

## Before the Court

**A**NOTHER test of the American Constitution begins to-day with the filing in the Supreme Court of the brief supporting the Oregon Minimum Wage Law. What is to be decided is the immediate future of an experiment in seven States to prevent the bottom from falling out of the American standard of living. What is really at stake is whether the Constitution is flexible enough to allow American communities freedom in dealing with modern wage conditions.

The Legislature of Oregon has declared it a misdemeanor to pay women wages which are "inadequate to supply the necessary cost of living and to maintain them in health." An Industrial Welfare Commission was created to carry out this principle. It called a conference in Portland of nine people—three manufacturers, three employees, and three members-at-large representing the public. This conference discussed wages and hours and conditions, and reported unanimously to the Industrial Welfare Commission, which then made the report into an order. No manufacturer was allowed to employ a woman more than nine hours a day or fifty hours a week, to fix a lunch period of less than forty-five minutes, or give to any experienced adult woman worker, paid by time rates, a weekly wage of less than \$8.64. The order was appealed to the courts of Oregon by a paper-box manufacturer. But the Oregon Supreme Court upheld the law. The appeal is now being made to Washington, and the Supreme Court will have to declare whether the Constitution permits a state like Oregon to make the compulsory minimum wage experiment.

The decision hangs first of all upon the meaning of "liberty" under the Fourteenth Amendment. But "liberty" has already been restricted by the court in *Lochner vs. New York*, and *Muller vs. Oregon*, so that the right to purchase or sell labor now means that the right must not be exercised in a way dangerous to health, safety, morals, and general welfare. What has to be proved to the Supreme Court is that women's wages in many trades are so low as to be dangerous. The argument is not so much over legal principle as over actual fact. On this account the brief which Mr. Brandeis and Miss Goldmark have prepared is not an array of precedents, but an overwhelming indictment of the chaos and the cruelty and the stupidity by which women's wages are fixed. The human being who can read this brief and not be shaken by it may with perfect justice regard himself as invincible. Without one touch of rhetoric it piles fact upon fact until the total effect is crushing, and if nothing else were accomplished by the case, the recognition that

tific argument over legal pedantry. It is an example of democracy become clear-sighted—intrusion of reality into the law.

The Court's decision will be awaited with anxiety by men and women all over the country who think that the minimum wage law is the most serious effort yet made to deal with an intolerable condition. No one is certain that this legislation will do all that one could wish it to do; but it is being tried in England and in Australia, and it seems to have worked fairly well; with time and experience it may be made to work better. But if the experiment is cut off now, we shall not know where to turn. For whatever may be said against the legislation, this at least must be said for it: nothing else is proposed which shows the least promise.

On human grounds, therefore, the burden of proof is with those who object. These opponents may be divided into those who object on theoretical grounds to State interference with wages, and those who use these theoretical objections to protect their profits. The sincere theorist hallows many a bad cause. If only he can be detached, the selfish opposition will be drawn into the open and revealed.

The first sincere argument is that we must not interfere with the laws of supply and demand, that women are paid what they are worth, and that no government should compel people to receive more than they earn. Now the fact is that there are more women than jobs, that women are unorganized and have no bargaining power, that women must eat every day and pay board every day. They are not like cotton which can be stored in warehouses until the price goes up. A day's work lost is lost utterly. You cannot sell yesterday's labor even at reduced rates. The supply of unskilled or semi-skilled women's labor is practically at the mercy of the demand. And the result is just what one would expect it to be. Women's wages in most trades are fixed by the fear of starvation and the caprice of the employer.

If we study the wages paid for the same work under the same conditions, we find the most extraordinary variation. In six Boston department stores the number of women who were paid four dollars or less a week varied from one per cent to twenty-four per cent. In thirteen laundries the four-dollar women varied from about two per cent to twenty-nine per cent. These figures are taken from the report of the Massachusetts Commission. In one factory practically every woman earns at least six dollars, in another doing the same kind of work six dollars is an aspiration. There is, in short, no such thing as a standardized wage for women. One employer pays one wage, his competitor pays a different one. What does it mean? It means that

what labor is worth or what the employer should pay.

It is meaningless to talk of "interfering with natural laws." There is no law, for there is no uniformity. It is meaningless to talk about "paying women more than they are worth." They are not paid what they are worth, but what they can get. It is idle to talk of damaging business by forcing up wages, for the enormous difference between the worst employer and the best shows that with efficient management the lowest rates are unnecessary.

There seems to be no standard by which women's wages are fixed. Sometimes a generous employer will set them at what he regards as a level of decency, another will drive them down to a point where no woman can exist without outside help. Some employers rely on the girl's family to subsidize the business, others count on charitable homes to pay the board which the wages will not supply. Others have been known to rely on casual prostitution. In some shops a girl is pledged not to tell anyone what she is paid; in many, wages are fixed by the foreman, under orders to keep down expenses. Everywhere in the labor market, with the exception of the protocol trades, are anarchy and fluctuation. The price is wretchedness unspeakable for the women, for the employer a careless and unthinking absolutism which degrades the efficiency of labor, and for the nation a tribute in stamina and nerves and a stultifying of human beings which is a curse upon the generations.

The actual story of women's work is a record of stupid cruelty which makes the theorist of "freedom" seem like a class-blinded pedant. Take, for instance, the nominal wage; put it at a high figure, at \$8.00 per week. This does not mean that a woman will earn \$8.00 for fifty-two weeks, since the factor of time lost in slack seasons amounts in many trades to twenty per cent. For ten weeks the woman may not even earn her nominal wage. She must either get another job or she must have saved. But getting another job is not simple in a crowded market, and saving is a luxury that the poor are taught but not enabled to practice. For thousands of women a week's unemployment means desperation, means the poorhouse or charity. When you read that in artificial flower-making the maximum force in a certain number of shops at the high season is 4,470, and that in the dull season there are only 873 at work, you are reading about thousands of people like yourself who are suffering more than they can tell.

How do they manage to live? Not all become "white slaves," though that seems to be the best way of attracting public attention. Most of them remain virtuous enough, gray enough and sufficiently

for a pair of shoes or something like that," said one girl to an investigator, "I don't buy meat for weeks at a time." Another was more extravagant. "You know," she said, "sometimes I just long for a good thirty-cent meal. I get so tired of these twenty-cent dinners that often I think I'd rather not eat at all." "I never board a street car without planning days ahead how I can spare the nickel from my lunch or clothes money." One woman received a week's vacation with pay, and every day of that week she went around to the shop to see that her job had not been taken by someone else.

Those who have caught sight of these things have invented the minimum wage as an instrument for dealing with these conditions. They do not underestimate the difficulties. They know that there are unemployables, they know that if wages were suddenly jerked up everywhere there would be tremendous confusion. All they ask for is permission to experiment in a few of the worst trades, and to learn what they can of the problem. In all conscience, it is little enough, miserable and grudging at best. But if this experiment is shut off on *a priori* grounds, if this reasonable, hesitating effort is strangled, the problem will still stare us in the face. We shall not have put it out of sight, nor solved it. We shall merely have blocked our only avenue of hope.

## The Spoken Message

WHEN Congress reconvenes next week President Wilson will, according to the precedent already established, read his message in person to an assembly of both houses. His action in establishing this precedent is one of the best and will prove to be one of the most fruitful of his public career. The physical presence of the President at the Capitol may not seem to be in itself a matter of much importance; but the value of Mr. Wilson's innovation is not measured by its direct results. The transformation of the Presidential message into an address, delivered in person, symbolizes and promises an important change in the relationship between the Presidency and Congress, and to a lesser degree between the Presidency and the American people. It symbolizes the closer cooperation between the executive and the legislature, which the executive needs to bring about in order to make effective its increasing leadership of American public opinion.

That our Presidents have been assuming an increasing initiative in legislative policy and an increasing leadership of American public opinion is, of course, one of the conspicuous developments of modern American politics. The President as the