Labor Legislation for Women and Its Effects on Earnings and Conditions of Labor

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WHAT precisely is meant by labor legislation for women? Using the term in its broadest sense it is a congeries of statutes adopted wherever power-driven machinery has been introduced in Europe, America, North and South, and Australia, New Zealand and Tasmania, in India and on the Gold Coast, to save wage earners and their families from physical deterioration and to make possible continued efficiency in the productive industries. It is a product of universal industrial experience.

The term covers a wide diversity of legislation which goes back nearly ninety years in England and more than sixty years in New England. In an effort which continues to this day to reduce death, disease, the stunting of very young children by neglect, and to prevent the utter ruin of family life among the industrial workers, labor legislation was introduced in England for women as an experiment in 1842, when Parliament passed a bill prohibiting the employment of women underground in mines.

This was followed in 1844 by a bill restricting the working hours of women in mills to 12 hours in 24. In 1847, the first ten-hours law in history was adopted, effective May, 1848. Labor legislation enabled women to enter and to hold their own in large areas of industry which needed their especial qualities, among these quickness and deftness. It has followed the introduction of power-driven machinery throughout Europe and in state after state in America. The Orient entered this World movement at the International Labor Conference held in Washington in 1919, to which forty nations sent delegates.

Labor legislation for women is, therefore, an early and integral part of the evolution of modern industry which could ill have proceeded without it, not a set of recently introduced arbitrary restrictions upon the freedom of women to work, as has been frequently asserted in this country, especially in connection with the proposed twentieth amendment to the Constitution of the United States.

In Industry Who Are Women?

But in industry who are women? How rarely has the word been precisely defined! Perhaps the most amazing attempt to define it officially is that of Attorney General Dennis G. Brummitt of North Carolina, interpreting the new child labor law of 1927, for the purpose of enforcement in his state:

> By completing the fourth grade at the age of 14, the minor is placed in the position of one who has attained the age of 16 in so far as hours of labor are concerned. . . .
>
> A child between the ages of 14 and 16 who has completed the fourth grade in school may be employed 60 hours per week, but not between the hours of 7 P.M. and 6 A.M.

The statutory working week for women in North Carolina is 60 hours.

Women mill workers in that state are, consequently, now subjected to the competition of girls 14 years old and upward who leave school at the fourteenth birthday, who are, under this ruling, industrially women, except that they cannot work at night. Their wages are, however, the paltry wages of southern mill children.

Attorney General Brummitt's ruling of 1927 is in force eight years after the decisions of the United States Supreme Court, holding unconstitutional the two federal laws under which girls and boys under 16 years of age, if employed in manufacturing goods for interstate and foreign commerce, were assured everywhere in the United States, among other safeguards, freedom from work at night and also the eight hours day.

By a cruel irony the way for those devastating federal decisions, and the ensuing competition of girls 14 and 15 years old against adults, was paved by a federal district judge of the western district of North Carolina.

On first seeing the phrase "labor legislation for women" a reader naturally assumes that "women" means persons of voting age. This is, however, an injurious generalization. It is a form of confusion costly indeed to tens of thousands of girls between 14 or 16 and 21 years of age who work for wages.

One illustration of this confusion is the bill repeatedly introduced (hitherto unsuccessfully) in the legislature of New York to repeal the waitresses' section of the New York labor law. This statute prohibits the employment of any woman as a waitress in a restaurant after 10:00 P.M., unless it is in a hotel, or in a factory where the employer supplies night lunch on a noncommercial basis. This section of the labor law has been unanimously upheld by the Supreme Court of the United States.

For the attempted repeal of this part of the nightwork law, there have appeared before legislative committees at Albany, counsel for the Associated Industries (the New York branch of the National Association of Manufacturers) and representatives of the Woman's Party. Naturally the arguments presented by them to the legislature assumed that all waitresses are adults, able and ready to guard themselves and all their own interests everywhere and always.

If these arguments had prevailed, there would be, in all the larger cities of the state, automatically deprived of legal safeguards against working all night, a large body of young girls of 16 years and upward, who can at present work legally no longer than 10:00 P.M.

The trade of waitress, like all those which involve tipping, is undesirable at best. Without the law against all-night work, it is utterly unfit for these young employes.

Yet the Manhattan Trade School, of the New York City public school system, which teaches girls 14 to 16 years of age, among other occupations, the elementary practice of the waitress' trade, finds it difficult to hold them six months in school, so urgent is the demand for young girls, of whom great numbers are hired with no preparation whatever.

In twenty-four states young workers, after the sixteenth birthday are treated, so far as prohibition of nightwork goes, as though they were voting adults and could successfully manage their own affairs including such universal needs as those of regular sleep, and of earnings sufficient to supply them with abundant nourishing and attractive food. For this degree of self-direction,

they are in fact far from being equipped. They are beyond the bailiwick of those organizations dealing with child labor which unfortunately accept the sixteenth birthday as a reasonable limit after which boys and girls may be left to fend for themselves. These young competitors having no trade unions, nor votes, nor the judgment of maturity, tend to keep down the earnings of their working mothers and adult sisters as well as of the men in the trade. They themselves, however, profit by every shortening of the working hours of their seniors, including the prohibition of all-night work.

The Woman's party, in its campaign against protective labor legislation for women, has always ignored this large body of young girls whose fate industrially is bound up with that of adult women. If successful in its recurring legislative efforts, the party would incidentally leave them wholly deprived of protection.

All this merely illustrates how much more far reaching the phrase "labor legislation for women" is, in real life, than it appears to be in most of the discussions printed during the last decade, or in the arguments, for and against, presented to committees of legislatures.

Labor Laws Live or Die at the Will of the Judiciary

Throughout the long period since 1876 the attention of the reading, investigating and legislating public has been, in the field of women's work, almost exclusively centered upon one element of this complicated social development, *i.e.*, the enactment of labor statutes followed or not, as it happened, by provision for official inspection of industries employing women.

The time has come when popular attention must be shifted, in part, from statutes, to a consideration of judicial opinion; from making laws, to the decisions which determine whether or not they are valid when made. To date, far too little scrutiny has been focused, even by the people most directly affected, upon the judicial aspects of labor legislation.

We have not habitually thought of the activity of the judiciary as a permanent, integral part of this never-ending process. Since 1876, literally millions of club women have had practical experience with their legislatures in action. It is doubtful whether in this half century one hundred have been present, in the court room of the United States Supreme Court, during the reading of any decision affecting the lives, the health and well-being, the prosperity, or the industrial future of wage earners.

Labor legislation derives chiefly from two main sources, Congress and the legislatures on the one hand, supplemented by various departments, boards, and commissions empowered to make rulings having the force of law; and the courts, state and federal on the other. Congress and the legislatures have power to enact, to modify, and to repeal labor legislation. For its continuance it depends upon the courts.

The situation has been cogently summed up in the statement that "until it has been passed upon by the United States Supreme Court every labor law, whether it applies to men, women, or children, is a mere trial draft."

Obviously courts do not enact laws. Even the Supreme Court of the United States, could originally only interpret them. After nearly a century and a half, however, it has gradually gathered to itself, following the famous argument of John Marshall, power to veto by declaring it unconstitutional, any statute which comes before it.

Whether a court of last resort,

federal or state, upholds a labor law or vetoes it, the action in either case, is a link in our general legislative system. The negative activity of courts in this country is unique in its extent and its power to delay and to destroy labor legislation, a unique condition of labor.

A labor statute may be intrinsically useful or hurtful but that is not what determines its fate. This depends ultimately upon the collective economic opinion of five justices of the United States Supreme Court, or upon a majority vote of some state court of last resort. Whole trends urgently needed, in law-making fields of utmost importance may thus be diverted for decades by one adverse decision.

It is a sad chapter in the history of the judiciary that important new branches of labor legislation have been held unconstitutional, and delayed for years until some state court of last resort has seen its way to distinguish a later measure embracing the same principle, and thus make progress possible again; or to reverse its original untenable opinion. This latter process occurred in 1907 in the Schweinler New York nightwork case; in 1914, in Connecticut in the early workmen's compensation cases; and in Illinois in 1895 and 1911 in *Ritchie* v. *the People*.

An example of what may follow an adverse decision is the paralysis of the movement in this country for minimum wage commissions which has followed the Sutherland decision promulgated April 9, 1923, in the District of Columbia case. Women had been fully enfranchised and had increased in industry to approximately eight million, when this decision of the United States Supreme Court deprived the states of the power to prevent or to mitigate, by creating minimum wage commissions and boards, the exploitation of the economically most defenceless.

By twenty-nine pages of print agreed to by five justices of whom two were new comers to the Supreme Bench appointed by President Harding[1] within a year, ten indispensably necessary state laws were undermined so that their subsequent annulment became inevitable; and the minimum wage commissions of Massachusetts, Wisconsin, and California were crippled.

Chronologically these justices were new, but some of the arguments which they sponsored in the opinion were no newer than those of members of the English Parliament who voted against the first ten-hours law in 1847. The Sutherland decision is to the humblest wage earners among women what Judge Taney's opinion was to the fugitive slaves. By women for decades to come they will be bracketed.

THE UNEMPLOYED AND OPERA TICKETS

The latest labor law declared unconstitutional is that in *Ribnik* v. *McBride*, the opinion on which was written by Justice Sutherland and promulgated May 28, 1928 (again not a unanimous decision); a further illustration of the economic bias which determines these vital issues.

This is an aggravation of the injury inflicted by the District of Columbia minimum wage decision. The same court[2] which in 1923 deprived women wage earners of the meager safeguard of a lowest level of earnings beneath which the meanest employer cannot go, has now removed the interlocking safeguard of licenses and regulated charges previously applied to commercial employment agencies.

This is another example of adverse judicial action changing most injuri-

[1] Justice Sutherland of Utah, appointed September 18, 1922; Justice Butler of Minnesota, December 21, 1922.

[2] With the substitution of Justice Harlan F. Stone for Justice McKenna.

ously an enlightened trend of legislation until the decision can itself be changed. The Supreme Court held that the principle involved in overcharges by private agencies is the same as in the case of opera tickets. Every rate charged must be considered on its individual merits, the question at issue being whether or not it is extortionate. This leaves to the unemployed only recourse to the courts. But unemployed men and women are in no position to go to court, every time they are gouged by a commercial employment agency! They are defenceless because they are unemployed and *must* find work.

This decision tends also to confine future efforts to restoring in forty-eight states and the District of Columbia, free public employment agencies, municipal, county, state and federal, a terribly long and slow process. It precludes wise regulation of fees under licensing. Every industrial community needs both methods.

In truth, important interests of industry as well as labor are here attacked, but women suffer especially severely because, their earnings being less, every increase in the cost of getting a job bears correspondingly more heavily upon them.

EFFECTS OF MINIMUM WAGE DECISION

The annulment of a labor statute for women is never immediately understood by the people most closely concerned. Too many of them are young and too limited in experience. In the District of Columbia minimum wage case, this was especially true because many of the women who had benefited by the law were Negroes employed in the laundry trade who, because they are not admitted to trade unions, need in an unusual degree the safety afforded by this law.

In the states whose statutes were ultimately obliterated in consequence of this precedent, the results have been veiled, disguised, minimized, at least temporarily, by the greatest financial inflation in our history.

In California and Massachusetts the minimum wage laws have never been appealed to the United States Supreme Court. The employers in California do not now fight the law, in spite of the $16 minimum wage, the highest in the world. Unfair competition has been removed and the workers are better satisfied, especially in the fruit and vegetable canning industry. In Massachusetts the statute is not mandatory, and the rates vary from $15.50 a week downward.

Wisconsin having had its original act held unconstitutional, has enacted a different statute under which it seems to be getting approximately the same effects as before.

These three laws serve a clearly useful purpose by keeping the worst paying trades under scrutiny, and letting the world know what their workers earn.

These three surviving statutes are also a perpetual reminder that ten other valuable and socially necessary laws, perished because of the reactionary personal opinions of individual Justices of the Supreme Court. They farther illustrate the long delays involved in an adverse Supreme Court decision. If the District of Columbia minimum wage decision had been instead a bill repealed in Congress, it could be reintroduced following the gradual change of the personnel of Congress where the House is elected every two years, and Senators once in seven. But the Supreme Court is appointed for life and its decisions live on until they are reversed by the court responsible for them.

Furthermore any five justices in this

court of nine can exercise, by a majority of one, negative domination over both the legislative and executive branches of the Government. President Wilson signed the District of Columbia minimum wage bill. In vetoing it the Supreme Court ignored (beside the President) the opinions of their colleagues, Justices Holmes and Sanford with that of Chief Justice Taft. They made void and of no effect the nationally famous efforts of Justice Brandeis for minimum wage legislation continued until his elevation to the Supreme Court in 1916. Although, because of that previous participation, he did not sit in this case, his opinion was not unknown to any of his colleagues.

PUBLIC CRITICISM OF COURTS

One unforeseen effect of the Sutherland decision is the slow, varied alteration for which it has become the occasion, in the relation of the public to the United States Supreme Court and to courts of last resort. There is no more important condition of labor than the makeup of the courts state and federal.

The exemption of judges from criticism had previously conferred upon them and upon their decisions a sanctity unknown to the legislative and executive branches of the Government and no longer endurable here. In 1923, however, immediately upon the publication of this decision the leading law schools and their professional publications recognized its nationwide significance, in this era of miraculous change, for the general social and industrial development. The law journals and reviews criticized the opinion with a freedom and vigor new and unique.

Two years later, in 1925, the New Republic issued a volume entitled *The Supreme Court and Minimum Wage Legislation.* It offered in permanent form seventeen articles chosen with great care among the above mentioned criticisms which had been contributed by writers of authority, and were characterized by a degree of poignancy not to be discovered in adverse comment upon any decision of that court in any previous labor case.

Other influences are effectively at work. In this first decade after the enfranchisement of women, elective courts are open to women as judges, and the reëlection, in 1928, of Judge Florence Allen to the Supreme Court of Ohio is significant. During the five years since 1923 when the decision was promulgated, women have been as never before studying law, acquiring in greatly increased numbers competence not only for future participation in duties and responsibilities of Bench and Bar, but as critics who cannot be ignored. Women are now regularly admitted to the law schools of Chicago, Columbia, Yale, Wisconsin, Richmond and Virginia State, Pennsylvania, and of all important state universities. They are to be admitted to the new Institute of Law Research at Johns Hopkins. It will soon be true that only Harvard, and certain Catholic Universities, and a few of the less important secular endowed ones, continue to exclude women from their law schools.

Within this quarter century candidates for admission to the Bar will, undoubtedly, have to present evidence of acquaintance with the history, development and principles of labor legislation. Nor can it long remain the usage that men are taken directly from practice as attorneys for great corporations and permitted to promulgate within a year a decision annulling a labor law whose validity is a matter of life and health for hundreds of thousands of workers.

No less essential than sharing re-

sponsibilities of the Bench is obtaining an unfailing stream of enlightened, constructive criticism. Penetrating legal criticism is, however, sometimes restrained by fear of possible punishment by the criticized judge, who is in a position which offers strong temptation to punish his critic, if a member of the profession, under the charge of contempt of court. Most threatening of all for courageous critics of the judiciary, and most insidiously repressive, is the attorney's consciousness of the possibility of retribution in the form of adverse decisions in every day legal practice.

EDUCATIONAL EFFECTS OF LABOR LEGISLATION

In spite, however, of judicial setbacks, progress has been made, unevenly, haltingly, nevertheless progress. For example, forty-three states limit by law the number of hours a woman may work. The prescribed limits vary from 8 hours in a day and 48 in a week to 10 hours a day and 70 a week. The number of occupations included varies also, so that the proportion of gainfully employed women safeguarded against overfatigue, is not the same in any two states.

In general, the laws were drafted to establish standards for industries and employments in which the greatest number of women were subject to the strain of excessive hours. So too, minimum wage legislation was introduced to protect workers in the worst paid trades, and prohibition of the employment of women in certain occupations was based on their extra-hazardous nature. Of laws and rulings establishing sanitary standards surely there is no need to speak.

Women get by no means the full effect of labor legislation enacted for them. Though unfavorable court decisions may later be reversed or overridden, in the interim they deprive multitudes of that rest and degree of comfort which civilized communities recognize as minimum requisites for the public health and welfare.

In attempting, therefore, to evaluate the "effects of labor legislation for women on earnings and conditions of labor" the whole trend of women's employment must be considered. The unevenness due to statutory inadequacies and judicial reversals makes knowledge of detailed effects practically impossible to obtain, though certain tangible data will be considered later.

One preëminently useful influence of legislation on labor conditions is the spread of enlightenment throughout the community during the campaign for enactment, and the ensuing struggle for enforcement. This beneficent effect is not confined to women but extends to minors and also to men.

The perennial ignorance of industrial conditions even in industrial communities is the bane of the wage earners. It is the mother of the hoary myth of the unmarried working woman who lives at home free of cost to herself, squandering her earnings on fur coats, silk stockings, and Ford cars. It remains unaware of the woman who, however wretched her wage, shares it with aged parents, dependent or disabled members of her family. It credulously swallows whole the fear, voiced first in England in the 'sixties, that women would suffer economically if they could *not* work unlimited hours, because men whose working hours were restricted only by the bargaining power of their unions would fall heir to the jobs of the legislatively hampered women.

Modifying this ignorance, generations of public discussion in England and America have preceded and accompanied the establishment of the shorter

working day, no nightwork, one day's rest in seven, the short week.

Certain subjects are now "facts of public knowledge" and are so recognized by the courts of last resort. A vast mass of these facts showing the ill effects of unrestricted labor has been assembled and presented as briefs beginning in 1907 in connection with the case of *Muller* v. *Oregon*,[3] the first of the series in which the United States Supreme Court upheld as constitutional the ten-hours day for women; the ten-hours day for men and women; the nine-hours day for women; the eight-hours day, and prohibition of nightwork. In every one of these cases it was necessary to prove to justices that an evil existed, and that shortening working hours was an appropriate means of remedying that evil. They were not physicians, or hygienists. Most of them were brought up to the belief that that Government governs best which governs least. Yet when the facts were laid before them they upheld every law on this subject that was presented to them. The series lasted from 1908 to 1925.

Among other results the educational effect of this long effort is reflected in the frequent adoption by progressive and humane employers of standards higher than have been acceptable to state legislatures.

REGULATION OF WOMEN'S HOURS REDUCES UNEMPLOYMENT

Labor legislation for women has exercised a stabilizing influence in seasonal occupations, by regulating the length of day and working week, so distributing among more individuals a share in the total of employment and earnings. This effect is especially valuable as new inventions continuously increase the output of machines tended by fewer workers. Without some restraint on the number of hours, it is apparent that even our present degree of unemployment would be markedly increased.

Regulation of hours has been notably beneficent in recent years because of intensified speeding. It stops inefficient employers from exploiting the labor of women as a substitute for increased efficiency in management. It protects progressive employers from depressing competition of sweaters.

HAVE LABOR LAWS KEPT WOMEN OUT OF INDUSTRY?

From the beginning, in 1842, of the regulation by statute of conditions of labor for women, there have been bitter opponents of its enactment. By these opponents so much has been said concerning its restrictive effects on opportunities for employment that it is refreshing to turn from the field of fancy to that of fact.

A recent study of the United States Women's Bureau[4] contains charts showing state by state, from 1870 to 1920, the rate of increase in the population of men and women over sixteen, and the rate of increase of those gainfully employed in non-agricultural pursuits. In summing up the findings of analyses on which the charts were based, the report says:

> It is apparent, therefore, that only in the Southern States—those east of the Mississippi and south of the Ohio or of the Potomac—has there been a general tendency toward a greater increase of men than of women in gainful occupations during the 50 years from 1870 to 1920. In almost all the other states the rate of increase for women gainfully employed has been greater than that for men.

It is significant that in southern

[3] The briefs used in these cases may be obtained from the National Consumers' League, 156 Fifth Avenue, New York City.

[4] Bulletin No. 65, *The Effects of Labor Legislation on the Employment Opportunities of Women.*

States labor legislation has had its slowest development. It is precisely where hours have tended to grow shorter that women have entered industry as never before.

In two of the states which have the largest per cent of women working under protective laws, we find a marked difference in their rate of increase as against the rate of increase in the population. Massachusetts which has the longest history of labor legislation, has 55 per cent of its gainfully employed women protected under these laws. In the 50 years their rate of increase was approximately 400 per cent, while the rate of increase of the female population was but 269 per cent.

In Pennsylvania, where 65 per cent of all employed women work under protective laws, the rate of increase of gainfully employed women in the fifty-year period was 530 per cent and the female population rate increased but 267 per cent.

As a further illustration that statutory regulation has not militated against the employment opportunities of women, it is of interest to note that while according to the Census of 1910 there were 203 occupations in which more than 1,000 women were employed, by 1920 the occupations employing women had increased to 232. The increase was largely in the manufacturing and mechanical industries and professional services.

Beside the intangible benefits of the long fight for improved standards, there is also available evidence in a negative form, of the beneficent effects of statutes regulating hours of labor. Again Bulletin No. 65 provides authentic data.

The Women's Bureau has made surveys of hours, wages, and conditions of labor of workers in eighteen states. It has analyzed the scheduled hours[5] of 233,288 women employed in 2,608 plants. The data given in the following paragraphs are extracts from these analyses.

In Alabama, which has no legal restriction on the working hours of girls over 16 years of age and adult women, 40.4 per cent worked 10 hours a day, 9.7 per cent worked more than 10, and 63.2 per cent worked more than 54 hours a week.

Georgia's law prohibiting more than ten hours a day and 60 hours a week, applies only to cotton and woolen factories (incidentally this statute applies to both sexes). In this state 34.1 per cent of the women covered by the survey were working 10 hours a day and 29.8 per cent more than 10, while 68.4 per cent had a working week longer than 54 hours.

These are two of the six states listed as having the largest number of women working 10 or more hours daily and more than 54 hours a week. The other four are South Carolina, Virginia, Mississippi and Tennessee. The moral seems plain—where the lowest legal standards obtain, there are to be found the greatest numbers of women working excessive hours.

What the United States Does Not Know and Why?

Of all the conditions of labor none is so universal as fatigue. Against no other evil have so many, such long continued, such varied efforts been directed by so many wage earners both men and women. Nor is there with regard to any other labor condition such world-wide experience of the social and industrial gains due to that unremitting effort.

In our country, however, with forty-eight variations in statutes regulating working conditions, it is not possible to compare the beneficent effects of legislation establishing an 8-hours day and

[5] These schedules were obtained in 1922, 1924 and 1925.

48-hours week, with the influence of statutes which still permit a 10-hours day and a 60-hours week, even these backward regulations applying only to a limited number of occupations. Our failure to keep continuous comprehensive federal statistical records of industrial causes of death and of industrial morbidity, blocks the comparisons so imperatively needed.

Because of our unique lack of these statistics, no one can yet *know* what any year's earnings of the great body of women wage workers are. For neither they, nor their employers, nor the Bureau of the Census can *know* how much time and earnings women have lost by reason of illness. This applies to every state and to the nation.

No one can prove whether tuberculosis was, or was not, diminished among working women when the 12-hours day was abolished for women in Pennsylvania cotton mills; or when work after 6:00 P.M. was abolished for women in Massachusetts; or when the 8-hours day or the 48-hours week for women was introduced in more or less various and incomplete forms in nine states and the District of Columbia.

Nor have we comparable statistics on the morbidity and mortality of mothers and babies, among wage-earning mothers in states with and without protective labor legislation.

Until records are kept permitting the high cost of fatigue to be shown by vital statistics, industrial morbidity, and mortality statistics, only fragmentary evidence can be offered of the effects on the health of women workers of restricted or unrestricted hours of labor.

EARNINGS

Earnings have undoubtedly been indirectly improved by shortening the hours of work of women from unlimited stretches to 12, then 10 a day and 60 a week, and finally to 9 and 54, and 8 and 48. These were the hours beginning with 1848 down to 1914 in England. They were national laws and were enforced.

No official records seem to have been kept specifically to show changes for the better in earnings following upon changes in hours. Only with sickness and accident insurance did the sequence become clear. It is, however, now an accepted part of the industrial history of England that changes for the better did more or less keep step.

In America, also, we lack official figures showing regular connection between reductions in the working day and improved earnings. It is, however, a well recognized phenomenon that long hours and low wages go together and short hours and high wages.

In considering the effect of legislation upon the earnings of women, several facts stand out in sharp relief. The first and most significant is that minimum wage laws came into existence because of shockingly low earnings of women working under an industrial system entirely free of government regulation of wages.

New Zealand, as the direct result of insufficient earnings in the sweated trades adopted, in 1894, the first statute intended to remove the hardships suffered by underpaid workers. It was particularly because women and children were special sufferers from unscrupulous employers that public opinion was strong enough to create the legislation.

In the United States the first minimum wage law was passed by Massachusetts in 1912. The demand for this statute and the eight which followed in other states in 1913, arose out of public horror at the low earnings of women workers as revealed by current

studies, by the Federal Government in 1907–10, followed by similar ones made by states and by private organizations.

The history of minimum wage legislation shows the development so characteristic of labor laws, exploitation of the weakest and most defenseless until conditions become so bad that public control of exploiting employers can no longer be deferred. That such public control is to the advantage of employers with high standards, thus relieved of unfair competition, scarcely needs to be pointed out.

A fact generally overlooked by critics who condemn this legislation as impracticable, is the short actual operation of the oldest American law which has also been the least interfered with. A corollary of this limited period of operation is the relatively small proportion of all the gainfully employed women who have been in the occupations affected by decrees.

Beginning in 1912, minimum wage laws were enacted in fifteen states, Arizona, Arkansas, California, Colorado, Kansas, Massachusetts, Minnesota, Nebraska, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wisconsin. The District of Columbia and Porto Rico also acquired laws; a total of seventeen communities in which this experiment has been tried.

Immediately upon the passage of these statutes obstructionist tactics delayed their application. Where the statute called for the creation of boards to determine wage rates, the period between the enactment of the act and the date when the first decree became effective, varied from eleven months in the District of Columbia to five years and five months in Arkansas.

Injunctions were issued restraining boards and commissions from enforcing decrees while long legal battles were fought in state courts. These and other factors markedly reduced the number of years during which minimum wage decrees have been effective.

A second complication which makes clear cut comparison of earnings before and after the issuance of decrees practically impossible, is the marked fluctuation in earnings in the war and post war periods. A bulletin of the United States Women's Bureau, recently issued entitled[5] *Minimum Wage Legislation in the United States* contains detailed analyses of wage rates and actual earnings in minimum wage states. In several instances the increase in earnings which followed decrees was so marked and so immediate that its source could not be questioned.

Out of the confusion caused by different types of laws adopted by the various states, and their subsequent fate at the hands of the judiciary, one fact stands clear. Minimum wage legislation, as a means of protecting the public health by assuring women workers earnings sufficient to maintain life and vigor, has never had a real trial in this country. That is to come in the future.

The Sutherland decision of the United States Supreme Court in 1923, and subsequent state ones, for which it established a precedent, are neither final nor fatal. Ultimately they will inevitably be reversed. Lowest levels will again be established beneath which unrestricted competitive industry cannot go.

In the meantime, thousands of women and girls are suffering because of these decisions; and this country remains unique among industrial nations in its inability to protect its economically defenseless wage earners against destitution, even while they are doing work which society needs to have done.

[5] Bulletin No. 61.

MINIMUM WAGE BOARDS AN URGENT NEED TODAY

Unhappily, a large part of the public rests comfortably in the belief that the need for such legislation no longer exists. This is partly a result of the paralysis caused by the adverse decisions; and partly because in certain professional, semiprofessional and skilled occupations women's earnings have risen.

Wage regulation by law having always been intended to establish decent standards for the worst paid workers, it is evident from the scattered data available, that that comfortable belief is fatuous. The need for such regulation is far from ended.

It is a shock to learn that in 1929, certain candy manufacturers in Pennsylvania pay their beginning workers an average of $10.70 a week in a state which permits a 10-hours day and a 54-hours week. In New York City, where the cost of living is high, the investigation[7] made by the Consumers' League of New York in 1928, showed that $12 was the average beginners' wage in the candy industry, and that the great majority of all workers in that highly seasonal occupation are considered "beginners" at the commencement of each new season. This investigation showed, as have all others, that progressive employers, with high standards, constantly faced undercutting of prices by competitors with low standards. As a result of the League's study, ninety-two New York manufacturers have recently agreed to pay not less than a beginning wage of $14 a week, little enough surely in view of current living costs.

Since its establishment in 1918 the United States Women's Bureau has made surveys of wages, hours and other working conditions of women. In 1924 and 1925 surveys were made in four states. One was Mississippi, where factories, laundries and mercantile establishments, located in twenty-five cities and towns, were studied.

In Mississippi, which gives legal sanction to a 10-hours day and a 60-hours week by a law poorly enforced, 204 women who had worked from 54 to 59 weekly hours had a median for their week's earnings of $8.45. In less technical language this means that one half of these women had earned less than $8.45 in a week and one half earned more. Of a group of 747 women who had worked six full days in the week, one half had less than $9.70 to show for their long hours of labor.

Space forbids quotations from all four of the Bureau's most recent studies. However, while the Mississippi study unquestionably showed the lowest median earnings, the figures from the other three states are equally disturbing to the comfortable assumption that, since the war, all is well with women workers. The medians given below are for all female employes in the establishments covered by the surveys, including those who did not work a full week. But as full-time employment is not always within control of the worker, and these figures are for actual earnings, they possess great significance. In Tennessee, in 1925, the median was $11.45; in Delaware, in 1924, $11.60; and in Oklahoma, in 1925, $13.75.

As has been said, three states continue in force their minimum wage commissions. Upon facts gathered through the administration of these statutes and upon whatever studies the United States Women's Bureau is invited by state officials to make, must we depend for knowledge of the earnings of women in the United States!

[7] *Behind the Scenes in Candy Factories*. Consumers' League of New York, 1928, 289 Fourth Avenue, New York City.

It is obvious how sporadic and inadequate such knowledge must be.

If we had had at work since 1923 the minimum wage boards, destroyed by the action of the Supreme Court in that year, we should know for all those states, approximately the lowest levels of the annual earnings of the worst paid workers, in the ill paid trades of women and girls.

For want of these boards, and the potential ones in states where legislative action was precluded by the Sutherland decision, these necessary figures cannot be known year after year on a national scale. Ignorance of facts important to the life of the nation is another by-product of the annulment of sorely needed statutes by the judiciary.

The absence of minimum wage laws, and the downward pressure of competition of the multitude of young girls upon the wage rates of adult women, tend toward widespread subsistence wage rates. These leave no margin for times of unemployment, no savings for sickness and old age. Subsistence wages entail dependence upon the family, or where the family itself is at subsistence level, upon charity, both public and private. These charitable agencies subsidize the underpaid workers and industry is encouraged to shirk paying in full for the labor it thus meanly gets. The charities and the taxpayers have no present way of making the employers pay.

It may be asked why the groups of women who most need minimum wage boards have not agitated for them during the five years since the decision was handed down. It is because these groups include the young, the unorganized, the unskilled, and the uneducated. Their wages have been too small to enable them to pay dues for an effective women's union or to maintain legislative committees to speak for them. They dare not risk losing a job by taking part as individuals in public agitation. It is precisely their defenseless poverty that silences them.

On the other hand women employes have been forced to appear in opposition to a proposed minimum wage bill for fear of losing their jobs. In 1922, in a certain Southern state the legislature was holding a public hearing on a minimum wage bill. The state branch of the Manufacturers' Association engaged a special train, loaded it with employers, foreladies, and women department heads. On their arrival at the capitol the secretary of the Manufacturers' Association handed each one a red badge reading "We do not want our wages fixed by law."

Some friends of the bill knew a number of these women and something of the struggle they had had, and the pitifully small wages they had earned. Armed with that knowledge the friends asked by what curious twist of attitude they could justify appearing as opponents of a measure intended to safeguard other workers from their bitter experience. Two kinds of replies were given, one that the "boss" had told them to come. The other that they had been assured by their superiors that the bill meant their present wages would be lowered to meet the minimum.

Forty years ago, in 1889, the first year of its existence, the Consumers' League of New York City published this statement: "There is no level below which the wages of women cannot be forced down." It was issued by Mrs. Charles Russell Lowell, the League's first president. This was true then and is true now. Then it was a phenomenon newly observed. Now it is confirmed and indefinitely prolonged by the Sutherland decision.

Obstacles to Progress

Two national organizations which have as an important permanent ele-

ment of their work public opposition to labor laws for women, are the National Association of Manufacturers and the National Woman's Party. The former represents that part of the rulers of industry who do not recognize the evil of industrial fatigue as an obstacle to industrial progress. They oppose the legal 8-hours day, even for children 14 to 16 years of age (see pamphlet by their secretary, Noel Sargent, April, 1928). They became widely known as actively opposed to labor legislation in 1894 and 1895, when they attacked successfully the Illinois 8-hours law for women, the first of its kind in the Western Hemisphere. Their hostile efforts have been continuous, and account, in part, for the fact that the 8-hours day exists, even yet, in only ten states including the District of Columbia as one, and the New York statute of 1927. Illinois has never regained the 8-hours day and women can legally be required to work 70 hours a week. The benefits of labor legislation to health and, therefore, to earnings have obviously been greatly limited by the retarding influence of this 34-years-old organized and abundantly financed opposition.

The Woman's Party's hostility to labor legislation for women, and the incessant misinterpretation which has constituted its publicity, cannot be ignored in any serious attempt to estimate the effects upon earnings and conditions of labor of the statutes now in force.

The English grandmothers of the present party began to voice their objection to "restrictions" about 1865. A history of factory legislation sheds interesting light on the origin of this objection. We quote:[8]

It would seem to have originated in a certain confusion between the social and customary disabilities placed on women's work in the professions followed by the upper and middle classes, and the restraints placed by law on the overwork of women in industry. There really is no parallel between the two classes of restrictions. The limitations of opportunity suffered by women of the professional classes have their roots deep down in class custom and social history, and doubtless were and are a distinct grievance, sometimes more and sometimes less keenly felt, according to the nature of the desired occupation.

This confused thinking persists today both in England and America among a limited circle of the professional class. It is doubtless responsible for some of the curious arguments put forward by the Woman's Party.

In England, where improved conditions brought about by the Factory Acts resulted in the development of strong and virile trade unions among the industrial population, the English authors of this "History" made the following comment concerning the opposition of the feminists:[9]

And it is surely extremely significant that whilst the attack on the regulation of women's labor has been fruitless in better organized industries—that is, in those which can make their wishes felt—it has taken effect precisely in those industries which are unorganized and collectively inarticulate. By the admission of the opposition itself, the women whose trades have been under state control for thirty, forty or fifty years are now so strong, so efficient, and so well organized, that even those who most strongly disapprove of state control do not wish to withdraw it from them. Yet we are told that to those who are still working long hours, in insanitary conditions, state control would mean lowered wages, and perhaps ruin.

An analogous situation is to be found in this country in the firm stand for protective legislation taken by

[8] *A History of Factory Legislation* by B. L. Hutchins and A. Harrison, 2nd ed. Revised, 1911, p. 183, P. S. King & Son, London.

[9] *Ibid.*, p. 193

the National Women's Trade Union League and other strong trade unions of women, which represent the best paid workers in industrial occupations.

At a Congressional hearing, held February 1, 1929, on the proposed constitutional amendment for "Equal Rights for Men and Women" sponsored by the Woman's Party, opposition to its passage was voiced by a number of women's unions. The Young Women's Christian Association and the National Council of Catholic Women, a large proportion of whose members know from personal experience what protective laws mean, expressed strong opposition to the amendment because of its effect on those laws. Mrs. Maud Wood Park of the League of Women Voters was spokesman for fourteen other national organizations who oppose the proposed amendment.

Advocates of the amendment mentioned various individual women opposed to the so-called "inequality" brought about by legislation. There was not, however, a trade union woman among the proponents. The "Equal Rights" amendment would wipe out all labor acts except those applying identically to men and women.

Seventeen states exclude women from work in mines. Neither the mining corporations nor even the National Association of Manufacturers object to this. Does the Woman's Party wish to restore by its amendment such equality as existed in the English mines in 1842?

In view of the malignant criticism which labor legislation for women has survived, and the millions of people to whom it has beneficently applied, and does apply (directly and indirectly), the proposal renewed before each Congress to wipe it all out as an "inequality" is preposterous. It is a surviving phase of the ancient strife between doctrinaire individualism, and the cumulative, always ultimately victorious, teachings of experience.

NOT LESS LABOR LEGISLATION BUT MORE

Fatigue and poverty being two principal conditions of labor, the struggle for safeguarding measures for women has been most active in behalf of working hours, and of instrumentalities for compelling industry to pay an ascertainable part of the cost of living to the economically most depressed wage earners.

The total effects of present labor statutes, especially for women, are meager indeed compared with the wealth and development of the nation and its enlightenment in other respects. Today's urgent human need of statutes adapted to the kaleidoscope of industry is vast, and grows with every new disease of occupation, every new poison, every speeding machine newly adapted to women's work. Every study of effects demonstrates that women in industry need not less labor legislation but vastly more.