1923

The Minimum Wage Decision

George W. Goble

University of Illinois

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Labor and Employment Law Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Available at: https://uknowledge.uky.edu/klj/vol12/iss1/1

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
THE MINIMUM WAGE DECISION

GEORGE W. GOMLE.

In the combined cases of Adkins v. Children's Hospital and Same v. Lyons the Supreme Court has again rendered a decision which has been the subject of severe criticism from many sources. The cases involved the validity of the District of Columbia minimum wage law. Congress passed an act creating a Minimum Wage Board which was to "ascertain and declare what wages were inadequate to supply the necessary cost of living to women workers, to maintain them in good health and to protect their morals," and was empowered "to fix standards of minimum wages for women in any occupation" in the District of Columbia.

In two cases in which one decision was rendered the validity of this act was questioned. In the first case a hospital for whose nurses wages had been fixed by the Minimum Wage Board, instituted a suit to restrain the board from enforcing its order. In the second, a woman who had been operating an elevator in the Congress Hotel in Washington was discharged because of the hotel's inability to pay the price set by the board. She also asks for an injunction against the enforcement of the order of the board. In both of these cases the constitutionality of the minimum wage act was questioned on the ground that it was an unjustifiable interference by Congress with the liberty of contract. The cases involve the old problem of drawing the line between two contending principles—the police power on the one hand, which enables congressional action, and the constitutional guarantee against deprivation of liberty, on the other hand which denies the power of congressional action. Does the police power protect the law's validity, or does the constitutional guarantee destroy it?

*Professor of Law, University of Illinois.
Many times it has been decided\(^2\) that if the public health or morals are sufficiently needy of correction, Congress is enabled through the police power to furnish the correction. But if the public health or morals are not sufficiently needy Congress is disabled, through the constitutional guarantees to furnish the correction.

In order to sustain the constitutionality of a law under the police power it must appear (1) that there was a general need for some law, i.e., that there was a health evil, moral evil, or some other public evil, which needed correction, and (2) that the proposed law is reasonably calculated to remedy to some extent such evil.

In the instant case the evil appears to have been the existence of immorality and poor health among women workers in the city of Washington, as well as their inequality with their employers in bargaining power. These facts seem not to have been seriously denied. The whole controversy was upon the question as to whether or not the requirement that employers shall pay a certain minimum wage, was reasonably calculated to remove to any extent the evil. The majority of the court held that the legislation would not remedy the evil and that therefore the police power could not be invoked to sustain the validity of the law. But a vigorous minority, Chief Justice Taft and Justices Sanford and Holmes, thought that the means used by Congress to remedy the situation could not be said to be unreasonable, and that therefore Congress had power to enact the law.

The case seems close. Much can be said to support either view. But it is believed that the minority opinions follow more closely the guiding principles formerly enunciated by the Court. Mr. Justice Sutherland, speaking for the court, points out very forcibly many instances of the law's unreasonable operation, and cases where it would seem to work positive injustice and make unnecessary discriminations. His language is:

"The price fixed by the board need have no relation to the capacity or earning power of the employee, the number of hours which may happen to constitute the day’s work, the character of the place where the work is to be done, or the circumstances or surroundings of the employment, and, while it has no other basis to support its validity than

the assumed necessities of the employee, it takes no account of any independent resources she may have. It is based wholly on the opinions of the members of the board and their advisers—perhaps an average of their opinions, if they do not precisely agree—as to what will be necessary to provide a living for a woman, keep her in health and preserve her morals. It applies to any and every occupation in the district, without regard to its nature or the character of the work.

"... What is sufficient to supply the necessary cost of living for a woman worker and maintain her in good health and protect her morals is obviously not a precise or unvarying sum—not even approximately so. The amount will depend upon variety of circumstances: The individual temperament, habits of thrift, care, ability to buy necessaries intelligently, and whether the woman live alone or with her family. To those who practice economy, a given sum will afford comfort, while to those of contrary habit the same sum will be wholly inadequate. The co-operative economies of the family group are not taken into account, though they constitute an important consideration in estimating the cost of living, for it is obvious that the individual expense will be less in the case of a member of a family than in the case of one living alone. The relation between earnings and morals is not capable of standardization. It cannot be shown that well-paid women safeguard their morals more carefully than those who are poorly paid. Morality rests upon other considerations than wages, and there is, certainly, no such prevalent connection between the two as to justify a broad attempt to adjust the latter with reference to the former."

Yet the evidence seemed to disclose that many people believe there is a connection between one's wage and his morals, and that therefore the legislation which increases his wage would have a tendency to better his condition of living and make an immoral life less attractive or desirable. The unreasonable phases of the operation of the law referred to by Mr. Justice Sutherland were proper to be considered by Congress in selecting its remedy, but are not of controlling weight with the Court in deciding on the existence of the congressional power. Admitting that the evil exists, it follows that Congress has the power to eradicate it by legislation. By what kind of legislation? Is it for the Court to decide what kind? Must the Court decide that a complete eradication is necessary, or only a partial one? Or must it say that X proposal will accomplish the desired results while Y proposal will not? If the Court is to decide these matters, clearly the Court is usurping the functions of Congress which would be constitutionally unjustifiable. If the Court may not decide these matters what may it decide? It may decide only whether or not the statute is reasonably calculated to cure the evil. If it cannot say that the law is palpably unreasonable, when viewed in connection with the evil it is designed

---

to cure, it should hold that the congressional power exists. If
the law is directed toward the evil and there exists any reason-
able ground for saying that it is a corrective, then the power to
pass the statute exists, unless, of course, other positive constitu-
tional inhibitions stand in the way. On the other hand if
there is no reasonable ground for such belief the power does not
exist. The only question for the Court to decide then is: Is
there reasonable ground to believe that this legislation is a cor-
rective for this admitted evil? Many unreasonable features of
the law may be pointed out and many instances of its operation
being unfair and discriminatory may be shown, and yet the en-
actment may fairly well perform its office or accomplish the de-
sign of its framers. Any law can be shown to have unfair, unjust,
and unreasonable provisions. But these would not make it un-
constitutional.

The fact that the legislative bodies of many states and for-
ign countries have enacted minimum wage legislation and that
leading economists and sociologists advocate such laws for the
improvement of the health and morals of the people, should be
adequate proof of the reasonableness of the enactment of such
legislation for the accomplishment of such objects. For after
all what is meant by the requirement of reasonableness in such
cases? It is not simply that there are reasonable men who be-
lieve that such a law will cure such an evil? It does not mean
that the judges of the court must believe that the law is ade-
quate for the cure, for in that event the Court would be usurping
the power of the legislature to select its own curative measures.
Of course the judges of the Court are presumably reasonable
men, but human experience demonstrates that men differ as
to what corrective measures should be administered to the innum-
erable ills of society, and the Court ought not to foist its own
views upon the legislature. Rather, it should recognize that
if contrary views are held by any considerable body of men, such
views cannot be regarded as unreasonable. The Court should
accept the choice of the legislature on this question rather than
insist upon its own. We may assume that before the legislature
enacted the law in question, there were presented to it for con-
sideration a number of different schemes designed to eradicate
this unhealthful condition of society. Upon examination of the
proposals it found some of them to be the projects of fanatics,
and others to be the carefully devised plans of experts, some of them perhaps being supported by a successful experience in other states or countries. The legislature selected and enacted into law the one of the latter which seemed most reasonable. Now is the Supreme Court to say that such legislation is unconstitutional because the plan adopted seems to the members of the Court unfit to accomplish the designs of its makers? The question is not: Does the plan seem reasonable to the members of the Court, but has the plan seemed reasonable to others whose opinions are entitled to respect? If the legislature should adopt the plan of a fanatic, or an untried scheme which could not claim a respectable following, the enactment probably would be invalid, for in that event it could not claim to possess the merit of reasonableness.

The view above set forth is supported by many decisions. In *Mugler v. Kansas* where the constitutionality of a state prohibition law was before the Court, it was said:

"And so, if in the judgment of the legislature, the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question."

In *Jacobson v. Massachusetts* it was contended that a compulsory vaccination law operated to deprive the plaintiff of his constitutional liberty, but the Court thought otherwise, and in setting forth the scope of the legislative power in matters of public health, safety, or morals, said:

"We must assume that when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled of necessity to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease. That was for the legislative department to determine in the light of all the information it had or could obtain. It could not properly abdicate its function to guard the public health and safety. The state legislature proceeded upon the theory which recognized vaccination as at least an effective if not the best known way in which to meet and suppress the evils of a

---

4 (1887) 123 U. S. 623, 662.
smallpox epidemic that imperilled an entire population. Upon what sound principles as to the relations existing between the different departments of government can the court review this action of the legislature? If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature had done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

But a case more nearly analagous to the case under discussion is Buntin v. Oregon.6 There was here involved the constitutionality of a law limiting the working day of employees in "mills, factories, and manufacturing establishments" to ten hours. In holding the law constitutional, the court said:

"But we need not cast about for reasons for the legislative judgment. We are not required to be sure of the precise reasons for its exercise or be convinced of the wisdom of its exercise. . . . It is enough for our decision if the legislation under review was passed in the exercise of an admitted power of government; and that it is not as complete as it might be, not as rigid in its prohibitions as it might be, gives perhaps evasion too much play, is lighter in its penalties than it might be, is no impeachment of its legality. This may be a blemish, giving opportunity for criticism and difference in characterization, but the constitutional validity of legislation cannot be determined by the degree of exactness of its provisions or remedies. New policies are usually tentative in their beginnings, advance in firmness as they advance in acceptance. They do not at a particular moment of time spring full perfect in extent or means from the legislative brain. Time may be necessary to fashion them to precedent customs and conditions and as they justify themselves or otherwise they pass from militancy to triumph or from question to repeal."

The same doctrine is stated very forcibly by Mr. Justice Harlan in his dissent to Lockner v. New York in the following language:

"I do not stop to consider whether any particular view of this economic question presents the sounder theory. What the precise facts are it may be difficult to say. It is enough for the determination of this case, and it is enough for this court to know, that the question is one about which there is room for debate and for an honest difference of opinion. There are many reasons of weighty, substantial character, based upon the experience of mankind, in support of the theory that, all things considered, more than ten hours' steady work each day, from week to week, in a bakery or confectionery establishment, may endanger the health, and shorten the lives of the workmen, thereby diminishing their physical and mental capacity to serve the state, and to provide for those dependent upon them."

7 Ibid 437, 438.
8 (1905) 198 U. S. 45, 72.
And by Mr. Justice Holmes in his dissent in the same case as follows:

"It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious or if you like as tyrannical as this, and which equally with this interfere with the liberty to contract. . . . But a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States.

". . . I think that the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first installment of a general regulation of the hours of work."

In applying the theory set forth in the above cited decisions to the minimum wage case, it would seem fair to say that if it is not unreasonable for one to believe that a prescription of minimum wages has a beneficial effect on morals and health it would follow that Congress has power to enact a minimum wage law.

*Ibid 75, 76.*