of girls working for "pin money" is a negligible factor, that women are in industry from economic compulsion. A Federal report says: "Of women who work and live at home, 87.7 per cent. of the females of all cities give all of their earnings to the family."[1] In the opinion of the Massachusetts Commission on Minimum Wage Boards the "number who are working in order simply to add to their comforts or luxuries is insignificant."[2] "These figures," says a Kansas City report, referring to the figures quoted in the table which is soon to follow, "explode any notions that many girls living at home go into shops in order to earn 'pin money;' a majority of them pay as much or more into the family as they would have to pay if they were boarding out, but there may be enough 'pin money' girls to help depress the wages of necessitous workers."[3]

The following tables will throw added light upon the question:

CONNECTICUT[4]

Industry	No reporting as to Contributions	Per Cent. Contributing All	Part	None
Metal	770	66.24	33.11	.65
Rubber	307	65.15	34.53	1 worker
Corset	923	74.0	24.27	1.73

KANSAS CITY[5]

Industry	No reporting as to Contributions	Per Cent. Contributing All	Part	None
Factories and Stores	912	23.0	67.0	9.0

[1] Senate Document No. 645, 61st Congress, Second Session, 1911, p. 393.
[2] Report of the Massachusetts Commission on Minimum Wage Boards, 1912, p. 17.
[3] Report on Wage Earning Women in Kansas City. Board of Public Welfare of Bureau of Labor Statistics, 1913, p. 63.
[4] Report of Special Commission to Investigate the Condition of Wage Earning Women and Minors in the State of Connecticut, 1913, p. 201, 216, 229.
[5] Report on the Wage Earning Women in Kansas City. Board of Public Welfare of Bureau of Labor Statistics, Kansas City, 1913, p. 62, 63.

MILWAUKEE[2]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Factories and Stores....	1,078	81.16	18.83	.006

BOSTON[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Factories	478	61.7	36.4	1.9
Stores[1]	239	55.6	38.9	5.5
Stores	2,276	61.7	34.9	3.3

CHICAGO[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Stores	178	78.7	17.4	3.9
Factories	268	81.3	17.2	1.5

MINNEAPOLIS & ST. PAUL[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Stores	94	47.9	44.7	7.4
Factories	129	53.5	44.2	1.5

NEW YORK[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Stores	344	84.3	11.9	3.8
Factories	1,532	88.1	11.3	.6

PHILADELPHIA[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Stores	264	56.8	39.0	4.2
Factories	732	67.9	30.6	1.5

ST. LOUIS[3]

Industry	No reporting as to Contributions	Per Cent. All	Contributing Part	None
Stores	95	77.9	17.9	4.2
Factories	231	74.9	21.2	3.9

[1] From the Report of the Massachusetts Commission on Minimum Wage Boards, 1912, p. 140.

[2] J. R. Commons, "Proposed Minimum Wage for Wisconsin," Wisconsin Consumers' League, Madison, 1913, p. 9, 11.

[3] Senate Document No. 645, 61st Congress, 2d Session, 1911. Data taken from tables on p. 19, 21. Also summarized by Louis Brandeis in his Appendix to Briefs Filed in Behalf of Respondents in Stettler v. O'Hara, in Supreme Court of Oregon, October term, 1913.

But, if the "pin money" argument is sound, then the case against a low wage becomes doubly strong. The argument would justify the payment of less than living wages to women employees who live at home and are not dependent upon their earnings for their living. The objection to this arrangement is evident. If an employer pays these women less than living wages, is he not in receipt of their working energy at less than cost? Who pays the difference? Their parents. What is the character of this payment? A gift or a bounty paid toward the revenues of the employer. The man who would uphold such a reprehensible practice as this should not be argued with, he should be investigated.

Then too, since it is impossible to have one wage schedule for women workers who live at home and another for women "adrift," the practical results of paying the former less than a living wage is to put the latter on the same wage basis. Thus the employer levies tribute indiscriminately upon all; and the pity of it all is that the woman adrift must pay that tribute or fare worse, and as she has no legitimate way to supplement her wages, she must either starve or pay for the means of livelihood with the loss of her virtue. Is it possible to conceive of a more vicious parasitism than this?

In view of these facts, gathered from many reliable sources, it seems evident that there is a very important percentage of women workers who are living on or below the bread line, and whose potential competence as workers and mothers is, in consequence, seriously impaired. Who will maintain that this condition of affairs does not affect the public welfare, the health and material well-being of this and future generations? Is it not within the police power of a State to protect the weak members of society from exploitation, and to make it possible, if it is possible, for the unborn to be well-born? If then the end be legitimate, and in harmony with our ideal of government, should not the legislature possess the choice of means that are conductive to the attainment of this end?

Morals: Turning from a consideration of the relationship of low wages to safety and health, to the relationship between starvation wages and vice, we enter a much disputed sphere. Investigators differ in their conclusions. The consensus of opinion seems to be, however, that although low wages may not be the direct and immediate cause for the fall of many women, still their indirect influence is very disastrous. Poverty is a menace

and a snare. Poverty is an opiate that blunts the moral sensibilities, weakens the will, and makes the descent into an immoral life easy. Once having broken faith with her womanhood, a fallen woman finds little in a life of decency, that is conditioned upon a return to poverty, to attract her away from the criminal ease, luxuries and excitement of the brothel.

But there is a closer relationship between low wages and immorality than through a mere weakening of the will, important as this is. One of the direct results of inadequate wages is to compel thousands of girls to live in cheap boarding or tenement houses.[1] The close quarters in these places permit little if any privacy. Often where there are men and women lodgers in the same house the entrance to the rooms of the men lead through the rooms of the girls, or vice versa.[2] About fifty per cent. of them have no other place than their rooms in which to receive friends.[3] This cannot help but blunt a girl's sense of proper relations with the other sex and foster standards that are prejudicial to an enlightened morality. It is a matter of common knowledge, too, that many of the tenement house landlords expect to make their profits not primarily from the rent, but from a vicious traffic in the virtue of their tenants. Jacob Riis wrote of these landlords in 1901: "We have heard it until it has made our hearts sick, how they traffic in virtue, these vultures, that their pockets may bulge and their diamonds blaze while mothers weep; how girls are snared for the bagnio, and sold by their seducers into a slavery from which death is the only escape, for while they live they must help fill with the wages of their shame the bottomless coffers that buy elections and our liberties."[4]

Another result of a low wage is to leave the recipient nothing for amusements. Says one report: "When it comes to amusements, most of the women have nothing left to spend. Of the 1,568 women who reported on this question, 62 per cent said that they spent no money for pleasure—that it took all their earnings to meet their daily expenses."[5] Yet these girls crave considerable diversion—they want to forget their troubles—they

[1] The Social Evil in Chicago, Report of Vice Commission, 1911, p. 42-43.
[2] Senate Document No. 645, 61st Congress, 2d Session, 1911, p. 66.
[3] Senate Document No. 645, 61st Congress, 2d Session, 1911, p. 62. Report of Commission on Minimum Wage Boards (Massachusetts), 1912, p. 213.
[4] Outlook, October 26, 1901.
[5] Senate Document No. 645, 61st Congress, 2d Session, 1911, p. 73.

want to get away from their cheerless and unsanitary lodgings. As a result they either accept whatever amusement men are willing to give them, or they flock to cheap amusement places, as they are the only ones they can afford.[1] In either case they are subjected to tortuous temptations to which many yield.

Then there is the effect of the attitude of the employer to consider—the employer who does not have to pay a living wage and who assumes that his girl employees supplement their wages from the outside. Take the case of one of the hundreds of girls whose weekly expenses exceed their wages. If she has no relatives or friends to assist her, what is she to do? If she protests to the employer she is met with a "Haven't you a man friend to help support you?"[2] In fact, the attempt on the part of many employers to employ girls who are willing to work for less than a living wage, seems to be nothing less than a barefaced bid for girls who are supplementing their wages immorally, or it is a veiled suggestion to innocent applicants that they are supposed to earn a little on the outside.[3] Miss Evangeline Booth, commander of the salvation army in the United States, while in Minneapolis in the spring of 1913, made the comment: "I know that in New York City, where I make my headquarters, a working girl cannot live without being subjected to strong temptations unless she is paid more than $9.00 or $10.00 a week. This is the situation in New York and I do not believe a girl can live for less in other cities. I know from the results of investigations by the Salvation Army in New York to better the conditions of the working girl, that hundreds of girls are advised to 'go wrong' when they are employed."

Finally, it cannot be controverted that low wages are the immediate cause of the downfall of some girls. According to a report from Kansas City, seventy out of the 300 inmates of houses of ill fame in that city gave low wages as the cause of their downfall.[4] During the investigation in the spring of 1913, by the Illinois Senate Vice Commission, Senator Nels Jual of the Commission said: "The employers think that low wages have nothing to do with immorality among women; the women of the town say it has everything to do with it." The Minne-

[1] Senate Document No. 645, 61st Congress, 2d Session. 1911, p. 93, 94.
[2] Ibid., p. 30.
[3] Ibid.
[4] Report on Wage Earning Women of Kansas City. Board of Public Welfare of Bureau of Labor Statistics, 1913, p. 81.

apolis Morning Tribune for March 8, 1913, reported: "The women witnesses talked in whispers and all to the same effect, namely, that they had been unable to make a living at reputable callings, and so took the downward path." On March 6, 1913, Lieutenant-Governor O'Hara, the chairman of the Commission, said in a public statement (quoted in part above): "In brief this is the situation: environment is responsible for a majority of crime. Women go wrong because they are compelled to. They have to live. Life is dear to us all. . . . The senators declare that if the women of Illinois are being paid starvation wages and that, as a result, many of them are being made the victims of the infamous 'white slave' traffic, it is high time the public take cognizance of such conditions." Elizabeth B. Butler shows the intimate relation between low wages and prostitution by the following examples from Pittsburg: "A girl whose father was killed by an electric crane was the only one of the family old enough to work. Forced by financial means to accept a wage fixed by custom at a point below her own cost of subsistence, much more below the cost of helping to maintain a family of dependents, she drifted into occasional prostitution. Another Pittsburg girl was induced by the bitter need of her younger brothers and sisters to raise her wages from $6 a week to $10 by concessions to her employer, and finally to choose prostitution as a means of support. A comrade of hers came long ago from a country town to work in a cigar factory, but after an unsuccessful struggle with the city, drifted into the same way of life. Without a home to supplement her wages, she caught at what seemed to her the only way of making them meet her needs. In such cases, scarcely typical, but far from uncommon, cause and effect are glaring in their directness."[1]

The underpaid working girl's two-horned dilemma is this: her business employer demands cleanliness, neatness and efficiency, but he is willing to pay her in wages only a part of what she needs to satisfy these conditions. On the other hand, in the sorry business of prostitution those who deal in virtue are willing to pay her well if she will but commercialize her womanhood. What shall she do? That is the problem that is torturing the tempted soul of many a starving girl. Yet wise individuals, who have always basked in plenty, insist that there is no relation between low wages and vice.

[1] Elizabeth B. Butler, "Women and the Trades," p. 347-8.

Protection against Oppression. That the State occupies, with respect to its citizens, a position of "parens patriae," trustee, or guardian, has been repeatedly asserted by the United States Supreme Court.[1] It is the duty of the State, therefore, not only to protect the health and morals of its subjects, but also to extend to them protection against economic oppression. "We hold, therefore," said Professor William F. Willoughby of Princeton University, in his presidential address before the American Association for Labor Legislation in December 1913,[2] that the refusal by the State, which alone has the power of enacting and enforcing general rules of conduct, to determine the minimum conditions of health, security and comfort which the public conscience demands as the birthright of all, its refusal to prevent the exploitation of the weak and helpless through excessive hours of labor or payment of inadequate compensation, and its refusal to insure that due provision will be made, through insurance institutions, or otherwise, against the four great contingencies threatening the economic security of the individual—accident, sickness, old age and inability to work, means its failure to met that duty which it is the prime function of a constitutional government to perform: viz., the protection of the individual against oppression and the guaranteeing to him of the fullest possible enjoyment of life, liberty and the pursuit of happiness." On this understanding of the powers and duties of a state, minimum wage legislation is based. But in the opinion of Judge Catlin,[3] and others who oppose the legal regulation of the rate of wages, the State cannot lawfully become a "pater familias" until our present form of government has been entirely changed; they hold that the enforcement of a minimum wage law is an assumption by the State of this paternalistic power and is expressly prohibited to the State by the Fourteenth Amendment to the Federal Constitution.

The Police Power and the Fourteenth Amendment. The Fourteenth Amendment does not impair the police power of a state to legislate in the interest of the public welfare. This was conclusively determined by the Supreme Court of the United States in the famous Slaughter House Cases[4] in 1873. This same

[1] Missouri v. Illinois, 180 U. S., 208; Kansas v. Colorado, 185 U. S., 125; Mormon Church v. The United States, 136 U S., 1.
[2] American Political Science Review, February, 1914.
[3] Ramer Co. v. Evans, District Court, Second Judicial District, November 23, 1914. Minnesota.
[4] The Slaughter House Cases, 16 Wallace, 36, and 111 U. S., 746.

court said in a later case: "But neither the amendment (Fourteenth)—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate as to increase the industries of the State, develop its resources, and add to its wealth and prosperity."[1] Again the Court has said: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants."[2] Hence the legislatures, when they adopted the Fourteenth Amendment for their respective States, could not enter into a bargain that could be later construed as a surrender of the States' police power to protect the public health and morals.

Freedom of Contract. Both in the economic and the legal sense, freedom of contract is a qualified and not an absolute right. Under the present system of highly specialized division of labor there is practically no mobility of labor. A laborer is proficient only within a very narrow sphere of industry and his contractual power is limited to that narrow field. This applies to the skilled class of laborers. If we consider the class of women workers affected by a minimum wage law, we find a majority of these women living on and below the bread level, and, therefore, almost completely at the mercy of the employer who can force upon them his own schedule of wages. Furthermore, the women in industry are unorganized and cannot bargain collectively with their employers to good effect. Also the abode of many of them is practically fixed. Some haven't the means wherewith to change to another location, and others have families that they must help support. Under these conditions there can be no freedom of contract—not as long as an employer can drive a bargain by starving his employees into submission. The Supreme Court has pointed out the fallacy of the freedom of contract argument in very succinct terms. "The legislature," said the Court in Holden v. Hardy, "has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do

[1] Barbier v. Connolly, 113 U. S., 31.
[2] Stone v. Mississippi, 101 U. S., 816. Other cases: Mugler v. Kansas, 123 U. S., 412; Union Co. v. Landing Co., 111 U. S., 751; Noble State Bank v. Haskell, 219 U. S., 104; Gas Light Co. v. Light Co., 115 U. S., 650.

not stand upon equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority. . . . But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party shall be protected against himself. The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all its parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer."[1] This case upheld a law of Utah which limited the hours of labor for men employed in underground mines, and was certainly a curtailment of the freedom of contract as understood by those who would put a strict construction on the Fourteenth Amendment. An Oregon law, forbidding a woman employed in a laundry to contract to work more than ten hours each day, was also held constitutional by the Supreme Court.[2] The highest court of the State of Oregon said in the recent case of "Stettler v. O'Hara:"[3] "There are many women employed at inadequate wages—employment not secured by the agreement of the worker at satisfactory compensation, but at a wage dictated by the employer. The worker in such a case has no voice in fixing the hours or wages, or choice to refuse it, but must accept it or fare worse."

In the economic sense, therefore, as pointed out in the preceding cases, there is no real freedom of contract. On the other hand, the right to contract is considerably qualified as a legal right. The Supreme Court has said on this point: "It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume

[1] 169 U. S., 397.
[2] Muller v. Oregon, 208 U. S., 412.
[3] Decided March 17, 1914.

any obligations, except for the necessaries of existence; to the common carrier the power to make any contracts releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy. The possession of this power by government in no manner conflicts with the proposition that, generally speaking, every citizen has a right freely to contract for the price of his labor, services, or property."[1] In another case the language of the court is especially explicit and should leave no doubt as to its meaning. "Freedom of contract," said the court, "is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guarantee of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts or deny to government the power to provide restrictive safeguards. Liberty implies the safety from arbitrary restraints, not immunity from reasonable regulations and prohibitions imposed in the interest of the community."[2] Professor Westel Woodbury Willoughby, of Johns Hopkins University, covered the whole field when he said: "A political or constitutional theory which considered the rights of the individual to life, liberty and property as wholly removed, upon their substantive side, from regulation by ordinary legislative act would, however, be destructive of efficient government, if not of political authority itself. It would predicate a régime of individualism that would scarcely be distinguished from anarchy. From this legislative impasse we have been saved by the development of the doctrine of what is known as the 'police power' of the State."[3]

Class Legislation. It is further contended that a minimum wage law contravenes the Fourteenth Amendment to the Constitution in that it is class legislation, because the order of the Commission does not apply uniformly to all sections of the State. But, the fact that a Commission does not fix wage rates for all sections of a State at the same time is not open to a charge of discrimination within the meaning of the Fourteenth Amendment. According to this objection the operation of the law would have to be suspended for years—until the commission

[1] Frisbie v. United States, 157 U. S., 165.
[2] Chicago, B. & Quincy R. R. Co. v. McGuire, 219 U. S., 549.
[3] The American Political Science Review, Feb. 1914. Presidential Address before the Tenth Annual Meeting of the American Political Science Association, "The Individual and the State."

had made investigations and wage determinations for every locality in the State. It has been held that a railroad commission may fix certain freight rates between certain specified points, without at the same time fixing similar rates for all the points of the State.[1] The same rule should apply to wage rates.

Nor can the charge of discrimination be maintained on the ground that the rates vary in different sections of the State. A uniform State-wide schedule of wages would be the grossest of injustice. Under our present laws, every employer affected by a wage determination must pay a "living wage"; and, as the cost of living, upon which a living wage is conditioned, varies in different sections, and in different industries of the same section of a State, simple justice demands that the wage rates be graduated accordingly. The fact of a law being general and uniform is not affected by the number of persons within the scope of its operation.[2] The Constitution does not require that a law to be uniform must operate upon every person in the State, but that it operates uniformly on each class.[2]

The claim of discrimination on the ground that the act applies only to employers employing women and minors is not sustained by the rulings of the courts. That children need special protection is not open to argument, and Justice Brewer, in rendering the opinion of the Court in Muller v. Oregon,[3] said: "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. The difference justifies a difference in legislation, and upholds that which is designed to compensate for some of the burdens which rest upon her."

[1] Louisville Co. v. Garrett, 34 Sup. Ct. R., 48.
[2] McAunich v. R. R. Co., 20 Iowa, 343; Chicago Co. v. Iowa, 94 U. S., 163; Barbier v. Connolly, 113 U. S., 27; State v. Muller, 48 Ore., 252.
[3] 208 U. S., 412.

DELEGATION OF LEGISLATIVE POWER

One of the principal reasons for holding the Minnesota minimum wage law unconstitutional was that, in the opinion of the Court, it delegates legislative power to an appointive commission.[1] It is a familiar rule of law, based upon the theory of the separation of governmental powers, that the legislature cannot delegate any of its constitutional powers to enact laws, but that all strictly legislative functions must be exercised exclusively by the legislative branch of the government. But the defense is a flat denial of the charge that the Commission exercises delegated legislative powers within the meaning of our Federal and State Constitutions. The Commission is an administrative body carrying out the will of the legislature. It does not make the law; it merely determines, under authority of the act itself, when and where the provisions of the law, as determined by the legislature, apply. "The test and distinction," said the Indiana Supreme Court in 1900,[2] "whether a power is strictly legislative, or whether it is administrative, and merely relates to the execution of the statute law, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done. To the latter no valid objection can be made.'" Justice Moore, speaking for the Supreme Court of Oregon in a case upholding the constitutionality of the State Railroad Commission Act, said. "The rule is universal that, as a legislative assembly exercises an authority conferred by the Constitution, it cannot delegate the power to enact laws. It may, however, direct that the application of a statute to a designated district or to a specified state of facts shall depend upon the existence of certain conditions to be ascertained and determined in a particular manner."[3] For instance, the Federal Supreme Court has held that the Congress may delegate to the Secretary of the Treasury the power to prescribe the regulations under which one of its acts shall operate, and to determine whether or not such regulations can be

[1] Ramer Co. v. Evans, Minnesota District Court, Second Judicial District, Nov. 23, 1914. Judge Catlin.
[2] Blue v. Beach, 155 Ind., 121. Also, Cincinnati Co. v. Connors, 1 Ohio State, 77-83.
[3] State v. Corvallis Co., 59 Ore., 450.

made.[1] In line with these decisions is a minimum wage law which delegates to a Commission the power to determine when the facts or contingencies, upon which the action of the act is made to depend, exist.

It is contended that the determination of maximum hours and minimum wages is a legislative question of judgment and discretion, and not an administrative question of fact. But, from the legal point of view, the Commission does not determine either the hours of labor or the rate of wages. The act itself sets the standard, and all the Commission does is to apply this standard to certain sets of facts. The minimum wage shall be the "necessary cost of proper living and to maintain the health and welfare."[2] Is not the determination of what is necessary "to maintain the health and welfare" of women in the various occupations a question of fact? The courts have held that the determination by a Railroad Commission of what is or what is not "adequate service" is a question of fact to be determined by the Commission.[3] There is no practical distinction between the two cases. A similar parallel can be drawn between the determination of wage rates by a Minimum Wage Commission and the fixing of freight rates by a Minimum Wage Commission and the state Commerce Commission. The various Railroad Commission Acts usually set a standard of rates by requiring that they be "reasonable"; the Minimum Wage Laws set a wage standard by requiring that it be "a living wage." When a Railroad Commission determines what rates are "reasonable," it does not exercise any legislative discretion—it merely applies the standard of "reasonableness" to a given set of facts;[4] when a Minimum Wage Commission determines what is a "living wage" for the various localities or industries of a State, it exercises no independent action of its own, no legislative function, it carries out a command of the legislature. In both cases the legislature itself determined that the rates should be "reasonable" and the wage a "living wage."[5] The courts have pointed out that "half the statutes on our books are in the alternative, depending upon the discretion of some person or persons to whom is confided the

[1] Dunlap v. United States, 173 U. S., 65. The same rule was laid down in Union Co. v. U. S., 27 Sup. Ct. Rep., 367.
[2] The California Minimum Wage Law.
[3] Minneapolis Co. v. R. R. Commission, 116 N. W., 905. Brief for Respondents in Stettler v. O'Hara, Supreme Court of Oregon, p. 90-91.
[4] State v. C. M. & St. P. Ry. Co., 38 Minn., 295.
[5] Brief for Respondents in Stettler v. O'Hara. Supreme Court of Oregon, 1913, p. 88.

duty of determining whether the occasion exists for executing them. But it cannot be said that the exercise of such discretion is the making of the law."[1]

Furthermore, it is quite incorrect to contend that the fact that a power vested in an administrative commission is legislative in character is prima facie evidence that the exercise of the power is not constitutional. The absolute line that Montesquieu drew between the three departments of government has, in practice, been widened into an indistinct buffer zone where each of the departments participates, more or less, in the work of the others. The courts have always recognized this overlapping of powers. "The executive," said the Federal Supreme Court in Watkins v. Holman,[2] "in acting upon claims of services rendered, may be said to exercise, if not in form, in substance, a judicial power. And so a court, in the use of a discretion essential to its existence, by the adoption of rules or otherwise, may be said to legislate. A legislature, too, in providing for the payment of a claim, exercises a power in its nature judicial; but this is coupled with the paramount and remedial power." The Minnesota Supreme Court has said on this point: "The principle is repeatedly recognized by all courts that the legislature may authorize others to do things which it might properly, but cannot conveniently or advantageously, do itself. . . . The statute books are full of legislation granting to officers large discretionary powers in the execution of laws the validity of which has never been successfully assailed."[3]

If, then, there is no absolute separation of the powers of government, and if the legislative department may authorize the judicial department to perform executive functions, and the judiciary may assume such obligations, in order to assist the legislature while acting under its "paramount and remedial" power, why cannot the legislature, having a similar end in view, vest in an administrative commission powers which in their nature are legislative? When a legislature leglislates for the public welfare, its discretion cannot be interfered with by the courts unless its action is palpably in excess of its constitutional powers.

[1] Moers v. Reading, 21 Pa., 202, quoted by the court in Dowling v. Lancashire Co., 31 L. R. A., 112; and in the Brief, supra.
[2] 16 Peters, 60.
[3] State v. C. M. & St. P. Ry. Co., 38 Minn., 295.

LEGISLATIVE DISCRETION AND JUDICIAL SUPERVISION

From the very nature of the case, the legislature must possess the choice of means for carrying into execution some power or duty vested in or imposed upon it.[1] The legislature, therefore, possesses wide discretionary powers over which the courts have little or no control. Unless an act of the legislature is unmistakably and palpably in excess of its constitutional powers, the courts are powerless to interfere.[2] Said the Supreme Court in Ogden v. Saunders: "It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the constitution is proved beyond all reasonable doubt."[3] In another case the same Court said: "The legislature, being familiar with local conditions, is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. . . . If there existed a condition of affairs concerning which the legislature of the State, exercising its conceded right to enact laws for the protection of the health, safety or welfare of the people, might pass the law, it must be sustained; if such action was arbitrary interference with the right of contract to carry on business, and having no just relation to the protection of the public health, the act must fail."[4] On the discretionary powers of the legislature when dealing with employment the Court has said further: "The legislature, provided its acts within its constitutional authority, is the arbiter of the public policy of the State. In dealing with the relation of the employer and the employee, the legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and

[1] United States v. Fisher, 2 Cr., 358; McCulloch v. Maryland, 4 Wh., 415; Briscoe v. Bank of Kentucky, 11 Pet., 257.
[2] Jacobson v. Massachusetts, 25 Sup. Ct. Rep., 358; Mugler v. Kansas, 123 U. S., 623.
[3] Wheaton, 270. See also Otis v. Parker, 187 U. S., 606.
[4] McLean v. Arkansas, 211 U. S., 547.

good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression."[1]

A very ingenious argument, devised to put a sweeping limitation on this discretionary power of the legislature, is advanced by a distinguished Minneapolis attorney. He argues as follows: "The exercise of the police power in such cases is to be determined by the nature and extent of the peculiar hazards to health or safety arising out of the connection between the particular class of employees in question with the particular occupation in question. If, from such connection, standing by itself and independent of other causes and conditions, there does not arise peculiar conditions menacing the health, comfort and safety of the employees, then there is no ground for the exercise of the police power in connection with such occupation."[2] According to this argument, it would seem that a girl who is engaged in a perfectly respectable and hygienic employment is not a proper subject for State protection even if it be conclusively shown that, because of an inadequate wage, she is forced to take lodgings in a tenement house that is neither respectable nor hygienic, to live in constant need of nourishing food, and to forego medical aid when she really is in need thereof. It may be admitted that a woman worker is actually deteriorating in body and mind for want of the necessaries of life, yet, unless the peculiar nature of the employment itself directly menaces her health or safety, the police power cannot be invoked to compel her employer, who is using her energy, to pay her a living wage. Is this a case in point: A child is ill with penumonia, and the guardian proceeds to administer a remedy which certain great physicians in Europe have used with reasonable success after all others have failed; but, in the meantime, a friend of the undertaker comes in and insists that this particular remedy should not be used unless the disease has been contracted in a certain definite way. Poverty is a social condition that breeds physical and moral disease, and if the employer is responsible for poverty—and the facts show that he sometimes is—has not the State got just as good a case as if the peculiar nature of the employment itself endangered the public health and safety? If not, the employers of a locality can shift practically the whole burden for improvements, necessitated by a

[1] Chicago, B. & Quincy R. R. Co. v. McGuire, 219 U. S., 549.
[2] Rome G. Brown, "The Minimum Wage," p. 42.

health regulation, to their employees by cutting wages, and this is precisely what they do. They satisfy the health and safety regulations in a way and then proceed to cut wages just as low as our very imperfect competitive system will permit, disclaiming all responsibility for the injurious effects of these starvation wages upon the health and morals of their employees and throwing the whole burden upon society.

The trouble with the above quoted argument is that it is out of tune with our whole social program, and it must give way to a counter argument that is stated in terms of social process. Every progressive measure on our statute books has had to run the gauntlet of arguments similar to those so ably presented there. The conservative forces, disguised under divers cloaks and armed to the teeth with "Let good enough alone" arguments, are jealously guarding every public and private avenue of thought and action, lest progressive heresies be disseminated among our people, and the established order of things be, in consequence, suffered to change. Progress is made not because of these, but in spite of them.

CHAPTER III.

THE TEST OF EXPERIENCE

There are objections urged against minimum wage legislation that cannot be disposed of as easily as can the constitutional difficulties considered in the preceding chapter. If the legal regulation of the rate of wages is otherwise highly desirable, the fact that it might contravene the Constitution would simply be conclusive proof that the best interests of the State demand that we should entertain no sentimental scruples about changing the Constitution; the important consideration is whether or not such regulation is desirable. To show that it is not desirable several practical objections are urged. For instance, it is contended, and not without effect, that a minimum wage will discourage industrial prosperity by driving certain industries out of the state; that it will enhance the vexing problem of unemployment; and that it will reduce the general level of wages by making the minimum wage the maximum. To disprove these allegations, the friends of the legislation point to the experience of Australasia and England. As the laws have been in operation but a few years, however, any positive conclusion as to how they really have worked, and how they will operate in the future, must needs be tentative; but, the statistical data at hand is valuable in pointing out a tendency, and this tendency, it must be admitted, is favorable to the laws.

Practicability. First of all, the laws work. They are enforceable and are enforced apparently with little friction. The official reports from Victoria are to the effect that "the working of the determinations is harmonious and satisfactory,"[1] that "the determinations are well observed, and prosecutions for breaches are few, misunderstandings being usually responsible."[2] The rapid growth of the number of boards and awards is an indication of the workability of the acts. In June 1912, there were, in Victoria,

[1] Report of Chief Inspector of Factories of Victoria, 1909, p. 72.
[2] Official Year Book of the Commonwealth of Australia, 1901-1912, p. 1041.

111 Wage Boards affecting 130,000 employees, and 65 determinations in force; in New South Wales, in December, 1912, there were 157 Industrial Boards and 339 awards in force; in South Australia, in December 1912, 56 trades, including 25,000 employees, were under Boards, and 49 determinations were in force; in Tasmania, where the law was put into operation in 1911, the Parliament had, by the 30th of June 1912, authorized the appointment of 19 Boards, and 11 of them had made determinations.[1]

Apparently serious administrative difficulties cannot be urged as a good objection to minimum wage legislation.

Effects on Industry. Is minimum wage legislation destructive to commercial prosperity? Not in Australasia, if available testimony and statistics are reliable. The following figures, taken from the census report of New Zealand,[2] should satisfy the most sanguine proponents of minimum wage legislation.

	April, 1896	March, 1901	Increase
Number of establishments[3] ...	2,459	3,163	704
Hands employed			
Males	22,986	35,438	12,452
Females	4,403	6,288	1,885
Totals[4]	27,389	41,726	14,337
Horse-power	28,096	39,052	10,956
Total approximate value of			
Land	£1,063,989	£1,713,254	£ 649,265
Buildings	1,743,073	2,419,903	646,730
Machinery and Plant	2,988,955	3,826,574	837,619
Totals	£5,796,017	£7,959,631	£2,163,614

The value of the output of manufactures increased from £9,549,000 in 1895 to £17,141,000 in 1900; the external trade grew from £16,000,000 to more than £23,000,000 in 1901.

"In June 1900," says Mr. Reeves,[5] "after this 'most prejudicial' law had been at work nearly five years, the Canterbury Chamber of Commerce, one of the chief mercantile chambers in the Colony, published these sentences in the forty-first annual report:

" 'Probably at no period in the history of New Zealand can we

[1] Official Year Book of the Commonwealth of Australia, 1901-1912, p. 1041. According to the Report of the Chief Inspector of Factories for Victoria, for 1912, there were 131 special boards, affecting 150,000 employees in 1912.

[2] Reeves, William P., "State Experiments in Australia and New Zealand," II, p. 137-8.

[3] Omitting Government railway workshops and Government printing office.

[4] Excluding dressmaking, tailoring, shirtmaking, millinery, etc., for which there were no returns in 1896.

[5] Reeves, William P., "State Experiments in Australia and New Zealand," II, p. 105-6.

find such unmistakeable signs of general prosperity as we have experienced during the past year. Our industries, almost without exception, have had their capacities taxed to the very utmost, skilled labor has been practically unobtainable, and, except in the case of one or more exceptional trades, there is every prospect for a continued demand for the productions of New Zealand labor. The number of workers employed in our factories in the year 1895 was 29,879. The number has steadily increased until, at 31st March 1900, the number employed reached 48,938, being an increase of 19,059, or nearly 64 per cent in five years. No stronger proof can be required of the forward march of our industrial army, and it is satisfactory to note that the industries that have been benefited most by the wave of prosperity which we are now enjoying have been able to give to the workers higher wages and improved conditions of employment.'"

A similar condition of affairs is reported from Victoria. For instance, the number of factories increased steadily from 3,370 in 1896 to 7,750 in 1912; and the number of persons employed increased from 40,814 in 1896 to 104,746 in 1912.[1] Victor S. Clark says:[2] "The impression the country makes upon a visitor is not that of a land where industry is paralyzed and business stagnated, but rather the reverse. Permanent and costly buildings are being erected in the larger cities, public improvements are going forward, the wharves are crowded with shipping, the railway service is fully occupied. . . . There are few evidences of excessive unemployment. To a person studying in Australia, the economic argument that a country will be industrially ruined by state regulation is not convincingly demonstrated." Sidney Webb said, in 1912, that in the sixteen years since the minimum wage law went into effect in Victoria, the number of factories had increased by no less than 60 per cent, and the number of workers in them had more than doubled.[3] And Philip Snowden adds to this:[4] "The prosperity of the colony has been marked in the years which have passed since this legislation was first enacted. Since 1896 (the year when the first Act was passed) the revenue of Victoria has risen from £6,400,000 to

[1] Report of the Chief Inspector of Factories and Shops of Victoria, 1913, p. 5.
[2] Victor S. Clark, "The Labor Movement in Australia," p. 219.
[3] Sidney Webb, "The Economic Theory of a Legal Minimum Wage," p. 5-6.
[4] Philip Snowden, "The Living Wage," p. 113, 114. For representative opinions see Appendix to Briefs in the case of Stettler v. O'Hara, Oregon Supreme Court, 1913, p. 162-169.

£10,700,000. The savings bank investments have risen from £4,300,000 to £15,400,000. The receipts from the state railways have increased from £1,400,000 to £4,443,000. The number of marriages have risen from 4,700 to 10,200."

Without speculating on the probable or possible part that the minimum wage laws have played in this extraordinary expansion in Australasia, and even without insisting that they have played any part at all, is it not fair to assume that the presumption is in favor of the laws and that the burden of proof has been shifted to the opponents thereof? This data may not prove the case for minimum wage legislation, but it is hard to see how it can be used to establish a case against such legislation.

Effects on Wages. State regulation has practically eliminated sweating in Australasia, according to the reports. According to Professor M. B. Hammond of Ohio University, the secretary of the Anti-Sweating League of Victoria, Samuel Mauger, told him that sweating no longer exists in Victoria, and adds that "his statements are confirmed by factory inspectors and various trade union secretaries."[1] Corroborating testimony is not wanting. "The question whether the operation of the acts has bettered the monetary position of the operative," say the official Year Book of Australia,[2] "may be answered in the affirmative. Starting from the lowest point, the provision of an absolute minimum wage per week has stopped one form of gross sweating. . . . The average wage of females in the clothing trade in 1897 was ten shillings and ten pence a week; there were, however, in that year 4,164 females receiving less than one pound per week, and their average was eight shillings and eight pence. It was almost a revolution when a minimum wage of sixteen shilling per week of forty-eight hours was fixed by the Boards, when pieceworkers' rates were fixed to ensure a similar minimum, and when outworkers were placed on the level of pieceworkers." The Chief Inspector of Factories of Victoria reported in 1900:[3] "I venture to affirm that there is now no sweating in the clothing trade in the State of Victoria." The following statistics on the clothing trade are taken from the Official Year Book:[4]

[1] M. B. Hammond, "Where Life is More Than Meat," Survey, February 6, 1916.
[2] Official Year Book of the Commonwealth of Australia, 1901-1912, p. 1041.
[3] Report of Chief Inspector of Factories of Victoria, 1900, p. 17.
[4] Official Year Book of the Commonwealth of Australia, 1901-1912, p. 1042.

1897	Dress Mantle and Underclothing Trade No.	Av. Wage £ s. d.	Shirt Trade No.	Av. Wage £ s. d.
Workers 16 years and over receiving under £1 per week	4,164	8 8	435	12 3
Workers 16 years and over receiving £1 and over	593	1 9 1	144	1 3 10

1911	Dress and Mantle Trade No.	Av. Wage £ s. d.	Shirt Trade No.	Av. Wage £ s. d.	Underclothing Trade No.	Av. Wage £ s. d.
Females at minimum wage and over	3,490	1 5 11	318	1 3 8	826	1 3 8
Pieceworkers	73	1 0 11	883	1 1 2	185	19 9

In Tasmania, continues the report, where there was no such law in operation in 1911, the female workers in clothing factories, 20 to 26 year old, who had been in the service from three to five years, received 12s per week.

But it is not the sweated workers alone that have been benefited by a minimum wage; wages have increased all along the line. "Except in three occupations," said Victor S. Clark in 1905,[1] "where there has been a recent increase in the proportion of female and juvenile workers, the rate of wages has uniformly risen since the boards went into operation." This statement is followed by the table on page 51 taken from the Report of the State Inspector of Factories for the year ending December 31, 1902.

According to the official Year Book,[2] "the relative increase from 1891 to 1911 was greatest in Victoria and South Australia, and least in Tasmania, but in the last named State there was a remarkable increase, amounting to nearly 17 per cent in 1912. This is, no doubt, accounted for to a large extent by the fact that the wages board system was first adopted in Tasmania in that year."

When interpreting these figures, however, it should be remembered that they represent the nominal rather than the effective wage increase. The increase in wages has been accompanied, in most cases, by an increase in the cost of living; so that the increase in real wages can be safely assumed to be considerably less than the foregoing figures would seem to indicate. One official report[3] from Australia is to the effect that

[1] Bulletin of the U. S. Bureau of Labor, No. 56, p. 70.
[2] Official Year Book of the Commonwealth of Australia, 1901-1912, p. 1129.
[3] Ibid., p. 1154.

Average Weekly Wages in Trades under Board Determinations in 1902 as compared with Average Wages before Determinations Went into Effect.

Trade	Before Determination Went into Effect	1902	Increase
Bedstead makers	$ 7.83	$ 8.36	$ .53
Bookbinders	4.81	5.37	.56
Bootmakers	5.64	6.87	1.23
Breadmakers	7.91	10.42	2.51
Brewers	8.35	9.63	1.28
Brickmakers	10.12	11.13	1.01
Brushmakers	5.62	6.47	.85
Butchers	9.17	9.81	.64
Cigar makers	7.36	8.09	.73
Clothing makers (men's)	4.85	5.45	.60
Confectioners	4.12	5.09	.97
Coopers	8.66	10.56	1.90
Engravers	5.15	4.62	.53[1]
Jewelers	8.23	10.02	1.79
Maltsters	10.00	10.97	.97
Mantlepiece makers	8.15	10.67	2.52
Millet broommakers	6.79	8.13	1.34
Pastry cooks	7.50	6.96	.54[1]
Plate glass makers	6.69	8.68	1.99
Potters	6.83	8.84	2.01
Printers (city)	8.96	9.49	.53
Printers (country)	7.54	8.05	.51
Saddlers	6.59	8.54	1.95
Shirtmakers	3.51	3.49	.02[1]
Tanners	7.73	8.64	.91
Underclothing makers	2.74	3.08	.34
Wickerworkers	5.58	6.37	.79
Woodworkers	8.07	10.63	2.56
Woolen goods	4.97	5.19	.22

nominal wages increased nearly 18 per cent between 1901 and 1911, the cost of living 13.6 per cent, and effective or real wages 5.8 per cent; another report[2] shows that there was a substantial increase in wages in the baking and clothing trades in 1898, with no increase in the price of bread and clothing. Sidney and Beatrice Webb wrote in 1902, in the preface to "Industrial Democracy," of their visit to Melbourne in 1898: "We could find no evidence that prices had risen, and we were informed by employers that they had not done so." The statistics on the subject are by no means complete; so that an approximation is perhaps the nearest we can get to an exact mathematical computation of the increase in effective wages in the several industries affected by minimum wage determinations. The significant point is, however, that the official reports leave a comfortable margin of real increase for the laws to rest their case upon.

[1] Decrease.
[2] Report of Chief Inspector of Factories of Victoria, 1899. Henry D. Lloyd, "Newest England," p. 238.

In New Zealand conditions have been much the same as in Australia. The following table, taken from the census returns for 1909, shows the wage increase between 1896 and 1901:[1]

Manufacturies and Works.

Wages paid	April, 1896	March, 1911	Increase
To Males	£1,776,076	£2,895,279	£1,119,203
To Females	131,516	203,282	71,766
Totals	£1,907,592	£3,098,561	£1,190,969

These figures, when translated into average annual wages, show that this average annual wage for men in 1895 was £77.2, and £81.7 in 1900; for females it was £29.8 in 1895, and £32.3 in 1900.[2]

The fear that the minimum wage would become the maximum has proven groundless, if the experience of Australasia may be taken as a criterion. Professor Hammond says:[3] "Victorian statistics on this point are lacking, but in New Zealand where minimum wages are fixed by the arbitration court, statistics as to wages, tabulated in 1909 by the Labor Department, showed that in the four leading industrial centers of the Dominion the percentage of workers in trades where a legal minimum wage was fixed who received more than the minimum varied from 51 per cent in Dunedin to 61 per cent in Auckland. There is no reason to think that a dissimilar situation would be revealed by a statistical investigation in Victoria." "In the bootmaking trade, for instance," says another report,[4] "in Auckland 66 per cent, in Wellington 85½ per cent, in Christchurch 66 per cent, and in Dunedin 50 per cent of the workers receive wages above the minimum wage. In Auckland 91 per cent, in Wellington 57½ per cent, in Christchurch 50 per cent and in Dunedin 26 per cent of the cabinet workers receive above the minimum named in the award. Plumbers and gasfitters receiving wages above the minimum are: In Auckland 66 per cent, in Wellington 19 per cent, in Christchurch 84 per cent, in Dunedin 59 per cent."

Professor Hammond's statement that Victorian statistics are lacking is not strictly correct. Says William P. Reeves:[5] "The Chief Inspector of Factories (of Victoria), writing in May 1902,

[1] Reeves, William P., "State Experiments in Australia and New Zealand," II, p. 136.
[2] For the number of workers in 1896 and 1901 see table on p. 47.
[3] Survey, February 6, 1915.
[4] Report of the New Zealand Department of Labor, 1909, p. 13.
[5] "State Experiments in Australia and New Zealand," II, p. 62.

denied that the tendency of the minimum wage was to become the maximum also. He asserted that, whereas in the clothing trade in 1901 the minimum wage for adult males was 45s. a week, the average paid was 53s,6d.; for adult females, while the minimum was 20s., the average was 22s.3d. He instanced similar differences in the boot, furniture and shirtmaking trades." The Chief Factory Inspector at Melbourne, in reply to an inquiry from the New York Factory Investigating Commission, said:[1] "It is frequently asserted in this State that the minimum becomes the maximum, but our official figures show that this is not the case. I am sending by separate packet a book containing all the existing factory laws of Victoria, and a copy of my latest annual report. If you will kindly refer to Appendix B, you will see what the average wage in the trade is. A further reference to Appendix D. will give you the figures in any particular trade. I regret that I have not figures which will precisely answer your question, but a careful comparison will show that the average wage in a trade is invariably higher than the minimum wage. I do not know that there is any exception to this in Victoria."

Professor H. R. Seager also has said:[2] "It is of much more significance that in Victoria, after the minimum wage system had applied to the clothing industry for half a dozen years, the average wage for women was reported as 42s.3d. a week, as compared with the prescribed minimum of 36s., and the average for men as 53s.6d. as compared with the legal minimum of 45s. An average nearly 20 per cent higher than the minimum is pretty conclusive evidence that wages continued to vary with the individual capacity of the workers after the minima were prescribed as they had done before."

Effects on Efficiency and on Industrial Peace.—Professor Hammond, it would seem, concludes that there has been a decline in efficiency among workers in certain industries under wage determinations; or at least, he leaves the question a mooted one.[3] And yet he says, and it is hard to reconcile this statement with a lowering of industrial efficiency: "Well-paid workers are

[1] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 62.
[2] American Labor Legislation Review, February, 1913. "The Theory of the Minimum Wage," by H. R. Seager, p. 89. For further supporting testimony see Brandeis' Appendix to the Briefs Filed in Behalf of Respondents in Stettler v. O'Hara, in the Supreme Court of Oregon, 1913, p. 179-188.
[3] Survey, February 6, 1915. M. B. Hammond, "Where Life is more than Meat."

in better condition and work more cheerfully than do those whose wages have forced them to a low standard of living."

Replying to a question in point, propounded by the New York Factory Investigating Commission, the Chief Inspector of Factories in Melbourne said.[1] "My own personal opinion is that the fixing of a standard wage increases efficiency generally, from the fact that the employer demands in return a standard degree of efficiency. . . . To answer your question generally, I think it can be truthfully said that the efficiency of the workers all around is distinctly higher under the minimum wage than it was before." The Australian Official Year Book is authority for the statement that from 1901 to 1911 the relative productive activity increased from 1,000 to 1,355, or 25½ per cent.[2] To this may be added the following testimony of Louis Brandeis and Josephine Goldmark.[3] "The establishment of a legal minimum wage has been found an important incentive to increasing efficiency on the part of both employers and employees. It stimulates the employer to reduce costs by improvements in organization and new inventions, and also to develop and to keep the most efficient workers. On the other hand, the establishment of the legal minimum wage stimulates the workers to prove themselves the most efficient."

The better opinion would have it, too, that the wage and arbitration boards have practically eliminated, or at least, greatly reduced, industrial strikes in Australasia. Says Arthur H. Holcombe:[4] "Whatever may have been the original purpose of the Victorian Wage Boards, their chief function today is to establish a more solid foundation for industrial peace. . . . In short, the Victorian wage boards serve today to foster collective bargaining between capital and labor with a view to the peaceful conciliation of industrial disputes." M. B. Hammond says:[5] "There are, I think, not more than half a dozen cases in which a strike has occurred in a trade where wages and hours are fixed by a wage board." Victor S. Clark says that few, if any, strikes have occurred where wage determinations are in force.

It has been thought best not to make extensive use of the unripe experiences of Great Britain, as that would introduce the disquieting element of uncertainty. Enough should be said about

[1] Irene Osgood Andrews, "Minimum Wage Legislation," p. 634.
[2] Official Year Book for the Commonwealth of Australia, 1913, p. 1154.
[3] Appendix to Brief Filed in Behalf of Appellants in Stettler v. O'Hara, in the Supreme Court of Oregon, 1913, p. 108.
[4] American Economic Review, 1912, p. 22-23.
[5] Survey, February 6, 1915.
[6] Victor S. Clark, "The Labor Movement in Australia," p. 148.

England's experiences, however, to show the tendency of the results. The New York Investigating Commission sent the following questions to the office of the Board of Trade in London:[1]

"First: Does the minimum wage become the maximum?

"Second: How far are the unfit displaced by such legislation?

"Third: Do such laws tend to drive industry from the State?

"Fourth: Do they result in decreasing efficiency?"

The following reply was given:

"I am directed by the Board of Trade to say that, as the Trade Boards Act has only been in operation for a comparatively short period, they consider that it is as yet too early to express a definite judgment on its indirect and ultimate results.

"The board are of the opinion, however, that provisional replies, based on the experience so far obtained of the working of the act, may be given to the questions contained in your letter, as follows: (1) The board are not aware of any general tendency among employers to reduce rates to the minimum allowed by law in cases where higher rates have been paid in the past. On the contrary, there is reason to suppose that the better organization of the workers, which has been observed to have taken place in the trades to which the act has been applied, tends to prevent the legal minimum rate from becoming in fact the maximum. (2) So far as the board are aware, there has been no general dismissal of workers as a result of the fixing of minimum rates; and even where workers have been dismissed on this account, it has frequently been found that this has been due to misunderstanding of the act and not to its actual provisions. (3) The board are not aware of any tendency on the part of manufacturers to transfer their business to foreign countries, or, in cases where lower minimum rates have been fixed for Ireland than for Great Britain, to transfer their business from Great Britain to Ireland. (4) There is no evidence in the possession of the board to show that the efficiency of workers has been reduced as a result of the fixing of minimum rates of wages. On the contrary, there are indications that in many cases efficiency of the workers has been increased. The fixing of minimum rates has also resulted in better organization among the employers and in improvements in the equipment and organization of their factories."

To this may be added a favorable report by John A. Hobson,

[1] Irene Osgood Andrews, "Minimum Wage Legislation," p. 77.

one of England's leading economists. Mr. Hobson points out that the Trade Boards Act has been successful in the four trades where it has been longest in operation, namely, in chainmaking, machine-made lace finishing, box-making, and tailoring.[1]

Conclusion. Other aspects of this phase of the minimum wage problem could be discussed, but as the cardinal points have been covered, it is doubtful if further discussion would influence the reader to change his conclusions one way or the other. The main purpose of the discussion has been to show that the plan to regulate the rate of wages by law, in Australasia and Great Britain, works; and that it has not proven prejudicial to the highest commercial and industrial development of the state, but, on the contrary, results would seem to indicate that it has materially promoted such development. What the results will be when the principle of regulation is applied to American conditions is a matter that should be determined by experience. Why not determine the expediency of regulation in the simplest and most efficacious manner—by giving it a trial? Why allow the already grievous conditions, which such regulation purposes to remedy, to aggravate, while the state engages its attention and energy in extended and futile discussion? Playing hide and seek with the letter and the spirit of the Constitution may be good politics, but it is poor statesmanship.

[1] Survey, February 6, 1916. John A. Hobson, "The State and the Minimum Wage in England."

CHAPTER IV

A RÉSUMÉ

The whole contest over minimum wage legislation resolves itself into the inevitable struggle between the positive and the negative forces of society over a proposition to change the present rules of the game of life. It is a clash between vested property rights and humanity—a contest on the one hand for profits, and on the other for a few crumbs of the comforts of life. Labor, grown

". . . weary with dragging the crosses
Too heavy for mortals to bear,"

is praying to be allowed to enjoy enough of the fruits of its own toil to live; and with the labor forces stand those whom history has taught that those who toil shall inherit the earth, and who, therefore, believe that it is suicidal for society to pay its potential mothers and fathers less than a living wage. Hence the wage problem has become affected with a public interest.

Unlike England and Australasia, the United States do not include men in their wage determinations; they draw a distinction between male and female workers[1] that will not stand the test of time. The lowest stratum of male labor is little better organized than are women workers, and is almost as helpless. Also, the unborn generations need protection on the paternal side as well as on the maternal. And furthermore, a great many women and minors are in industry only because the wages of their male bread-winners are not sufficient for the support of the family; and, on the other hand, because they are in industry they are, by their competition, forcing the wages of male labor still lower down the starvation scale. That the further step, the inclusion of men, will be taken, should the courts sustain the present legislation, seems almost inevitable. It is vain to hope to perpetuate the existing order of inequality between the employer and the employee by an appeal to the Constitution—by an appeal to the familiar *"laissez faire, laissez passer"* philosophy.[2] Modern economic conditions have forced upon us a new philosophy of lib-

[1] Muller v. Oregon, 208 U. S., 412; Stettler v. O'Hara, Oregon Supreme Court, 1913.
[2] That is, let things alone, let them take their course.

eralism. We are being compelled to abandon the eighteen century philosophy of individualism for that of collectivism. Society is becoming more and more integrated, socialized, and the inevitable result is that individual action must be more and more tempered and governed by due considerations for the effect of such action upon the public. Unregulated individualism in industry is untenable, for it means the establishment of a vicious system of industrial slavery. To say that the extension of the police power of the state to the regulation of the maximum hours of labor and the minimum compensation, in certain industries, is one of the prime functions of government. Non-interference virtually means the sanctioning by law of conditions of gross an arbitrary interference with personal liberty, is a denial of inequality between the employer and the employee, which conditions are the very converse of freedom. Modern freedom does not mean license to exploit one's fellows—it means the proper co-ordination and correlation of all the parts of the social machine, so that social friction is reduced to a minimum and social efficiency raised to a maximum. To this end certain individual impulses must be held in check by community action, lest the ignorance and the weakness of the many be capitalized by the few for their own personal aggrandizement. To protect society from the direful consequences of such practices, is the purpose of our labor legislation, and particularly of the minimum wage laws. When a capitalist argues that this legislation takes his property without due process of law and without compensation, he is employing the odious argument of the Southern slaveholder. Are human rights less sacred than property rights? Furthermore, the experience of Australasia seems to indicate that a minimum wage, instead of depriving an employer of any property, does, in truth, increase his profits through an increased efficiency of the employee. The employer who suffers in consequence of an enforced payment of a living wage is parasitic and of questionable social value; he is in receipt of the working energy of human beings at less than its cost, and to that extent he is parasitic. The balance must be made up somehow. Sometimes it is paid in part by some other industry which may be employing another member of the family; generally part is paid by the worker in the form of a deteriorated physique, intelligence and character; in many cases the family or friends of the worker assume part of the obligation; and ultimately a part may

be contributed in the form of private and public charity. In other words, this employer is receiving a subsidy from some source—a practice that has been condemned by an enlightened public opinion as thoroughly reprehensible, and let us hope that the time has come when the courts will no longer permit the Constitution to stand between this social parasite and the public welfare.

The elimination of this parasite from industry should be looked upon with favor by the enlightened and efficient employer —as is the case in Australasia.[1] A subsidized employer, by exploiting an unlimited amount of cheap labor, is able to undercut the prices of his more fair-minded competitor and can thus carry on a vicious cut-throat competition that is bound to keep wages down all along the line. If, however, the labor cost to this inefficient or unscrupulous employer is raised by the requirement that he pay a minimum living wage, which requirement is made standard for all, it becomes evident that he can no longer undercut prices unless he becomes even more efficient than his competitors. Thus competition is raised from the sordid depths of wage-cutting and "sweating" to a high plane of intelligence and business efficiency.

To protect the lives, health and morals of the present generation, and the health of the generations yet unborn, is the avowed purpose of minimum wage legislation. The lower stratum of male labor, and practically all female and child labor, constitute a vast fund of unorganized and cheap potential energy from which certain industries draw practically their entire working forces. The practice of the past has been to look upon this labor as so much available mechanical energy to be consumed in the productive process without thought for the fearful physical and spiritual sacrifices which it entailed. But an awakened and sturdier social conscience has served notice upon private and corporate greed that public policy will no longer tolerate a condition which invites parasites to live off the social body, or which makes it possible for the silk-gloved hand of Wealth to pick the threadbare pockets of Want.

America has long been an asylum for the oppressed of other

[1] Victor S. Clark, in Bulletin of the United States Bureau of Labor, No. 56, p. 73, 77. Victor S. Clark, in Bulletin of the United States Bureau of Labor, No. 49, p. 1231. Philip Snowdon, "The Living Wage," p. 7, 8, 147. Louis Brandeis, "Appendix to Brief Filed on behalf of Respondents in Stettler v. O'Hara, Supreme Court of Oregon, October term, 1913, p. 192, 199.

lands. We have been boastful in advertising our opportunities and the unlimited wealth of our resources, and have welcomed all comers to share our blessings. Yet, in spite of our boasted wealth and opportunities, thousands of children go hungry to school every day; thousands of children are daily sent to our factories to be sacrificed upon the altar of an insatiable god of greed; thousands of girls, and for sheer want of the means of livelihood, are being robbed, while yet in their teens, of the bloom of girlhood and the charms of womanhood, and thus doomed to a loveless, homeless and childless life; scores of girls are daily subjected to the ignoble choice of starvation, or suicide, or shame—yes, scores of them are being frightened by the threatening specter of abject poverty into either ending it all in violence, or into breaking nature's holy law of sex by capitalizing their virtue and thus poisoning life and morals at the very fountain head.

President Wilson, whose heart is as right as his vision is clear, spoke these significant words in his inaugural address: "We have been proud of our industrial achievements, but we have not hitherto stopped thoughtfully enough to count the human cost, the cost of lives snuffed out, of energies overtaxed and broken, the fearful physical and spiritual cost to men and women and children upon whom the dead weight and burden of it all has fallen piteously the years through. The groans and agony of it all has not yet reached our ears, the solemn, moving undertone of our life, coming up out of the mines and factories and out of every home where the struggle had its intimate and familiar seat. . . . There can be no equality of opportunity, the first essential of justice in the body politic, if men and women and children be not shielded in their lives, their very vitality, from the consequences of great industrial and social processes which they cannot alter, control or singly cope with. Society must see to it that it does not itself crush or weaken or damage its own constituent parts. The first duty of law is to keep sound the society it serves. Sanitary laws, pure-food laws, and laws determining the conditions of labor which individuals are powerless to determine for themselves are intimate parts of the very business of justice and legal efficiency."

One of the hopeful signs of the times is the fact that we are beginning to hear and to understand this "solemn moving undertone of our life," and our social legislation shows signs of

an earnest desire to alleviate the dead burden of misery under which our toilers stagger and groan. The State is gradually growing, through the development of its so-called police power, into the stature and dignity of "parens patriae," guardian, or custodian of the public welfare. Honest business has nothing to fear from the exercise by the State of this sovereign obligation; for the temper of our people is eminently conservative, and, though they may sometimes err in their choice of means, their sober judgment will not permit them to stray far afield from an impartial application of the strict principles of equity and justice. The business employer who objects to the payment of a living wage, I leave to meditate upon this solemn thought: "He that sheddeth blood and he that defraudeth the laborer of his hire are brothers. The bread of the needy is the life of the poor; he that defraudeth them thereof is a man of blood."

APPENDIX

AN ANALYSIS OF MODERN MINIMUM WAGE LEGISLATION[1]

NEW ZEALAND

The Industrial and Conciliation and Arbitration Act, 1900.[2]

The promoter of the New Zealand Industrial Conciliation and Arbitration Act was Mr. William Pember Reeves, then minister of labor.[3] The purpose of the law was to settle and prevent strikes. The original act was the Industrial Conciliation and Arbitration Act of August 31, 1894. It has since been amended by the Acts of October 18, 1895, October 17, 1896, November 5, 1898, October 20, 1900, and November 7, 1901.[4]

Before the act could go into operation, voluntary societies of employers and employees respectively, known as "industrial unions," had to be organized as provided by the act. Now an industrial union may be formed by the lawful association and formal registration with the state registrar of seven or more employees, or by two or more employers. Two or more of these unions, provided they are unions of the same class and of the same industry, may form an "industrial association." These organized bodies are, for the purposes of the act, corporations, and it is only one of these unions or associations, or an individual employer that can be a party to an action before one of the boards of conciliation or the court of arbitration that are established under authority of the act; but the court of arbitration has power to extend an award to a labor union or an individual workman may not be a member of an industrial union.

For the administration of the act the colony is divided into a

[1] "France enacted, a little over two years ago, a minimum wage law applicable to women home workers—and with some modifications—to men home workers on clothing. After the present war had been in existence for nearly a year a minimum wage regulation was extended to factory made clothing, the extension itself having grown out of military orders fixing rates in the manufacture of certain classes of soldiers' apparel."—*Marie L. Obenauer*, in *Report by Alexander J. Porter, The National Civic Federation, Sixteenth Annual Meeting, Washington, D. C., January 17, 1916, p.* 31. "The minimum wage bill was passed by the Chamber of Deputies, November 13, 1913."—*Bulletin of the U. S. Bureau of Labor Statistics, Whole Number* 167, *Minimum Wage Legislation in the United States and Foreign Countries, pp.* 185-186.

[2] Department of Labor Bulletin, No. 49, p. 1282.

[3] Ibid, p. 1186. Victor S. Clark's report.

[4] Ibid, p. 1282. Victor S. Clark's report.

number of industrial districts,[1] in each of which is established a board of conciliation, composed of two members chosen by the industrial unions of employers and two by the unions of employees and an impartial chairman selected by the four representative members. In case the unions fail to elect the governor will nominate the members of the board. Special expert boards may be created for emergency or extraordinary cases. These boards have jurisdiction in all disputes referred to them by an industrial union, or an association of industrial unions, or by an employer, provided the appeal is agreeable to the other party or parties to the controversy. The voluntary character of this provision is not significant, however, as by the amendment act of 1901[2] either party may appeal directly to the court of arbitration and force a hearing there.

It is the duty of the board to endeavor to bring about an "industrial agreement" between the disputants, which agreement, when duly executed by the parties or by their attorneys, becomes binding upon them and enforceable by the court of arbitration. If an agreement cannot be reached, the board embodies its findings in a "recommendation," which, if not appealed within one month of record, becomes as binding upon the parties as an industrial agreement or an award of the court.

The most important part of the arbitration machinery is the "court of arbitration" to which reference has already been made. The court is composed of three members, appointed by the Governor, one on the recommendation of the industrial unions of workers, one on the recommendation of the industrial unions of employers, and the third a member of the supreme court of the colony who shall be the president of the court. The jurisdiction of the court extends to practically all things that might be made a condition of a private contract between an employer and a worker. This court may make its awards legally binding upon the parties to a dispute without their voluntary acceptance of the same; it may extend them so as to include parties not appearing in the dispute, and to labor unions or an individual workman who may not be a member of an industrial union; it may make them general, or localize them at its discretion; it may enforce not only its own award, but industrial agreements, and recommendations of boards, by penalties up to $2,433 in case of employers or industrial or trade unions, or by a penalty not in excess of $48.67 in case of individual workmen not members of an industrial union. Within its sphere of jurisdiction, the court of arbitration is supreme; as to such matters there lies no appeal from its decisions to the supreme court of the colony.[3]

Both the court and a board are empowered to summon witnesses, administer oaths, compel a hearing, receive evidence, and preserve order. In addition the court may inspect books.

[1] Eight in June, 1903, according to Victor S. Clark. The Governor constitutes the districts and also appoints for each a clerk of awards, the ministerial officer of the board.

[2] Section 58, Article 2, of the Act.

[3] Bulletin of the Bureau of Labor, No. 40, p. 1188. Victor S. Clark.

Thus New Zealand workmen may use one of two methods provided by law for the legal establishment of a rate of wages: they may arbitrate their case before a board of conciliation, or they may appeal directly to the court of arbitration for an equitable ruling between themselves and their employers.

New South Wales

In 1908, the Arbitration Act of 1899 expired, and a new Act was passed, which was a compromise between the Victorian and the New Zealand systems—it attempted to graft Wages Boards upon the system of Industrial Courts. However, the principle of the Wages Boards was virtually abandoned in 1909 by an amendment which for all practical purposes converted the Wages Boards into Industrial Courts. So the present law differs from the old Arbitration Act only in that it does not accept the Trade Union as the industrial unit, but allows any twenty workmen to apply for a Wages Board.[1] There are, of course, differences of detail.

As New South Wales has been classed with New Zealand,[2] the above observations have been thought of sufficient importance to warrant this separate treatment of New South Wales.

Victoria:

Special Boards Act, 1896.

The principle underlying the Victorian Special Boards Act of 1896 is quite unlike that of the New Zealand Industrial Conciliation and Arbitration Act of 1894. The Victorian legislation is aimed directly at the sweating system and does not attempt to interfere with trade disputes. The bursting of the yellow bubble of gold speculation in the last quarter of the last century, gave Victoria her new problem of sweating. To her lasting credit, her Parliament acted quickly and decisively through the enactment of the Special Boards Act.

The Act does not create a permanent board, as do the American laws; but a board may be created at any time in pursuance of a resolution passed by both houses of the Parliament. After this resolution has been adopted, declaring that it is expedient to appoint a Special Board for a trade or trades, the Minister of Labor may by notice published in the "Government Gazette" nominate persons for the board or boards. The parties interested are privileged to send lists of names to the Minister, from which he invariably makes his selection.[3] Each Board "shall consist of not less than four nor more than ten members and a chairman,"[4] and one-half of the members "shall be appointed as representatives of employers and one-half as representatives of employees."[5] The

[1] B. R. Wise, "The Commonwealth of Australia," p. 298-324.
[2] See Chapter I, p. 22.
[3] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 190.
[4] The Special Trade Boards Act.
[5] Ibid.

representatives of each group must be actual and bona fide employers and employees, respectively, or must have been so for six months during the three years immediately preceding their appointment. Unless at least one-fifth of the employers or adult employees interested give notice in writing to the Minister, within twenty-one days after the publication of the nominations, that they object to the persons nominated as their representatives, such nominations stand for appointment. The appointments are made by the Governor in Council for three years, subject to removal by the Governor at any time. Each Board nominates some person (not of its own membership) to be its chairman, and the appointment is again made by the Governor in Council. If the Minister does not receive this nomination within fourteen days after the appointment of the Board, the Governor in Council may appoint a Chairman on the recommendation of the Minister.

The act provides that every Special Board "(a) shall determine the lowest prices or rates of payment payable to any person or persons or classes of persons employed in the process, trade, business or occupation specified in such appointment. Such prices or rates of payment may be fixed at piece-work prices or at wage rates or both as the Special Board thinks fit; (b) shall determine the maximum number of hours per week for which such lowest wages rates shall be payable according to the nature or conditions of the work; and the wages rates payable for any shorter time worked shall not be less than a pro rata amount of such wages rates and not less than such a rate as may be fixed for casual labor; (c) shall fix a higher wages rate to be paid for any time in excess of the maximum number of hours per week so fixed and may fix the times of beginning and ending work upon each day; and may fix a higher rate to be paid for any hour or fraction of an hour outside the time so fixed; and may fix special rates for work to be done on a Sunday or public holiday."

It will be noticed from the above quotations from the Act that two different classes of overtime can be fixed. Higher rates are to be fixed for work done in excess of the number of hours determined upon as the maximum for a week's work, and also for work done before or after the hours set for beginning and ending each day's labor. It is evident that these two powers cannot very well be exercised independently of one another; and it is found, in many trades at least, that it is best to fix overtime rates only for work in excess of the established week's maximum.[1] A Special Board may also prescribe the form of apprenticeship indenture to be used; fix special rates for apprentices and improvers; and, where it appears just and expedient, fix special wages rates for aged, infirm, or slow workers.

When a Board has agreed upon a Determination, this is to be signed by the Chairman of the Board and published in the Government Gazette. The Act does not indicate, however, upon

[1] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 195.

whom the duty of gazetting the Determination devolves. In consequence of this omission, the Minister of Labor, whose duty it logically is to gazette the Determinations of the Board, may refuse to assume the obligation, and he has done so. In December, 1911, he refused to publish the amended Determination of the Hairdressers Board, and when application was made to Mr. Justice Cressen for a mandamus, the Judge refused the application.[1] The Determination shall go into effect after a date set by the Board (not within thirty days of such Determination) and shall remain in force until suspended by the Governor in Council, or amended or revoked by the Board itself or by the Court of Industrial Appeals. The Governor in Council may at any time, and for a period not to exceed six months, suspend the operation of a Determination. In that event the Board must reconsider its Determination. If it amends it, this new order takes precedence of the old; if it refuses to amend, it notifies the Minister of its determination, and the suspension of the operation of the previous Determination is, by an order in Council, revoked.

Two methods of appeal are provided. If any person wishes to dispute the validity of any Determination of any Special Board, he can "apply to the Supreme Court, upon affidavit, for a rule calling upon the Chief Inspector to show cause why such Determination should not be quashed either wholly or in part for the illegality thereof; and the said Court may make the said rule absolute or discharge it with or without costs as the court shall seem meet."[2] In the second place, an appeal may be taken to the Court of Industrial Appeals, created by the Act and composed of any one of the Judges of the Supreme Court. If a majority of the representatives of either the employers or the employees on the Board are dissatisfied, or if an employer or group of employers who employ at least twenty-five per cent of the employees affected, are not satisfied with a Determination, they may appeal to this Court, which has full power to amend or revoke the Determination of the Board, and its decision is final and without appeal. The Minister may at any time, and without appeal, refer any Determination by a Board to the Court.

The Special Boards may summon witnesses, examine records, books or payrolls and hold special investigations. The Chairman has the power of administering the oath to all witnesses. The Determinations of the Special Boards are enforced by the Minister and the Factory Inspection Board.

Great Britain

Trade Boards Act, 1909.

The English minimum wage law, the Trade Boards Act of October 20, 1909, was modeled on the Victorian legislation. Its aim is to give relief to the less intelligent and unorganized class

[1] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 202.
[2] The Trade Boards Act.

of laborers, as can be inferred, even without reading the Act, from the fact that its two leading sponsors were the National Anti-Sweating League, organized in 1906, and the labor party.

The Act originally applied to four trades, ready-made tailoring, cardboard box making, the making of hammered, dollied, or tommied chain, and certain processes in lace making; but the Board of Trade may by Provisional Order apply it to any specified trade if they are satisfied that the rate of wages paid are exceptionally low, as compared with other employments. All such Provisional Orders must be confirmed by Parliament.

The Board of Trade is empowered to appoint for each of such trades a Trade Board composed of an equal number of members representing the employers and employees respectively (known as "representative members"), and of a number (less than one-half the total number of "representative members") of "appointed members." Women are eligible as well as men. The Board of Trade appoints a member as chairman, and a secretary. The Trade Board may establish district trade committees consisting partly of members of the Trade Board and partly of persons representing the employers or employees of the trades. Where such a trade committee has been established, it is its duty to make reports and recommendations to the Trade Board, and no minimum rate of wages can be established by the Trade Board before the committee has had an opportunity to report, and that report has been considered.

Each Trade Board shall fix for its trade minimum rates of wages for time work (minimum time-rates), and may also fix general minimum rates of wages for piecework (general minimum piece-rates), and these rates may apply universally to the trade, or only to any special process in the work of the trade, or to any special class of workers in the trade, or to any special area. On the application of any employer the Board must fix a special minimum piece rate for any particular class of work on which he is engaged.

Before fixing minimum rates for any trade, the Board is required to give three months' notice of the proposed rates, and to consider any objection raised during that period. It is also required to give notice of the rates finally determined upon at the expiration of the three months, when said rates go into operation to limited extent, pending an obligatory order from the Board of Trade, which may be issued six months later and which make the said rates obligatory in all cases. In the meantime, the rates fixed apply to all cases of employment within the trades, where a written contract providing for a lower rate does not already exist, and to all firms engaged on public contracts.

Special permits, exempting the employment of aged or infirm persons from the provisions of the Act making the minimum time-rate obligatory, may be issued by the Trade Board at its discretion.

An employer who pays less than the rate fixed by the Trade Board and made obligatory by an order of the Board of Trades,

is liable to a fine not exceeding twenty pounds ($100), and for each day on which the offense is continued after conviction, five pounds ($25). The employee who has not received the legal minimum can also recover the balance due him. The Board of Trade is empowered to appoint such officers as they think necessary for the purpose of investigating complaints and enforcing the payment of the minimum rates fixed by the Trade Boards. Such officers have the right to enter any factory or workshop, or other work places, at any reasonable time, and to inspect books, etc.

Finally, the appointed members and secretaries of the Trade Boards are professional or paid officers; the representative members receive compensation only for expenses incurred in the performance of their duties.

Coal Mines (Minimum Wage) Act, 1912

The Coal Mines Act of March 29, 1912, is a temporary measure for dealing with conditions in the coal mines. It is provided in the Act that it shall remain in force for three years only, unless Parliament otherwise provides. This act marks a new departure in English minimum wage legislation. The Trade Boards Act of 1909 aims to relieve the more helpless, the sweated workers; this act embraces all the coal miners that elect to comply with the general district rules, and aims to alleviate the conditions that, during the winter of 1911 and 1912, has brought on so many strikes among the miners.[1]

Under authority of this act the Board of Trade have scheduled or created twenty-two districts. In each of these is to be established a joint district board, comprised of representatives of the employers and employees, with an independent chairman appointed by them. This Board must be recognized by the Board of Trade before it can act under authority of this Act. In case the parties interested fail to appoint representatives to this district board, the Board of Trade may appoint a person to act in the place thereof; or, in case either the employers or the workmen fail to appoint representatives when the other party is willing to do so, the Board of Trade may appoint members to represent the defaulting party. This board has power to make "district rules," which lay down the conditions "with respect to the exclusion from the right to wages at the minimum rate of aged workmen and infirm workmen (including workmen partially disabled by illness or accident), and shall lay down conditions with respect to the regularity and efficiency of the work to be performed by the workmen, and with respect to the time for which a workman is to be paid in the event of any interruption of work due to an emergency, and shall provide that a workman shall forfeit the right to wages at the minimum rate if he does not comply with conditions as to regularity and efficiency of work, except in cases where the failure to comply with the conditions is due to some

[1] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 78.

cause over which he has no control."[1] The Board also fix general minimum rates of wages. These general district rules and rates may apply to the whole district, or the board may fix special rules and rates for a certain group or class of mines within the district if they deem it advisable. The board may vary the rules and rates at any time.

The Victorian and the British Legislation[2]

The striking difference between the Victorian and the British legislation is a difference in completeness or inclusiveness. The Victorian Special Boards Act is a scientific unit, and even attempts to deal with contingencies incident to the administration thereof. On the other hand, it is hard to see how one can read the British acts and escape the feeling that Parliament felt at the time that the last word on minimum wage legislation had not been said and that, therefore, it were best to include in the acts the fundamental principle only and leave it to the administrative officers to fill in the details as the needs should arise. The British acts are indefinite as to the constitution of the boards; they make no provision for the fixing of maximum hours, for special overtime rates, and for special rates for apprentices and improvers; they provide for no orderly method of gazetting the determinations of the boards, no orderly legal process of appeal from these determinations; and the boards and district committees are not empowered to conduct investigations according to ordinary judicial procedure, but, it appears, must depend upon specially appointed administrative officers for information, the procuring of which requires legal compulsion. All these matters are specifically provided for by the Special Boards Act of Victoria. Time alone can determine the superiority of either system.

The American Legislation

History. Minimum wage legislation in the United States dates from June 4, 1912, when the Massachusetts law was approved. Since then, ten additional states have enacted minimum wage laws, approved in the following order: Oregon, February 17, 1913 (filed in office of Secretary of State); Utah, March 18, 1913; Washington, March 24, 1913; Nebraska, April 21, 1913; Minnesota, April 26, 1913; Colorado, May 14, 1913; California, May 26, 1913; Wisconsin, July 31, 1914; Kansas, March 6, 1915; Arkansas, March 20, 1915.[3]

Prior to the Massachusetts law, a resolution providing for a

[1] The Act, Article 2.

[2] As the fixing of a legal rate of wages under the New Zealand Conciliation and Arbitration Act is only incident to the settlement of disputes so as to prevent strikes, and as the latter is the real purpose of the law, further reference is not made to it here.

[3] Arkansas: C. 291, Laws 1915; California: C. 324, Laws 1913; Colorado: C. 110, Laws 1913; Kansas: C. 275, Laws 1915; Massachusetts: C. 706, Laws 1912; Am'd C's. 330, 675, Laws, 1913; Minnesota: C. 547, Laws 1912; Nebraska: C. 211, Laws 1913; Oregon: C. 62, Laws 1913; Utah: C. 63, Laws 1913; Washington: C. 174, Laws 1913; Wisconsin: C. 712, Laws 1913.

minimum wage in certain trades was introduced in the Nebraska legislature in February, 1909,[1] but nothing came of it. After the passage of the British Trade Board Act, however, a real agitation for a similar act was commenced in several States of the Union, and, as has been pointed out, Massachusetts led the way in 1912.

Titles. Four States, California, Oregon, Washington, and Kansas, have named the administrative board provided in each to carry into effect the provisions of the act, the "Industrial Welfare Commission," because these bodies in these States are given broader powers than the mere fixing of minimum rates of wages. Minnesota, Massachusetts and Nebraska use the title, "Minimum Wage Commission," and these commissions have power to fix wages rates only; and Colorado, granting the same power, uses "State Wage Board." Arkansas uses "Commission" only. Wisconsin and Utah use existing bodies: Wisconsin the Industrial Commission, and Utah the Commissioner of Immigration, Labor and Statistics.

Personnel: Appointment, Tenure, Compensation. In all cases but one, the appointments are made by the Governor, Wisconsin and Utah alone requiring the consent of the Senate. One of the women commissioners in Arkansas is appointed by the Commissioner of Labor and Statistics. In Colorado, Minnesota, Nebraska and Utah the appointments are made for two years; in California, Washington, and Kansas for four years; in Massachusetts and Oregon, for three years, and in Wisconsin, for six. The commissions are composed of from three to five members; three in Colorado, Massachusetts, Minnesota, Wisconsin, Arkansas, and Kansas; four in Nebraska; and five in California and Washington. One of the members must be a woman in California, Colorado, Massachusetts, Minnesota, Kansas, and Nebraska; in Arkansas two of the commissioners are women. In Minnesota, Nebraska, Arkansas, Kansas, and Washington, the Commissioner of Labor is a member, and in Utah he is the sole member. In Colorado, Minnesota and Oregon the employers and employees must be represented. In Nebraska the Governor serves on the Commission, and also a professor in political science at the State University. In all other cases the members are ordinary citizens. In no case are annual salaries given, but all expenses are paid by the State, and in California and Massachusetts $10 a day are further allowed for actual service. Secretaries may be employed and their salaries fixed by the Commission, except in Colorado and Minnesota, where the law fixes the annual salaries at $1,200 and $1,800, respectively.

Industries and Employees Affected. In all states, except Colorado and Arkansas, all industries employing women and minors are covered by the respective acts. In Colorado only manufacturing and mercantile industries, laundries, hotels, restaurants, and telephone and telegraph offices are included. Arkansas specifically exempts certain industries, those excluded being estab-

[1] Andrews, Irene Osgood, "Minimum Wage Legislation," p. 8.

lishments employing fewer than four females at the same time, in the same building, and at the same class of work, cotton factories, and fruit and vegetable canning industries. The industries included under the operation of the Arkansas act are "any manufacturing, mechanical or mercantile establishment, laundry, or any express or transportation company" and hotels, restaurants and telephone establishments. In California, Colorado, Massachusetts, Nebraska, Oregon and Washington the persons affected are women and minors under eighteen years of age; in Utah, females, adults and minors under twenty-one years; and in Kansas, women, learners, apprentices and minors.

The Commissions are empowered to make various exceptions to this rule, which practically put all women and minors under the operation of the law, in the case of defectives and learners. In all the States, with the exception of Utah and Arkansas, the commissions may grant special licenses to physically defective women, permitting them to work for less than the established minimum. In Wisconsin special licenses may also be issued to defective minors. The Arkansas act makes no mention of defectives. Minnesota alone limits the number of defectives that can be so employed, putting the maximum at ten per cent of the total employees in any one establishment. In California such a license is good only six months, but may be renewed indefinitely. California and Colorado make no provision for learners. Massachusetts, Nebraska and Oregon have special rates for learners and apprentices; Wisconsin requires that minors in a "trade industry" must be indentures; in Washington the commission may permit the employment of learners by granting special licenses for such a period of time as the commission shall determine; the Utah law provides that "adult learners and apprentices" shall not receive less than ninety cents per day, and the learning period and apprenticeship shall not exceed one years; Arkansas puts the minimum wage for "inexperienced female workers or apprentices" at $1.00 per day; and in Kansas, minors, learners and apprentices may be employed at lower rates than adult women only by special license. The Minnesota law provides that learners shall receive a living wage, same as regular workers. In no State are the maximum number of learners and apprentices fixed by the law.

Powers and Duties of Commissions: Investigation, Determinations. In Utah the Commissioner has no duties or powers other than the general enforcement of the Act. In all other States the commissions are required to make investigations into the conditions of labor in industries where women and minors are employed, and are authorized to fix minimum rates of wages. In Arkansas the Commissioner of Labor and Statistics, who is a member of the commission, or any person duly authorized by him, is charged with the enforcement of the act. The investigation, in all cases, may be made on the initiative of the commission; and, in California, also upon petition;[1] in Minnesota, at

[1] No more definite provision made in Act.

the request of one hundred employees; In Kansas upon the request of not less than twenty-five persons engaged in any occupation in which women, minors, learners and apprentices are employed, and in Wisconsin upon complaint of any person to the effect that the legal rates are not paid in any establishment or industry. In conducting these investigations, the commissions have power to subpoena witnesses, administer oaths, and examine books, records, etc. In California, Wisconsin, Kansas and Arkansas, they have the additional right to enter the premises of the establishment investigated for the purposes of their investigation.

Besides being authorized to determine minimum rates of wages, the Washington commission may fix standard conditions of labor; the commissions of California, Oregon, Kansas, and Wisconsin, conditions of labor and maximum hours; the commission of Arkansas may establish "regulations governing the employment of females in hotels, restaurants and telephone establishments." During strikes and lockouts they may, except in California, Arkansas, and Kansas act as boards of arbitration. In all the States, with the exception of Colorado and Arkansas, they are further empowered to enforce all wage rulings; and in most of the States, barring only Colorado, California, Arkansas and Washington, they may enforce all other rulings made in pursuance of the acts. The Minnesota Act provides that the commission, and the Utah and Arkansas acts that the Commissioner of Labor, shall have charge of the enforcement of the provisions of the act.

Methods and Principles of Wage Determination. There are three methods of determining wage rates in the United States: by fixing the rates in the law itself, as in Utah and Arkansas; by a special commission, as in Colorado; and by a special commission aided by a special subordinate board, as adopted by the eight other States.

The standard or principle governing the wage determination is "a living wage," defined by the several acts as follows:[1] in California and Arkansas, the "necessary cost of proper living and to maintain the health and welfare"; in Oregon and Washington, the "necessary cost of living and to maintain the workers in health"; in Colorado, wages "adequate to supply the necessary cost of living, maintain them in health, and supply the necessary comforts of life"; in Massachusetts, Kansas and Nebraska, wages "adequate to supply the necessary cost of living and to maintain the worker in health"; in Minnesota, "wages sufficient to maintain the worker in health and supply him with the necessary comforts of reasonable life"; in Wisconsin, "a wage sufficient to maintain himself or herself under conditions consistent with his or her welfare."

Minimum wages rates may apply either to time or piece work, and in Minnesota, Oregon and Kansas orders may be issued for a given locality or area.

[1] The Utah Act fixes the rates for experienced adults at $1.25 a day.

Penalties. Penalties are provided for by the several acts for any employer who violates any of the determinations of a commission, or any provisions of the act.[1] The penalties differ in the different States. In Massachusetts the commission may publish the names of the offenders in the newspapers, and any newspaper that refuses to publish the names is subject to a fine of $100; in Nebraska the commission must publish the names, and the newspapers are subject to the same penalty as in Massachusetts; in California the minimum fine is $50 or imprisonment for thirty days, or both; in Colorado, the maximum fine is $100 or imprisonment for three months, or both; in Minnesota, $10 to $50 for each offense, or imprisonment for ten to sixty days; in Oregon, $25 to $100 or imprisonment for from ten days to three months, or both; in Washington, Arkansas and Kansas, $25 to fornia.
$100 fine; in Wisconsin, $10 to $100 fine for each offense; and in Utah it is a misdemeanor, subject to the ordinary penalties at law.

In California, Colorado, Minnesota, Oregon, Kansas and Washington, the employee who has not been receiving the legal wage can recover from the employer the balance due him or her.

Different penalties are provided by most of our States for employers who discharge or otherwise discriminate against employees because such employees have testified, or are about to testify before a commission. California makes this offense a misdemeanor; Colorado, Nebraska, and Wisconsin make each offense punishable by a fine of $25; Washington, Oregon, and Kansas, $25 to $100; Massachusetts $200 to $1,000, and Minnesota fixes the same penalty as for a violation of the other provisions of the act.

Court Review: Minnesota, Arkansas and Utah, alone, do not provide for an appeal from the rulings of the commission to some judicial tribunal. Appeals may be taken as follows: in California and Washington, to the Superior Court, and on questions of law only,[2] in Oregon and Wisconsin, to the circuit court, on questions of law only; in Nebraska and Kansas to the district court, on a general demurrer to the ruling, and a further appeal from the district court to the supreme court of the State lies in Kansas; in Colorado, to the district court, on questions of law only; and in Massachusetts, to the supreme judicial court or to the superior court.

Generally the courts may set aside the rulings of the commissions on such grounds only as are provided for in the several acts. This may be done in Colorado and Wisconsin if the ruling is found to be unlawful and unreasonable; in California, if the commission acted without or in excess of its powers, or if the determination was procured by fraud; in Massachusetts if com-

[1] The penalty attaches only to a violation of the wage ruling in California.

[2] That is, there is no appeal from the commission's decision upon questions of fact.

pliance with the ruling would prevent a "reasonable profit"; and in Nebraska, if compliance "is likely to endanger the prosperity of the business."

Advisory Boards: Each act, the acts of Colorado, Arkansas and Utah excepted, provides for the establishment by the respective commissions of an advisory wage board. Action on the part of the commissions is mandatory in Wisconsin, Nebraska, Kansas and Massachusetts, and optional in California, Minnesota, Oregon and Washington. The California "wage board" is to be composed of an equal number of representatives of employers and employees, and a representative of the commissions; the Kansas "board" of not less than three representatives of employers, an equal number representing the employees, and one or more disinterested persons appointed by the commission to represent the public; the Massachusetts "wage board" of at least six representatives of employers and six of the employees and one or more of the public; the Minnesota "advisory board" of from three to ten representatives of employers and an equal number of employees, and one or more of the public, and at least one-fifth of the membership shall be women; the Nebraska "wage board" of at least three representatives of employers, three of the employees, and the three appointed members of the commission; the Oregon "conference" of not more than three representatives of employers, three of employees, three of the public, and one or more commissioners; the Washington "conference" of an equal number of representatives of employers and employees, and one or more of the public; and the Wisconsin "advisory wage board" so constituted as to fairly "represent employers, employees and the public." These boards receive no compensation in Wisconsin, Washington, Oregon and Minnesota. They receive five dollars a day and expenses in California; the same rate as jurors in Massachusetts; and in Nebraska and Kansas, the same as jurors in the district court.