



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 15 | Number 1

Article 14

12-1-1936

Constitutional Law -- Minimum Wage Legislation

O. W. Clayton Jr.

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

O. W. Clayton Jr., *Constitutional Law -- Minimum Wage Legislation*, 15 N.C. L. REV. 50 (1936).

Available at: <http://scholarship.law.unc.edu/nclr/vol15/iss1/14>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Virginia³⁰ has a harsh law for defaulting counties. It allows the Governor, upon petition by the bondholders, to order the state comptroller to withhold payments to the county of state funds (except school funds) until the default is overcome.

Montana³¹ provides for refunding if the refunding plan is approved by the state examiner.

The default problem in North Carolina³² has been handled through the Local Government Commission which advises and aids local units in drafting refunding plans.

If neither Federal nor State action alone can solve this problem adequately, it has been suggested that a desirable result might be reached by making their legislation complementary. Through the "full faith and credit" clause "Congress might exercise its bankruptcy power by an act which would recognize the validity of state adjudications and state discharges wherever the jurisdiction of Congress extends."³³

All of the above legislation has been an attempt to remedy the evil after it has come into existence. The state legislatures should prevent the formation of this evil in the future by enacting strict measures which would prevent local governmental units from burdening themselves during "boom" periods with excessive and unnecessary bonded indebtedness.

W. C. Holt.

Constitutional Law—Minimum Wage Legislation.

The United States Supreme Court in a 5-4 decision¹ recently declared unconstitutional a New York minimum wage statute² for women. The Court based its conclusion entirely upon the case of *Adkins v. Children's Hospital*,³ which banned an attempt of Congress to regulate wages for women in the District of Columbia as an "unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the Fifth Amendment."

³⁰ VA. LAWS (1932) c. 148.

³¹ MONT. LAWS (EXTRA SESSION 1933) c. 6.

³² In North Carolina over 250 local units have defaulted in the last six years. (1936). 25 NAT. MUN. REV. 323. There are at present 24 counties and 98 cities and towns in default, 3 POP. GOV'T 16 (1936).

³³ (1935) 22 VA. LAW REV. 39; (1936) 45 YALE L. J. 702 (discussing comity by the Federal Courts to state statutory receiverships of defaulting municipalities).

¹ *Morehead v. People of New York*, 56 Sup. Ct. 918, 80 L. ed. Adv. op. 921 (1936).

² N. Y. CONS. LAWS (Cahill's, Cum. Supp. 1931-1935) c. 32, §§550-567. Statute set up a wage board to conduct investigations concerning wage payment and to determine minimum wages in certain industries upon proof that the employee was being paid an "oppressive wage." An oppressive wage was defined as one "less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health." Violation of this act was punishable by fine, imprisonment, or both.

³ 261 U. S. 525, 43 Sup. Ct. 394, 67 L. ed. 785 (1922).

The condemning feature of the District of Columbia statute was that it required the employer to pay a sum sufficient to supply "the necessary cost of living" to the woman employee, thus exacting from him, in the words of the Court, "an arbitrary payment for a purpose and upon a basis having no causal connection with his business."⁴ The majority stated that the statute looked at only the side of the employee and failed to consider the equal rights of the employer, thus leaving the impression that an act which would take into consideration the rights of both parties to the employment contract might be valid.

In addition to the standard used in the District of Columbia statute, and for the protection of the employer, the New York law added another requirement to its "living wage"; namely, that the amount paid be "reasonably commensurate with the services rendered."⁵ A minimum wage, to be fair, must weigh the equities and needs of both employer and employee, as the New York Legislature undoubtedly intended should be done. Yet, the majority in the present case failed to see any sound distinction in the two acts on this point and argued that the acts differed merely in "details, methods, and time."

"There is grim irony," the minority believe, "in speaking of the freedom of contract of those who, because of their economic necessities, give their services for less than is needful to keep body and soul together."⁶

This freedom of contract that the Court believed so essential to personal liberty is not without restraint: businesses charged with a public interest may be regulated;⁷ the character, method and time for payment of wages may be governed;⁸ hours of labor may be fixed;⁹ and even wages may be set to meet and tide over a temporary economic

⁴ *Id.* at 558, 43 Sup. Ct. 394 at 401, 67 L. ed. 785 at 796.

⁵ N. Y. Cons. Laws (Cahill's Cum. Supp. 1931-35) c. 32, §551(8).

⁶ *Morehead v. People of New York*, 56 Sup. Ct. 918, 932, 80 L. ed. Adv. Op. 921, 937 (1936).

⁷ *Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77 (1877) (Congress may regulate storage charges in grain elevators); *Atkin v. Kansas*, 191 U. S. 207, 24 Sup. Ct. 124, 48 L. ed. 148 (1903) (regulating hours of labor for employees of municipal corporation); *Wilson v. New*, 243 U. S. 332, 37 Sup. Ct. 298, 61 L. ed. 755 (1916) (regulating wages and hours of interstate railroad employees); *Block v. Hirsh*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. ed. 865 (1920) (letting of houses in the District of Columbia may become of such a public interest as to authorize legislative interference).

⁸ *McLean v. Arkansas*, 211 U. S. 539, 29 Sup. Ct. 206, 53 L. ed. 315 (1908). (In those mines where it was customary to pay workers according to a specified rate per ton of raw coal, statute required coal to be weighed before screening).

⁹ *Holden v. Hardy*, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. ed. 780 (1898) (state regulation of hours the coal miner worked underground); *Bunting v. Oregon*, 243 U. S. 426, 37 Sup. Ct. 435, 61 L. ed. 830 (1916) (limitation on number of hours that employees worked in any mill, factory, or manufacturing establishment in the state); see Note (1934) 12 N. C. L. Rev. 156.

exigency.¹⁰ The Court in the *Adkins* case, however, was unable to put the Act of Congress within the purview of these exceptions. It was not applicable solely to businesses of a public nature, nor was it made a temporary measure; rather, it established a permanent policy for the District of Columbia. It made no effort to govern the character, method, or periods of wage payments, nor to prescribe hours or conditions under which labor was to be done. By holding the New York Act indistinguishable from the one considered in the *Adkins* case, the majority precluded any argument that this statute might be within these well defined exceptions.

Minimum wage legislation is by no means new.¹¹ Massachusetts was the pioneer in this field, enacting laws for the control of wages as early as 1912.¹² The problem was first presented to the United States Supreme Court in 1914 when an Oregon statute was held constitutional by a 4-4 vote in *Stettler v. O'Hara*.¹³ Two years later, an act of Congress establishing a temporary minimum wage schedule applicable only to interstate railroads was pronounced to be within constitutional limitations as an emergency measure.¹⁴ With this rather meager precedent, the *Adkins* case denied the authority of Congress to enact general minimum wage legislation.¹⁵

Notwithstanding the *Adkins* case, and regarding as doubtful the effect it might have upon subsequent legislation, several states due to changed economic conditions have enacted legislation for wage regulation of women workers.¹⁶ The state courts have not found it difficult to uphold these statutes as a valid exercise of the police power for the protection of the health and morals of the woman worker and for the

¹⁰ *Wilson v. New*, 243 U. S. 332, 37 Sup. Ct. 298, 61 L. ed. 755 (1916) (act passed to counteract a temporary interruption of interstate commerce due to a railroad labor dispute).

¹¹ The first English statutes passed for wage regulation were the ORDINANCE OF LABORERS in 1349 and the STATUTE OF LABORERS in 1351, requiring all persons of certain classes to work, and carefully fixing the most minute details of the wage contract. In effect, these two statutes fixed *maximum* wages rather than minimum.

¹² MASS. ACTS AND RESOLVES (1912) c. 706.

¹³ 243 U. S. 629, 37 Sup. Ct. 475, 61 L. ed. 937. Although the case was argued in Dec. 1914, the decision was not handed down until April, 1917.

¹⁴ *Wilson v. New*, 243 U. S. 332, 37 Sup. Ct. 298, 61 L. ed. 755 (1916).

¹⁵ In 1923, the Court, in a memorandum decision, felt itself bound by the *Adkins* case, and declared unconstitutional an Arizona statute which was substantially like the District of Columbia statute. *Murphy v. Sardle*, 269 U. S. 530, 46 Sup. Ct. 22, 70 L. ed. 396 (1923).

¹⁶ CAL. GEN. LAWS (Deering, 1931) §3613; COLO. COMP. LAWS (1921) §§4263-4283; ILL. REV. STAT. (Cahill, 1933) c. 48, §§238-256 (by express provision, in force only until July 1, 1935); MINN. STAT. (Mason, 1927) §§4210-4232; N. H. PUB. LAWS (1933) c. 87; N. J. LAWS (1933) c. 152; N. Y. CONS. LAWS (Cahill Cum. Supp. 1931-35) c. 32, §§550-567; OHIO LAWS (1933) p. 502; ORE. CODE ANN. (1930) §§49-301—49-319; S. D. COMP. LAWS (1929) §§10022-A—10022-E; UTAH LAWS (1933) c. 39; WASH. STAT. ANN. (Remington, Rev. 1932) §§7630-7641.

future well-being of the entire race.¹⁷ In an important Washington case, which shows the attitude adopted by these tribunals, the court justified its decision by saying that the *Adkins* case is not conclusive as to the validity of a state law "enacted in the exercise of the police power of the state."¹⁸

It is not inconceivable that the Court could have found substantial difference in the District of Columbia statute and the New York wage law to justify a distinction between the two. Nor is it at all unlikely that the Court might have reached an opposite result had it considered the constitutional question involved from the broader aspects of present-day social policy. However, as a practical question, would it be advisable to regulate the wages of women workers when no such regulation is placed on men? If so, many industries might discharge their women employees and replace them with men willing to work for less than the state has set for women. Furthermore, a minimum wage might become a maximum wage. Lastly, was the Court, in passing on the validity of the New York Wage Law, defining a fundamental right of individuals to bargain for the amount of wages to be paid and received, subject to regulation by neither federal nor state government?

O. W. CLAYTON, JR.

Criminal Law—Double Jeopardy.

A and *B* while together, were held up and robbed by the defendants. *A* was killed. The defendants were tried and found innocent of the murder of *A*. Subsequently, they were indicted for robbery with firearms of *B* to which they pleaded not guilty and former jeopardy. The plea of former jeopardy was overruled; the North Carolina Supreme Court held the two crimes separate and distinct, as there was no identity of offenses.¹

It is a fundamental principle that a person cannot be tried twice for the same offense, and a plea of former acquittal or conviction will be sustained,² if the defendant could have been convicted under the first

¹⁷ *Holcombe v. Creamer*, 213 Mass. 99, 120 N. E. 354 (1918); *Williams v. Evans*, 139 Minn. 32, 165 N. W. 495 (1917); *Simpson v. O'Hara*, 70 Ore. 261, 141 Pac. 158 (1914); *Malette v. City of Spokane*, 77 Wash. 205, 137 Pac. 496 (1913); *Larsen v. Rice*, 100 Wash. 642, 171 Pac. 1037 (1918). *Contra*: *Topeka Laundry Co. v. Court of Industrial Relations*, 119 Kan. 12, 237 Pac. 1041 (1925); see *Stevenson v. St. Clair*, 161 Minn. 444, 201 N. W. 629 (1925) (statute constitutional as to minors).

¹⁸ *West Coast Hotel Co. v. Parrish*, 55 P. (2d) 1083, 1089 (Wash. 1936). Probable jurisdiction of the case is noted in 57 Sup. Ct. 40. If certiorari is granted, this case is expected to decide more definitely the constitutionality of minimum wage legislation, and clear up the doubts left by the principal case.

¹ *State v. Dills and Osborne*, 210 N. C. 178, 185 S. E. 677 (1936).

² See *State v. Mansfield*, 207 N. C. 233, 236, 176 S. E. 761, 762 (1934); N. C. CONST., art. 1, §17; U. S. CONST., AMEND. V.