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Revising the Minimum Wage for the 1990s

CHRISTINE NEYLON O'BRIEN*

I. INTRODUCTION

This article examines the federal wage floor concept of the Fair Labor Standards Act of 1938¹ ("FLSA") in light of the current legislative debate about increasing the minimum wage.² The arguments from proponents and opponents of the federal minimum wage law have remained fairly constant over the past fifty years.³ Concern over the potential loss of jobs, the wage floor's negative impact upon the economy, and the questionable efficiency of the wage floor in reaching the neediest workers remain as some of the wage floor opponents' most prevalent arguments. In addition, the harmful impact of a minimum wage increase on the competitiveness of United States business in the international sphere has emerged as a foremost issue for the opponents in this decade.

Among the issues covered in this article are how various groups might be affected by pending minimum wage legislation (i.e., women, youths, undocumented workers, and minorities), the status of state minimum wage laws in the United States, and the international trends away from government intervention in wage setting both through collective bargaining and via direct legislative enactment. Also discussed are the recent societal trends in the United States, such as the increase in dual-earner families and the decline in union membership, and how these trends might be influenced by a change in the federal minimum wage.

II. HISTORICAL ORIGINS

Labor supporters over a century ago fought for improved wages, hours, and working conditions for American workers using slogans,

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1. Fair Labor Standards Act of 1938, ch. 676, § 13, 52 Stat. 1060, 1067-68 (codified as amended at 29 U.S.C. §§ 201-219 (1989)).

2. See *infra* note 17 and accompanying text.

3. See *infra* notes 9-13, 22-36 and accompanying text.

such as “[e]ight hours for work, eight hours for rest, eight hours for what we will.”⁴ As might be expected, the movement and the slogans had a fairly universal appeal among workers.

One writer who advocates a continuation of the philosophy of the New Deal stresses the notion that “[p]erfect justice is unattainable But rank injustice is easy to define and easy to observe”⁵ The theory behind the New Deal policies aimed at redistributing income is simply “watering the economic tree at the bottom rather than at the top.”⁶ Arguably, the historical underpinnings of the federal minimum wage law support its contemporary revision to a level which is more meaningful to workers currently paid at the minimum rate. As one commentator noted, when the FLSA’s minimum wage requirement was first proposed, it “generated passions, frustrations, and hopes”⁷ The minimum wage provisions continue to arouse similar sentiments today.⁸

President Franklin D. Roosevelt, in 1937, asserted that “[a]ll but the hopelessly reactionary will agree that to conserve our primary resources of manpower, government must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor.”⁹ While many of President Roosevelt’s other comments regarding the FLSA appear somewhat humorous and anachronistic today, the following quote sounds much like a modern “liberal’s”¹⁰ approach to national wage-setting policies:

[l]et any calamity-howling executive with an income of \$1,000 a day, who has been turning his employees over to the government relief rolls in order to preserve his company’s undistributed reserves, tell you (using his stockholders’ money to pay the postage for his personal opinions) that a wage of \$11 a week is going to

4. St. Louis Post-Dispatch, Dec. 29, 1988, at 3B, col. 2.

5. Keyserling, *The New Deal and its Current Significance in re National Economic and Social Policy*, 59 WASH. L. REV. 795, 806 (1984).

6. *Id.* at 801.

7. Nordlund, *A Brief History of the Fair Labor Standards Act*, 39 LAB. L.J. 715, 715 (1988).

8. *Id.* See also R. MARSHALL, V. BRIGGS & A. KING, *LABOR ECONOMICS* 516 (5th ed. 1984). Minimum wage law has aroused considerable controversy even though the United States government has not been very aggressive in using it to protect the incomes of low wage workers.

9. Nordlund, *supra* note 7, at 719 (quoting *Message to the Congress of the United States from President Franklin D. Roosevelt: Hearings Before the Committee on Education and Labor*, 75th Cong., 1st Sess. (1937)).

10. See Keyserling, *supra* note 5, at 803 (discussing differences between “liberal,” or New Deal, and “conservative” policies).

have a disastrous effect on all American industry.¹¹

The modern rhetoric sounds quite similar. For instance, a Boston Globe columnist, David Nyhan, recently attacked the objectivity of the Wall Street Journal on the issue of the minimum wage noting that the Journal's "two million subscribers have an average household income of \$97,900 a year, and an average net worth of \$819,000."¹² Based on this fact, as well as other similar observations, Nyhan concluded that "[n]obody who opposes \$4.65 an hour could live on it."¹³

Interestingly, President Roosevelt was not strictly a saviour of the underdog. In fact, his words and deeds were sometimes inconsistent. After researching the history of the New Deal, and specifically the FLSA, Marc Linder concluded that Roosevelt compromised minorities at every legislative turn in order to retain the support of southern Democrats.¹⁴ For example, the exclusion of agricultural labor and domestic servants from FLSA coverage perpetuated the discriminatory employment practices of a large segment of Southern society.¹⁵ Furthermore, Linder shows through convincing statistical and historical data that the disparate racial impact of the agricultural labor exemption continues in the 1980s.¹⁶

III. CURRENT LEGISLATIVE ACTIVITY

Congress last increased the minimum wage in 1981, raising it from \$2.65 per hour to \$3.35 per hour. In 1987, the efforts of Senator Edward M. Kennedy of Massachusetts and others rekindled the debate over whether to raise the minimum wage again.¹⁷ Supporters of

11. Nordlund, *supra* note 7, at 719, n.14 (quoting FRANKLIN D. ROOSEVELT, *The Continuing Struggle for Liberalism*, PUBLIC PAPERS AND ADDRESSES 392 (1941)).

12. Nyhan, *It's Time to Boost Minimum Wage*, Boston Globe, Mar. 21, 1989, at 15, col. 3.

13. *Id.*

14. Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1353 (1987).

15. *Id.* at 1373, 1375. Linder states that "Congress knew, as it considered and voted on the FLSA, of the racial implications of the Act's provisions." *Id.* at 1373. Furthermore, President Roosevelt was himself employing three black farm workers in Georgia for twenty dollars per month in 1938. *Id.* at 1379, n.291. This was significantly less than the twenty-five cent per hour minimum wage that the FLSA required for covered occupations because the workday was approximately ten hours. *Id.* at 1380, n.293.

16. *Id.* at 1382.

17. See generally *Minimum Wage Restoration Act of 1987: Hearings on S. 837 Before the Senate Comm. on Labor and Human Resources*, 100th Cong., 1st Sess. 1 (1987) [hereinafter *Hearings*] (statement of Hon. Edward M. Kennedy, Chairman of Committee on Labor and

an increase included AFL-CIO President Lane Kirkland,¹⁸ Amalgamated Clothing and Textile Workers Union President Jack Sheinkman,¹⁹ and International Ladies Garment Workers Union (ILGWU) President Jay Mazur.²⁰ Together they supported the Minimum Wage Restoration Act of 1987 which proposed a raise to \$3.85 in 1988, \$4.25 in 1989, and \$4.65 in 1990 with raises thereafter indexed to fifty percent of the average hourly rate.²¹

Arguments both supporting and opposing an increase of the federal minimum wage have been consistently predictable since the enactment of the FLSA fifty-one years ago. Proponents of the legislative enactment argue that the current minimum wage has failed to keep pace with the consumer price index and inflation, making it less than a subsistence wage.²² Moreover, they assert that the current minimum wage affects minority and female employees more than other employees.²³ Thus, they continue to support an increased minimum wage as the means for bringing workers out of poverty, especially minority and female employees.²⁴

Human Resources); Siegel, *Whether to Raise the Minimum Wage*, 9 N.E. BUS. 59, 59-60 (1987) (revival of minimum wage debate due to Sen. Kennedy's initiatives).

18. *Hearings, supra* note 17, at 297 (testimony of Lane Kirkland).

19. *Id.* at 358 (testimony of Jack Sheinkman).

20. *Id.* at 323 (testimony of Jay Mazur).

21. S. 837, 100th Cong., 1st Sess. (1987). See also H.R. 1834, 100th Cong., 1st Sess. (1987) (Rep. Augustus F. Hawkins (D. Cal.), Chairperson of House Education and Labor Comm., introduced legislation in the House to raise the minimum wage).

22. See *Statements Before Senate Labor and Human Resources Comm. on Econ. Impact of Increasing Fed. Min. Wage*, Daily Lab. Rep. (BNA) No. 137, at F-1 (July 20, 1987) [hereinafter *Adams*] (testimony of Prof. F. Gerard Adams concluding that minimum wage workers were disadvantaged in the past six years by a twenty-one percent decline in real hourly earnings); *House Subcomm. Opens Hearings on Bills to Increase Min. Wage*, Daily Lab. Rep. (BNA) No. 68, at A-15 (Apr. 10, 1987) [hereinafter *House Bills*] (Rep. Austin J. Murphy (D. Pa.) noted many compelling reasons for raising the minimum wage, such as the fact that the dollar's purchasing power is at its lowest level since 1955; Rep. Harold E. Ford (D. Tenn.) stated that the minimum wage was not even at subsistence level); Burkhauser & Finegan, *The Minimum Wage I: A Broken-Connection*, ACROSS THE BOARD CAPITAL DEBATE 53, 53 (Sept. 1988) (advocates of minimum wage bills point out that the present wage has lost approximately twenty-five percent of its purchasing power since 1981).

23. See *Hearings, supra* note 17, at 206 (a vast majority of women who head households and work for the minimum wage are in poverty). But see Burkhauser & Finegan, *supra* note 22, at 53 (a higher minimum wage will help fewer than half of the full-time workers who are poor); *Minimum Wage Myths*, THE NATION'S BUS. 35, 35 (June, 1987) (opponents of the increase argue that a higher wage would actually hurt those who supposedly would be helped).

24. See *Hearings, supra* note 17, at 216 (increase in poverty and falling wages are complex topics, but a major factor in both is a decline in real value of the minimum wage). Cf. Burkhauser & Finegan, *supra* note 22, at 53 (whether a low-wage family falls above or below poverty line turns on factors somewhat beyond reach of minimum wage policy).

The proponents of a higher minimum wage also reason that an increase in the minimum wage is essential to welfare reform since a higher wage makes welfare benefits less attractive.²⁵ In addition, they point out that predictions of dire economic consequences following minimum wage increases have never materialized.²⁶ Therefore, they emphasize the positive effects of a higher wage on the welfare system, while discounting any possible negative effects on the economy.

Opponents of a higher minimum wage include management and the National Federation of Independent Business ("NFIB").²⁷ They argue that the marketplace is the most appropriate and effective regulator of compensation.²⁸ Additionally, the minimum wage may price some workers out of the job market, especially younger and less senior workers.²⁹ Finally, they assert that the minimum wage merely increases labor costs without adding to an increase in productivity.³⁰ Such an enormous increase, they contend, will lead to inflationary pressures on our economy.³¹

25. See S. REP. NO. 101-6, 101st Cong., 1st Sess. 14, 28, *reprinted in* 1989 U.S. CODE CONG. & ADMIN. NEWS —, — [hereinafter S. REP. NO. 101-6] (proposed increase makes work more attractive than welfare benefits since many poor people cannot afford to work at the present minimum wage). Cf. Bell, *What Minimum Wage?*, Boston Globe, Apr. 25, 1989, at 32, col. 1 (most proponents of an increase argue welfare payments might be reduced as a result but they fail to recognize family size as a factor in poverty).

26. See S. REP. NO. 101-6, *supra* note 25, at 12 (historical economic data following previous wage increases show that adverse economic consequences never came to pass). *But see* Kuttner, *Making Work Pay*, Boston Globe, Apr. 12, 1989, at 19, col. 1 (President Bush has argued that restoring the minimum wage to 1981 purchasing power increases inflation and unemployment).

27. See Siegel, *supra* note 17, at 59-60 (management views any increase as a cost hike without any corresponding increase in productivity); *Group Calls for Repeal of Section 89, Defeat of Mandated Benefit Proposals*, Daily Lab. Rep. (BNA) No. 7, at A-11 (Jan. 11, 1989) [hereinafter *Repeal*] (NFIB "unalterably" opposed to overall increase in minimum wage). See generally *Hearings, supra* note 17, at 249, 415, 417, 434 (testimony of John R. Glennie, Douglas Fontaine, Dr. Matthew Runci, and Walter Ellis, Jr.).

28. See *Hearings, supra* note 17, at 415 (Douglas Fontaine testified that the hotel and motel industry decries Congress' failure to let the marketplace decide appropriate wages as it has so successfully).

29. See *Hearings, supra* note 17, at 211 (testimony that employers would lay off employees and cut back on hours if faced with higher minimum wage). Cf. *House Bills, supra* note 22, at A-15 (Professor Charles Brown testified his Minimum Wage Study Commission concluded that ten percent minimum wage increase would result in a one to three percent drop in teenage employment).

30. See Siegel, *supra* note 17, at 59-60; *Repeal, supra* note 27. See generally *Hearings, supra* note 17.

31. See generally Levitan, *The Minimum Wage II: Bread and Dignity*, ACROSS THE BOARD CAPITAL DEBATE 55, 57 (Sept. 1988) (minimum wage boost is inflationary and would have ripple effect).

Critics of the proposed increase have argued that the disemployment effect of the bill is enormous in that every ten percent wage increase leads to a loss of between 100,000 and 200,000 jobs.³² Furthermore, they argue, a wage increase has no tangible effect on the battle to reduce poverty in the country.³³

President Bush, while counted among the critics of the minimum wage bill, supports an increase in the minimum wage.³⁴ The President contends, however, that the Senate and House versions³⁵ are economically irresponsible and would lead to inflation and teenage unemployment.³⁶ One commentator has argued that a tax credit would be a more effective response than an increase in the minimum wage.³⁷ Another commentator suggests that the present minimum wage should prevail for workers under eighteen, while all other workers should enjoy a higher rate.³⁸

Other alternative proposals emphasize on-the-job training and restructuring the Earned Income Tax Credit ("EITC"). The minority members of the Senate Committee on Labor and Human Resources expressed support for the Job Training Partnership Act and the Carl Perkins Vocational Education Act, among others, as a means to enhance opportunities and earning power.³⁹ On February 23, 1989,

32. See S. REP. NO. 101-6, *supra* note 25, at 42 (economic opinion nearly unanimous that minimum wage increase will result in disemployment); Boston Globe, May 2, 1989, at 8, col. 1 (President Bush warned that every ten percent increase in the minimum wage would cause the loss of between 100,000 and 200,000 jobs).

33. S. REP. NO. 101-6, *supra* note 25, at 47 (recent research shows a minimum wage increase is an ineffective means of redistributing income or assisting poor). *Contra* S. REP. NO. 101-6, *supra* note 25, at 27 (proposed increase in the minimum wage would have a dramatic positive impact on poor workers, citing a 1988 study predicting that the poverty level would decrease by fourteen percent, and the number of poor families with low-wage workers would be reduced by 9.3% even considering disemployment effects); Roberts & Bowers, *Patching the Crack in the Floor: Strategies for Expanding Minimum the [sic] Wage* 22 CLEARINGHOUSE REV. 23, 23-25 (May 1988) (courts, legislators and commentators have historically viewed the federal minimum wage as an anti-poverty weapon).

34. Boston Globe, Mar. 4, 1989, at 7, col. 2 (Secretary of Labor Elizabeth H. Dole indicated that President Bush expressed his support for a minimum wage hike to the Senate Labor and Human Resources Committee).

35. See *supra* note 21.

36. See *Hearings*, *supra* note 17, at 206 (Secretary Dole asserted that the President's proposal was limited because a more expansive approach would decrease job opportunities).

37. See *Repeal*, *supra* note 27, at A-11 (NFIB President John Sloan suggested offering a tax credit to businesses rather than tampering with the minimum wage rate).

38. See Siegel, *supra* note 17, at 59-60. See also *Minimum Wage Myths*, *supra* note 23, at 35 (Sen. Orrin Hatch (R. Utah), the leading opponent of a wage hike, intends to campaign for a youth minimum wage which permits employers to pay youths at a lower rate).

39. S. REP. NO. 101-6, *supra* note 25, at 46. The minority of senators did not, however,

Representative Thomas Petri of Wisconsin introduced a bill to expand the EITC in order to focus on low income heads-of-households.⁴⁰ Representative Petri noted that the singular approach of an increase in the minimum wage alone would benefit only young, single entry-level workers.⁴¹

In the autumn of 1988, the opponents of a higher minimum wage scored a victory when a Republican filibuster defeated the legislation introduced by Senator Kennedy in March, 1987.⁴² The Senate apparently could not muster enough support for a thirty-seven percent increase in the minimum wage over a three year period.

Early this year Representative Augustus F. Hawkins of California introduced legislation to raise the minimum wage.⁴³ It too provided for three annual increments to ultimately increase the wage to \$4.65 per hour.⁴⁴ Whether the 101st Congress will eventually enact minimum wage legislation remains to be seen. Clearly, the Democrats continue to enjoy a strong representation and mandate in both houses of Congress. The defeat of Senator Kennedy's bill may have been due in part to "election year politics" and pressure from highly organized business interests. Even though President Bush is reportedly interested in the minimum wage issue,⁴⁵ as of early June, 1989, Congress had not acted on Hawkins' or any other minimum wage legislation. President Bush remains firm with his "first and final" offer: he supports an increase up to \$4.25 per hour, a six-month training wage for new employees at the current \$3.35 per hour level, and an exemption for businesses with less than \$500,000 in annual gross

issue anything more than a broad policy statement supporting such programs. It will be interesting to see whether or not these senators pursue such alternative approaches.

40. *Bill to Expand Earned Income Tax Credit Offered as Alternative to Minimum Wage Hike*, Daily Lab. Rep. (BNA) No. 36, at B-12 (Feb. 24, 1989). Rep. Petri proposed increasing the allowable EITC for low-income families with at least one child, and giving additional credits based upon family size. Additionally, Rep. Petri noted that his proposal is a comprehensive approach to the related challenges of welfare, minimum wages, and child care. *Id.*

41. *Id.*

42. *See Minimum Wage Legislation Introduced by Rep. Hawkins*, Daily Lab. Rep. (BNA) No. 4, at A-1 (Jan. 6, 1989) [hereinafter *Hawkins*] (Senate minimum wage bill defeated by filibuster).

43. *Id.* at A-3 (Rep. Augustus F. Hawkins (D. Cal.) introduced H.R. 2 to raise the minimum wage in a way similar to the defeated Senate version).

44. *See supra* notes 17 and 21 and accompanying text.

45. *Senate Labor Panel Reports Nomination of Elizabeth Dole as Labor Secretary*, Daily Lab. Rep. (BNA) No. 13, at A-9 (Jan. 23, 1989) (Secretary of Labor Elizabeth Dole reiterated that President Bush supports a raise in the minimum wage).

sales.⁴⁶ President Bush has repeatedly warned that he will veto any bill which varies from this formula, and preliminary surveys show that Congress cannot muster enough votes to override his veto.⁴⁷

Senator Kennedy, meanwhile, has softened his stance and has agreed to a wage increase to \$4.55 per hour rather than \$4.65 per hour as originally proposed.⁴⁸ Senator Kennedy has further agreed to a training wage, but only if employers actually provide training.⁴⁹ The 1989 minimum wage bill also includes a small business exemption for those businesses with annual sales of \$500,000 or less.⁵⁰

At the state level, some legislatures have adopted minimum wage programs in an effort to offer additional protection to workers beyond that provided by the FLSA. In 1988, minimum wage laws existed in forty-two states, as well as in Puerto Rico, Guam, and the United States Virgin Islands.⁵¹ Currently, twelve states—Alaska,⁵² California,⁵³ Connecticut,⁵⁴ Hawaii,⁵⁵ Maine,⁵⁶ Massachusetts,⁵⁷ Minne-

46. See *Boston Globe*, May 2, 1989, at 8, col. 1 (President Bush, in an address to the United States Chamber of Commerce, outlined a three-point minimum wage plan).

47. *Id.* (President Bush's proposal is his "first and final" offer on minimum wage increase). See also *President Bush Again Warns of Veto if Minimum Wage Bill Exceeds Limits*, Daily Lab. Rep. (BNA) No. 67, at A-6 (Apr. 10, 1989) (Congress could not override a presidential veto on the minimum wage issue at this stage).

48. *Boston Globe*, May 2, 1989, at 8, col. 1 (Democrats lowered wage in Sen. Kennedy's bill from \$4.65 per hour to \$4.55 per hour). Senator Kennedy has accepted changes to the minimum wage bill in the face of President Bush's "take it or leave it" stance. *Id.*

49. *Senate Begins Debate over Minimum Wage Hike*, Daily Lab. Rep. (BNA) No. 66, at A-9 (Apr. 7, 1989) (Senator Kennedy challenged legislators to make a substantive training requirement if they wanted sub-minimum training wage provision in bill).

50. *Boston Globe*, May 2, 1989, at 8, col. 1.

51. Nordlund, *supra* note 7, at 1 n.1.

52. ALASKA STAT. § 23.10.065 (Michie 1988) (employer shall pay to each employee rate of not less than fifty cents greater than prevailing federal minimum wage).

53. 8 CAL. ADM. CODE 11000. See generally CAL. LAB. CODE § 1182(b) (West Supp. 1989), S. REP. NO. 101-6, *supra* note 25, at 23.

54. CONN. GEN. STAT. ANN. §§ 31-58 (West Supp. 1989) (minimum wage of not less than \$4.25 per hour, effective Oct. 1, 1988).

55. HAWAII REV. STAT. ANN. § 387-2 (Michie 1988) (minimum wage of not less than \$3.85 per hour, effective July 1, 1988). Cf. *Hawaii Legislators Fail to Pass Minimum Wage Hikes*, Daily Lab. Rep. (BNA) No. 82, at A-7 (May 1, 1989) (further increases in state minimum wage defeated when Labor chairpersons of both houses failed to reach agreement).

56. ME. REV. STAT. ANN. tit. 26, § 664 (West 1988) (minimum wage of not less than \$3.65 per hour, effective Jan. 1, 1987).

57. MASS. GEN. LAWS ANN. ch. 151, § 1 (West Supp. 1989) (wage of less than \$3.75 per hour oppressive, unreasonable, and against public policy).

sota,⁵⁸ New Hampshire,⁵⁹ Pennsylvania,⁶⁰ Rhode Island,⁶¹ Vermont,⁶² and Washington⁶³—and the District of Columbia⁶⁴ have set their minimum wage at a level higher than the current minimum.⁶⁵ This legislation ranges from the very specific—the District of Columbia set a minimum for all jobs and a higher minimum for certain other jobs⁶⁶—to the very general—Alaska just indexes its minimum to be fifty cents over the federal rate at all times.⁶⁷ Indeed, if all the states enacted statutes setting minimum wages above the federal minimum, it would render the federal minimum meaningless.

Representative Cindy Resnick introduced a minimum wage bill in the Arizona legislature hoping to raise the rate from \$3.35 to approximately \$4.25 per hour.⁶⁸ Arizona's legislature is still studying the proposed increase.⁶⁹

58. MINN. STAT. ANN. § 177.24 (West Supp. 1989) (minimum wage shall increase to \$3.55 per hour on Jan. 1, 1988; \$3.85 per hour on Jan. 1, 1989; and \$3.95 per hour on Jan. 1, 1990).

59. N.H. REV. STAT. ANN. § 279:21 (Equity 1987 & Supp. 1988) (minimum wage of not less than \$3.65 per hour, effective Jan. 1, 1989).

60. PA. STAT. ANN. tit. 43, § 333.104 (Purdon 1964 & Supp. 1989) (minimum wage of not less than \$3.70 per hour, effective Feb. 1, 1989).

61. R.I. GEN. LAWS § 28-12-3 (Michie Supp. 1988) (effective July 1, 1988, minimum wage shall not be less than \$4.00 per hour).

62. VT. STAT. ANN. tit. 21, § 384 (Equity 1987) (minimum wage shall be \$3.65 per hour beginning July 1, 1988).

63. WASH. REV. CODE ANN. § 49.46.020 (West Supp. 1989) (minimum wage set at \$3.85 per hour starting Feb. 1, 1989, and shall rise to \$4.25 per hour on Jan. 1, 1990). See generally S. REP. NO. 101-6, *supra* note 25, at 23.

64. D.C. CODE ANN. §§ 36-201, 36-203(a) (Michie 1981). The District of Columbia was the first state to enact a minimum wage higher than the federal minimum.

65. See Roberts & Bowers *supra*, note 33, at 30 and accompanying text (discussing state minimum wage laws). See also Nelson, *State Labor Legislation Enacted in 1988*, 112 MONTHLY LAB. REV. (No. 1) 40-58 (Jan. 1989) (discussing recent legislation on minimum wage at the state level).

One contemporary theory asserts that states should set their own minimum wages to reflect regional variations in economic conditions. However, data from one study indicate that inequality of earned income is largely within regions or within states, rather than among regions or states. Grubb & Wilson, *Sources of Increasing Inequality in Wages and Salaries, 1960-1980*, 112 MONTHLY LAB. REV. (No. 4) 3, 7 (Apr. 1989). The study found inter-sectoral shifts, such as increases in services and high-tech employment at the expense of agriculture and manufacturing, partly responsible for increasing inequality. *Id.* at 11.

66. See D.C. CODE ANN. §§ 36-201, 36-203(a) (Michie 1981).

67. See ALASKA STAT. § 23.10.065 (Michie 1988).

68. *Minimum Wage Bill Planned by Arizona State Legislator*, Daily Lab. Rep. (BNA) No. 5, at A-10 (Jan. 9, 1989) (Representative Cindy Resnick (D.) reported that an increase in minimum wage is being researched and that a bill will be introduced).

69. *Id.*

IV. GROUPS AFFECTED BY THE MINIMUM WAGE

An analysis of the composition of the minimum wage work force provides valuable information for those who debate the issue of increasing the minimum wage. Four groups of workers potentially affected by a change in the wage floor are discussed herein: teenagers, women, undocumented workers, and minorities. Specific concerns about the impact of revising the FLSA on these workers are addressed.

A. Teenagers

A critical concern to legislators is the impact that an increase in the minimum wage would have on youths. This is not a new concern. Statistics support both those who propose and those who oppose increasing the minimum wage in light of its impact on young workers. Data from 1986 indicates that of those employees earning \$3.35 per hour *or less*, thirty-seven percent were in their teens.⁷⁰ A 1988 survey revealed that teens still comprised approximately thirty-six percent of the workers paid \$3.35 per hour *or less*.⁷¹ Currently, twenty-nine percent of our teenage population is paid \$3.35 per hour.⁷²

It should be understood that data indicating that some workers receive less than \$3.35 per hour do not necessarily reflect FLSA violations. There are various FLSA exemptions for workers in outside sales, low volume retail trade and service firms, and seasonal amusement concerns,⁷³ as well as other exemptions for certain learners, apprentices, messengers, full-time students and handicapped workers who may be employed at less than the federal minimum "in order to prevent curtailment of opportunities for employment."⁷⁴ Perhaps the most glaring omission in the present debate about a sub-minimum rate for "training" of youths is the lack of reference to the current existence of sub-minimums.⁷⁵

70. Mellor, *Workers at the minimum wage or less: who they are and the jobs they hold*, 110 MONTHLY LAB. REV. (No. 7) 34, 35 (July 1987) (Source: Current Population Survey conducted for the Bureau of Labor Statistics by the Bureau of the Census).

71. Wessel & Karr, *Two-Tier Minimum Wage May Be Near As Congressional Democrats Accept Idea*, Wall St. J., Apr. 18, 1989, at A2, col. 3 (Source: Bureau of Labor Statistics).

72. Kuttner, *Making Work Pay*, Boston Globe, Apr. 12, 1989, at 19, col. 1.

73. Mellor, *supra* note 70, at 34.

74. Fair Labor Standards Act, § 14(a), 52 Stat. 1068, as amended, 29 U.S.C., § 214(a), and Fair Labor Standards Act § 14(b), 75 Stat. 74, as amended, 29 U.S.C., § 214(b) (full-time students).

75. Roberts & Bowers, *supra* note 33, at 28 (noting that the little research which has been

In 1981, after reviewing numerous studies⁷⁶ on the overall impact of the minimum wage on the economy, the impact of the minimum wage on teenage unemployment, and statistics on the existing full-time student program, the Minimum Wage Study Commission appointed by Congress did not recommend a youth differential.⁷⁷ The Commission expressed concern about a resulting reduction in adult employment and decided that teenage unemployment would hopefully lessen as the "large group of baby-boom teenagers passe[d] into young adulthood."⁷⁸

The training wage proposed by President Bush is not linked specifically to either an employee's age or to mandates for training, but rather, sets a six-month period for a sub-minimum rate (\$3.35 per hour) for new employees.⁷⁹ A number of economists argue that an increasing emphasis on education and training is necessary for improving employment opportunities during the next decade. The National Committee for Full Employment recently sponsored a leadership round table which focused on jobs and training initiatives for the 1990s.⁸⁰ Ray Marshall, Professor of Economics and Public Affairs at the University of Texas at Austin, warned the group that the trend toward low-wage jobs in the United States must be reversed.

⁸¹ Sar Levitan, Director of the Center for Social Policy Studies at George Washington University, recommended an agenda that would focus on family, education and training, in addition to fiscal policies.⁸² Levitan warned that work should pay more than welfare, and that the United States "need[s] a good minimum wage."⁸³ Bennett Harrison,

done on the full-time student differential may not be enough to gauge the effects of an unrestricted youth differential).

76. *Id.* at 27 (Commission's 1981 report indicated that most of the research is subject to criticism due to insufficient data, value judgments or inadequate models).

77. *Id.* at 29.

78. UNITED STATES MINIMUM WAGE STUDY COMM'N, REPORT OF MINIMUM WAGE STUDY COMM'N (1981) at 57-58. The Commission also rebelled against a youth differential on the basis that it departs from the principle of equal pay for equal work. "If suggestions were made that the very real employment problems of women or members of minority groups should be 'solved' by paying them less for their labor, such a proposal would be rejected out-of-hand as fundamentally unjust." *Id.* at 58. See also Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987) "Demographics—the reduced number of young people entering the labor force for the next ten years will help firm up wages at the low end of the labor market." *Id.* at 6.

79. See *supra* note 46 and accompanying text.

80. Daily Lab. Rep. (BNA) No. 245, at A-5 (Dec. 21, 1988).

81. *Id.*

82. *Id.*

83. *Id.*

Professor of Political Economy and Planning for the Massachusetts Institute of Technology, cited evidence from the Current Population Survey for 1979-1987 which illustrated that "for every one net worker making \$36,000 who has been added to the work force, we've added four making less than \$12,000. For Blacks, the ratio is 1 to 12."⁸⁴ Harrison also noted that not enough jobs exist in which to place trained workers, and workers must be trained and retrained for a series of jobs during their working years.⁸⁵ Professor Harrison supports an increase in the minimum wage to provide a livable wage for workers without college degrees.⁸⁶

In a recent article, Professor Karl Klare recommends "linking American minimum employment standards policy with a strategy for upgrading and enhancing human capital."⁸⁷ Klare's definition of "minimum standards" goes beyond minimum wage legislation to "programs that affect the 'social wage'," including those that promote adult education and retraining.⁸⁸ It is clear that even revisions to the minimum wage will not address many of the problems which underlie unemployment.⁸⁹ Indeed, one of the critical problems with most economic studies on the impact of the minimum wage on teenage em-

84. *Id.*

85. *Id.*

86. *Id.*

87. Klare, *Workplace Democracy and Market Reconstruction: An Agenda for Legal Reform*, 38 CATH. U.L. REV. 1, 55-56 (1988).

88. *Id.* at 56. See also S. REP. NO. 101-6, *supra* note 25, at 14-15. Proponents of the bill note that even for minimum wage workers who are not poor, the increase will provide a significant benefit.

For example, teens and young adults attempting to meet college expenses have witnessed over a 75% increase in private college tuition and over a 60% increase in public college tuition since the minimum was last adjusted in 1981. Seventy percent of middle-income students depend on their earnings for college expenses, and since 1981 students have had to increase their borrowing by over 40%.

Id. As the percentage of youths in the United States attending college grows, a minimum wage increase would insure valuable training for jobs which will increasingly require skill and versatility in the years to come. See generally *supra* note 80 and Klare, *supra* note 87 and accompanying text.

89. See Roberts & Bowers, *supra* note 33, at 30.

Raising the minimum wage is an important part of an anti-poverty strategy. It is not, however, a panacea. It does not create jobs or make existing jobs full-time instead of part-time. It does not make up for educational deficiencies or pay for job training. Nevertheless, raising the minimum would provide *immediate* help to large numbers of people while the larger job issues are being addressed. It may also be important for the short-term well-being of families moving from the welfare system to paid employment. For their sake alone, the minimum wage is an issue that should be addressed.

See generally *supra* note 80 and Klare, *supra* note 87 and accompanying text.

ployment is the existence of many confounding variables.⁹⁰

A study by economists Brown, Gilroy and Kohen found only a very slight impact on employment opportunities for teenage workers as the minimum wage was increased.⁹¹ Even though inflation has caused the minimum wage to decline in the 1980s relative to the average wage, teenage unemployment has not declined significantly.⁹² Because the demand for teenage labor is very inelastic, a number of studies have concluded that the impact of the minimum wage on employment opportunities for teenagers is insignificant.⁹³

In a 1987 study, Professor Hashimoto, an economist, hypothesized that increases in the minimum wage would correlate with increased property-related crimes by teenagers.⁹⁴ The data used were not convictions for such crimes, but arrests.⁹⁵ The data source was the *Federal Bureau of Investigation's Uniform Crime Reports*, which only documents crime records from cities,⁹⁶ and the researcher noted that the records were not comparable over time.⁹⁷ Professor Hashimoto found that literature offering empirical evidence of a con-

90. See *supra* notes 75-77 and accompanying text.

91. Brown, Gilroy & Kohen, *Time-Series Evidence of the Effect of the Minimum Wage on Youth Employment and Unemployment*, 18 J. HUM. RESOURCES 1, 3-4 (Winter, 1983) (approximately one percent reduction in employment opportunities per ten percent increase in the minimum wage based upon what was then a "stronger" minimum wage relative to average hourly wages in the United States). The decreased value of the minimum wage in 1989 relative to average hourly wages should result in a lower figure for reduction of opportunities. See S. REP. NO. 101-6, *supra* note 25, at 24-25 (Brown, Gilroy & Kohen data are outdated and do not account for the declining percentage of the work force made up of minimum wage workers, the decline in supply of teenage and young adult labor, nor the states which have increased their state minimum wage above the federal level).

92. H. WACHTEL, *LABOR AND THE ECONOMY* 447 (2d ed. 1988) (Decline from nineteen percent teen unemployment in 1981 to 18.4% in 1986 despite fact that \$3.35 from 1981, adjusted for inflation in 1986 was worth \$2.69).

93. *Id.* at 459.

94. Hashimoto, *The Minimum Wage Law and Youth Crimes: Time-Series Evidence*, 30 J. LAW & ECON. 443 (1987).

95. *Id.* at 444. An analysis of conviction records would have been more reliable. It is well documented in Title VII litigation that the use of arrest records as the basis for disqualification from employment has an adverse racial impact and that conviction records provide more reliable indicia of misconduct. See generally SCHLEI & GROSSMAN, *EMPLOYMENT DISCRIMINATION LAW*, 175-76 (2d ed. 1983). See also *Schwartz v. Board of Bar Examiners*, 353 U.S. 232 (1957). "The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct." *Id.* at 241.

96. In 1952, the reports came from cities with populations over 25,000. Hashimoto, *supra* note 94, at 447. Although trends in cities are of interest, applying this data to the overall U.S. population is difficult.

97. *Id.*

nection between the minimum wage and youth crimes is "sparse",⁹⁸ and that "the link between crime and the labor market is not overwhelmingly strong, especially in time-series data."⁹⁹ Perhaps the most serious shortcoming of the Hashimoto article is that it does not present the evidence in a manner which permits analysis of the impact of the actual increase in the minimum wage over the past fifty years.¹⁰⁰ Because of the nature of the minimum wage variable used in the study, which Professor Hashimoto noted "may capture influences other than those of the federal minimum wage, the findings . . . must be viewed as more exploratory than conclusive."¹⁰¹

Thus, with respect to the overall impact of an increase in the minimum wage on youths, no conclusive connection has been made between an increase and property-related crimes by youths; however, some evidence shows that an increase may have a slightly negative impact on employment opportunities. This negative impact may be offset by the significant decline in the teen population over the next decade¹⁰² and by the proposed training wage, if enacted.¹⁰³

B. Women

As a group, women have not yet achieved wage parity with men.¹⁰⁴ Although women comprise forty-five percent of the labor force, they represent over sixty-three percent of the workers earning

98. *Id.* at 445.

99. *Id.* at 449.

100. Prof. Hashimoto promised complete results upon request, but did not offer them in his article. *Id.* at 456. *Cf.* S. REP. NO. 101-6, *supra* note 25, at 7-12 (analysis of the impact on inflation and disemployment of prior minimum wage increases).

101. Hashimoto, *supra* note 94, at 461.

102. *See* S. REP. NO. 101-6, *supra* note 25, at 26. The Department of Labor projects that labor force growth will not keep up with projected job growth through 1992. Furthermore, the number of sixteen to twenty-four year old workers in the work force is predicted to shrink by more than one million by 1992. A study by A.D. Little, Inc. forecasts that demographic changes will create a potential labor shortage of 1.1 million workers for the food service industry by 1995. *Id.*

103. *See supra* notes 49, 79 and accompanying text. *Cf.* S. REP. NO. 101-6, *supra* note 25, at 31. (Committee on Labor and Human Resources views "training" wage proposed by the Bush Administration as a misnomer because it does not require training).

104. *Mother's Workday*, Boston Globe, May 14, 1989 at A34, col. 1 (women's pay is only seventy percent of men's, and the gap remains regardless of education or job experience). *Cf.* O'Brien & Madek, *Pregnancy Discrimination and Maternity Leave Laws*, 93 DICK. L. REV. 311, 336 (1989) (absent a federal statute mandating job preservation for period of pregnancy-related disability, women generally suffer disadvantage in retaining meaningful place in employment sphere).

less than \$4.65 per hour.¹⁰⁵ Moreover, twelve percent of all women earned \$3.35 per hour or less in 1986, almost double the percentage of men earning the minimum wage or less in 1986.¹⁰⁶ Little debate exists about whether raising the minimum wage will have a beneficial impact on women¹⁰⁷ and poor children in families where a woman is the head of the household.¹⁰⁸ In 1986, of the women who were maintaining families on their own, about ten percent earned the minimum wage *or less*.¹⁰⁹ Also, women were almost twice as likely as men to earn between \$3.36 and \$4.35 per hour.¹¹⁰ Nineteen percent of the workers in this range were women maintaining families alone, while men maintaining families alone composed only ten percent.¹¹¹ In addition, in 1986, seventeen percent in this range were wives and only five percent were husbands.¹¹²

Low pay for women is far from a new legislative concern. The first predecessor to the FLSA was a 1912 Massachusetts law which recommended minimum wage rates to serve as a "living wage" for women and children.¹¹³ The weakness of the Massachusetts law was that it emphasized consideration of "the financial condition of the business" over the concept of assuring a living wage.¹¹⁴ However, the Massachusetts law remains important for several reasons. First, it engendered a series of state minimum wage laws over the following years.¹¹⁵ Second, since the condition of low-wage female (and male) workers was not localized, it set the scene for the federal statute.¹¹⁶ Third, it shows that the problem of unnaturally low wages for women is not strictly a modern issue.

105. S. REP. NO. 101-6, *supra* note 25, at 14. \$4.65 was the peak of the proposed increase in the report. The supporting data was supplied in 1989 by the Department of Labor to the Committee on Labor and Human Resources. *Id.*

106. Mellor, *supra* note 70, at 34.

107. Roberts & Bowers, *supra* note 33, at 28. "[T]here seems little question that raising the minimum wage would have a positive effect on adult women . . ." *Id.*

108. Cf. Edelman, *supra* note 78, at 12. "[M]ore than half of all poor children live in female-headed families, and more than half of all children in female-headed families are poor." *Id.* (Source: Bureau of Census, 1984).

109. Mellor, *supra* note 70, at 34-35.

110. *Id.* at 37-38. (Twenty-one percent of women versus twelve percent of men. Source: 1986 Current Population Survey, Bureau of the Census).

111. *Id.* at 37.

112. *Id.*

113. Nordlund, *supra* note 7, at 716.

114. *Id.* at 716-17.

115. *Id.* at 717.

116. *Id.* at 717-18.

What is a fresh issue for the coming decade is "the prevalence of the two earner family."¹¹⁷ A number of commentators have noted that without a second earner, more families would have experienced a decline in income or purchasing power over the course of the 1980s.¹¹⁸ In fact, because "American society has come to depend on having the majority of women in the work force," the "second" earner has gone virtually unnoticed.¹¹⁹ A study by the Economic Policy Institute, a non-profit research organization, found that a significant number of families experienced a decline in income between 1979 and 1986.¹²⁰ This number would have been greater if not for the dramatic eighteen percent increase in the number of hours women worked.¹²¹ In fact, the Institute concluded that this increased work effort by wives was the principal reason that many families were able to maintain an equivalent living standard.¹²²

According to the Economic Policy Institute, the bottom forty percent of the population received less real income in 1986 than in 1979. Yet the next forty percent received slightly more income, and the wealthiest twenty percent received a significant increase in income, causing the authors of the study to conclude that "[g]rowth has stopped being distributed widely and evenly . . . [causing] a dramatically different pattern of income growth from the one that existed during the post war period prior to 1973."¹²³ Apparently, the "rising tide" did not "lift all boats" the same amount.¹²⁴ Thus, the study supports the notion that the rich got richer in the recent past, and it points out that women's paychecks represent an important contribution to the economic well-being of families and society.¹²⁵

Since women represent a larger proportion of minimum wage workers than men, the erosion of the minimum wage has become

117. See Jacobs, Shipp & Brown, *Families of Working Wives Spending More on Services and Nondurables*, 112 MONTHLY LAB. REV. (No. 2) 15, 16 (Feb. 1989).

118. See Samuels, Coffinberger & Fouts, *Responding to Social and Demographic Change: Family and Medical Leave Proposals*, 39 LAB. L.J. 748, 750 (1988) [hereinafter, Samuels]; *Survey Asserts Many Families, Young Adults Have Experienced Wage Decline Since 1979*, Daily Lab. Rep. (BNA) No. 215, at A-1 (Nov. 7, 1988) [hereinafter, *Survey*]. See also Burkhauser & Finegan, *supra* note 22, at 54. "[F]ar more of the decline of poverty stems from the advent of the multiple-earner family." *Id.*

119. Samuels, *supra* note 118, at 750.

120. *Survey*, *supra* note 118.

121. *Id.*

122. *Id.*

123. *Id.*

124. Edelman, *supra* note 78. "A rising tide does lift all boats—somewhat." *Id.* at 6.

125. *Survey*, *supra* note 118.

partly a women's issue. Women cannot count on the market to eradicate wage discrimination.¹²⁶ Revision of the minimum wage will not remove many women and their households from poverty, but it will evoke *some* improvement for *some* women and their families.

C. Undocumented Workers

The Immigration Reform and Control Act of 1986¹²⁷ ("IRCA") did not end federal labor law protection for illegal aliens.¹²⁸ However, its strengthening of federal statutory policy against the hiring and retention of undocumented workers may discourage such workers from seeking traditional remedies for FLSA violations.¹²⁹ Eliminating FLSA protection for illegal aliens would encourage employer exploitation of such workers at sub-minimum rates of pay.¹³⁰ Already a higher percentage of illegal aliens than legal American workers are paid less than the minimum wage.¹³¹ Thus, in order to avoid creating an economic incentive for employers to hire undocumented immigrants, the courts have enforced the FLSA regardless of immigration status.¹³² Even though the law supports the right of undocumented immigrants to obtain the federal minimum wage, some employers undoubtedly will continue to pay less than the minimum.¹³³

126. Holzhauser, *The Economic Possibilities of Comparable Worth*, 53 U. CHI. L. REV. 919 (1986).

127. 8 U.S.C. §§ 1324a-1357 (1988).

128. See O'Brien, *Reinstatement and Back Pay for Undocumented Workers to Remedy Employer Unfair Labor Practices*, 40 LAB. L.J. 208, 211 n.35 (1989). See also Patel v. Quality Inn South, 846 F.2d 700, 704-5 (11th Cir. 1988) (undocumented aliens entitled to the protection of Fair Labor Standards Act despite IRCA).

129. See Merino, *Compromising Immigration Reform: The Creation of a Vulnerable Subclass*, 98 YALE L.J. 409, 423 (1988) (realistically, undocumented workers who are ineligible for legalization will be reluctant to invoke the protection of various labor laws because of IRCA).

130. *Id.* at 415. See also Note, *Conflict or Double Deterrence? FLSA Protection of Illegal Aliens and the Immigration Reform and Control Act*, 72 MINN. L. REV. 900 (1988).

131. See Kutchins & Tweedy, *No Two Ways About It: Employer Sanctions Versus Labor Law Protections for Undocumented Workers*, 5 INDUS. REL. L.J. 339, 344 (1983) (24% of illegal aliens are paid less than minimum wage, compared to 6.2% of other Americans).

132. See Patel v. Quality Inn South, 846 F.2d 700, 704 (11th Cir. 1988). The court held that Congress enacted the IRCA to reduce illegal immigration by eliminating employers' incentive to hire undocumented workers. Consistent with this goal, the court upheld FLSA rights for such workers to diminish the economic incentive of an employer to pay undocumented workers at a sub-minimum rate. The court distinguished *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) on the basis that "this is an area in which decisions under the NLRA are not helpful in interpreting the FLSA." *Id.* at 706. The undocumented alien was entitled to unpaid minimum wages and overtime for the period of time that he actually worked without regard to his immigration status.

133. See Roberts & Bowers, *supra* note 33, at 26 n.36 (many covered employers fail to pay

Notwithstanding the employers who flaunt the FLSA, the minimum wage affects many undocumented workers, providing yet another sector of society interested in its revision. Estimates of the number of undocumented aliens currently working in the United States vary,¹³⁴ but the undocumented workers who were not eligible or did not apply for legalization pursuant to the IRCA could be almost twice as numerous as the legalized population.¹³⁵ Rather than permit a subclass of workers in the United States to labor unprotected by basic employment-related rights, undocumented aliens should be entitled to equal protection under fundamental labor legislation.¹³⁶ An increase in the minimum wage would generally increase the substandard earnings of this group.¹³⁷ However, the negative aspect of higher wages for the undocumented is that it may make illegal immigration more attractive.

D. Minorities

Blacks and Hispanics represent higher percentages of low wage workers than the overall work force.¹³⁸ In addition, a majority of all agricultural labor by employees who are excluded from the maximum hours and overtime protection of the FLSA (but not from the minimum wage provision) is performed by nonwhites, principally Hispanics and Blacks.¹³⁹ The socio-economic status of Blacks and Hispanics

undocumented workers the wages required by law); Merino, *supra* note 129, at 417-18, 423 (despite technical protection for undocumented workers, IRCA encourages FLSA violations especially with respect to employees who arrived in the United States after January 1, 1982 but prior to September 6, 1986).

134. See Corwin, *The Numbers Game: Estimates of Illegal Aliens in the U.S. 1970-1981*, 45 LAW & CONTEMP. PROBS. 223, 248-49, n.85 (1982) (estimate of two to three million working full-time); Linder, *supra* note 14, at 1342 n.47 (Bureau of the Census has repeatedly acknowledged the general underestimation of minorities and aliens, both documented and undocumented); M. ROTHSTEIN, A. KNAPP & L. LIEBERMAN, EMPLOYMENT LAW 100 (1987) (Bureau of Census, 1986 indicates that between 3-5 million undocumented aliens live in the United States and the number grows by 100,000-300,000 per year).

135. Merino, *supra* note 129, at 411, n.15.

136. Note, *A Human Rights Approach to the Labor Rights of Undocumented Workers*, 74 CALIF. L. REV. 1715, 1744 (1986).

137. See *supra* note 131 and accompanying text.

138. S. REP. NO. 101-6, *supra* note 25, at 14. See also Mellor, *supra* note 70, at 35, 37-38. Of the workers earning \$3.35 per hour or less in 1986, approximately ten percent of Blacks and Hispanics were so categorized as compared to 8.6% of whites. *Id.* at 35. In the \$3.35-\$4.35 per hour category, both Blacks and Hispanics had approximately the same percentage in this category (19%) as compared to 16% of whites who earned in this wage range. *Id.* at 37-38.

139. Linder, *supra* note 14, at 1341-42. The author maintains that racial discrimination tainted the FLSA's exclusion of farm workers, and the current exclusion of agricultural work-

in this country is at least partly due to institutional racism.¹⁴⁰ Taking this harsh fact into account, what effect might an increase in the minimum wage have on these disadvantaged minorities?

A number of theories exist which dispute the value of an increase in the minimum wage to minorities. The "Chicago School" of conservative economics espouses one theory. It proposes that the removal of government from the private economy will encourage the private sector to come forth with its own programs to aid communities.¹⁴¹ However, as one commentator notes, the "elimination . . . of many of the [welfare] programs upon which a significant number of poor Black Americans have come to rely . . . will not benefit many discrete groups in America . . . [and] presently disadvantaged minorities [will be cast] into irretrievable chaos."¹⁴²

Although the conservative school wishes to decrease governmental expenditures to reduce inflation and encourage economic growth, some commentators feel that this might not benefit the nation's poor since "a rising tide does not do a thing for shipwrecks at the bottom of the sea."¹⁴³ Until minorities have achieved *real* equality in *all* areas relevant to employment opportunity, including education, the "regulation" of equal employment opportunity laws, affirmative action, and other social justice and welfare programs will continue to serve a vital role for minorities. "[I]t is far too early to throw in the towel on the phenomenon of discrimination and its effects on the ability of Black people to rise to their natural place in our socio-economic structure."¹⁴⁴

Another issue raised by the proposal to increase the minimum wage is the grave employment picture for Black youths. Unemploy-

ers from maximum hours and overtime protection continues that discrimination. *Id.* at 1336-38, 1341-42. See also *supra* notes 14-16 and accompanying text.

140. Linder, *supra* note 14, at 1380-81.

[I]t is apparent that the concentration of Blacks and Hispanics in such a vulnerable position is rooted in institutional racism and has proved impervious to both the free market and the political process. Low levels of educational attainment and political participation lock today's generation of minority farm workers into their current socioeconomic status The educational and political deficiencies are due in part to low annual income As Louis Brandeis noted, long working days are inconsistent with the leisure that workers require to continue their education and participate in a democratic society.

Id. at 1381 (citations omitted).

141. Smith, *A Black Lawyer's Response to the Fairmont Papers*, 26 *How. L.J.* 195, 198, n.9, 199 (1983).

142. *Id.* at 200.

143. *Id.* at 208, quoting Professor Bernard Anderson of the Wharton School.

144. *Id.* at 204.

ment rates for young Black males rose from 14.4% to 41% between 1954-1985, and for young Black females from 20.6% to 39.2% over the same time period.¹⁴⁵ Professor Wachtel concludes that the aggregate economic conditions, the composition of the labor force, and participation rates for different population groups all are influential variables on the rate of youth unemployment, particularly for minority youths.¹⁴⁶ He notes that the "aggregate economic conditions deteriorated [over the 1970's] and this deterioration, rather than the increase in the minimum wage, could have been the cause of higher youth unemployment."¹⁴⁷

Another commentator contends that the unemployment statistics do not fully reflect the severity of the situation for Black teenagers because many are neither in the labor force nor trying to find work.¹⁴⁸ Of those who have employment, about half work part-time, not necessarily out of preference, resulting in a full-time employment figure for Black teenagers sixteen to nineteen years old which is closer to twenty percent than to the purported sixty percent.¹⁴⁹

The disproportionately high unemployment of Black teenagers has been attributed variously to a lack of education and/or skill, a prior history of unemployment, and race discrimination.¹⁵⁰ As Professor Smith points out, "substantial federal cuts in the 'summer jobs programs' . . . [had a] devastating effect on the employment of Black youths."¹⁵¹ Additionally, our system of government has shaped the ability (or inability) of minorities to enter the job market,¹⁵² as well as the number of jobs available.¹⁵³

145. Wachtel, *supra* note 92, at 458.

146. *Id.* at 459. See generally discussion of youth unemployment *supra* notes 70-103 and accompanying text.

147. Wachtel, *supra* note 92, at 459. Professor Wachtel cites a study by Betsey and Dunson that found general economic conditions were more important than the minimum wage in explaining the rise in Black teenage unemployment for the 1954-79 period. For 1970-79, the same study did show a small, yet statistically significant relationship between the minimum wage and Black teenage unemployment. *Id.* at 460, n.22 citing Betsey & Dunson, *Federal Minimum Wage Laws and the Employment of Minority Youth*, 71 AM. ECON. REV. 379 (May 1981).

148. Edelman, *supra* note 78, at 17.

149. *Id.*

150. Smith, *supra* note 141, at 218-19.

151. *Id.* at 200-01.

152. Edelman, *supra* note 78, at 45.

153. *Id.* at 46. Edelman argues that "state action played a significant part in creating what now threatens to become a permanent underclass in society." *Id.* at 48. He maintains that a "minimum income guarantee at some 'survival' level is a fundamental human and constitutional right." *Id.* at 20, 25, 49. Professor Edelman further asserts that the political powerless-

The potential impact of an increase in the minimum wage on unemployment among minorities, particularly Black teenagers, should not be ignored, even in the absence of conclusive empirical evidence that minority unemployment will intensify. Regardless of ideological persuasion, legislators, business leaders, and educators must form a partnership to provide training for the unemployed and the underemployed. One incentive to boost worker employment and productivity may be the predicted shortage of youth labor in the next decade. Another compelling motivator may be the quest for international competitiveness.

V. INTERNATIONAL TRENDS

The debate surrounding the proposed increases in the minimum wage has centered on the issue of determining how much of an increase in the minimum wage, if any, is desirable and fair. A broader examination of our overall approach to minimum wage regulation has largely been absent from the debate. This section briefly surveys various foreign minimum wage systems. A comparative look at other countries' approaches to setting minimum rates of remuneration enhances the debate in the United States and may spur a re-evaluation of its minimum wage system.

A. Alternatives to a National Minimum Wage

Several major industrial nations, including Great Britain,¹⁵⁴ Australia,¹⁵⁵ West Germany,¹⁵⁶ Brazil,¹⁵⁷ Japan,¹⁵⁸ and Canada,¹⁵⁹ have no national minimum wage legislation. Instead, these nations rely on regional legislation, sectoral wage awards, or collectively bargained minimum wage agreements. An examination of these decentralized

ness of the poor, and the alarming deterioration of the condition of the poor, despite this country's affluence, require a re-examination of the theory that the constitution implies the right to a subsistence income. *Id.* at 1, 2-3. Beyond advocating judicial recognition of an affirmative obligation to solve the survival problems of the poor, Edelman recommends adoption of such public policy via legislation. *Id.* at 5, 7.

154. See 5 Hepple & Fredman, *INT'L ENCYCLOPEDIA FOR LAB. L. & INDUS. REL.* [hereinafter *IELL*] (Great Britain), 116-117 (R. Blanpain ed. 1986).

155. See 2 Brooks, *IELL* (Australia) 88 (R. Blanpain ed. 1987).

156. See 5 Weiss, *IELL* (Fed. Rep. Germany) 71 (R. Blanpain ed. 1987).

157. See 2 Cesarino & Cardone, *IELL* (Brazil) 86 (R. Blanpain ed. 1978).

158. See 7 Hanami, *IELL* (Japan) 80 (R. Blanpain ed. 1985).

159. See 3 Arthurs, Carter, Glasbeek & Fudge, *IELL* (Canada) 95-96 (R. Blanpain ed. 1988).

systems is valuable for purposes of rethinking our own state and national legislation.

Minimum wages in Great Britain are set by Wages Councils which regulate working conditions in industries where collective bargaining has not been successful in setting terms of employment.¹⁶⁰ Each Wages Council consists of an equal number of representatives of labor and industry, along with several independent members nominated by the Secretary of State. Each respective industry's appointed Wages Council sets the minimum wage for unskilled labor through a bargaining and voting process.¹⁶¹ Historically, the number of Wages Councils has varied, peaking at sixty-six in 1953 with 3.5 million workers covered by Councils' regulations.¹⁶² In 1985, twenty-eight Wages Councils existed, covering 2.75 million workers.¹⁶³

Prior to the Wages Act of 1986, the directives of Wages Councils varied, often providing for different wage rates for different job categories. These directives were often complex, making it difficult to comply with the orders.¹⁶⁴ The 1986 Wages Act has reduced the role of Wages Councils in setting minimum wages. Under the Act, a Council may set only one minimum wage for all workers covered by its orders.¹⁶⁵ Also, the Act removed workers under 21 years of age from the Wages Councils' protection thus subjecting them to individual or collective agreements.¹⁶⁶ Furthermore, under the 1986 Act, the Secretary of State no longer has the power to create new Wages Councils, retaining only the power to eliminate existing Councils.¹⁶⁷ This change was meant to encourage collective bargaining, eventually leading to the replacement of Wages Councils with collective bargaining (as originally intended).¹⁶⁸ However, Wages Councils still generally serve as a substitute for collective bargaining in areas where collective bargaining is ineffective, such as with part-time workers or in fragmented industries.¹⁶⁹

160. See Dolding, *The Wages Act 1986: An Exercise in Employment Abuse*, 51 MOD. L. REV. 84, 92 (1988).

161. Hepple & Fredman, *supra* note 154, at 116-117.

162. *Id.* at 117.

163. *Id.*

164. *Id.* at 118.

165. Dolding, *supra* note 160, at 94.

166. *Id.*

167. *Id.* at 94-95.

168. See *id.* at 92, 94. See also Hepple & Fredman, *supra* note 154, at 116.

169. Dolding, *supra* note 160, at 93, 95. See also Hepple & Fredman, *supra* note 154, at 118.

The Australian wage setting approach is perhaps the most unique system in this study and is certainly the most complex. In Australia, industrial tribunals decide wage cases and give wage awards to certain industries. Hence, the industrial tribunals set the minimum amount of remuneration for workers in each industry.¹⁷⁰ These wages are then partially indexed and periodically adjusted (but more about that later).¹⁷¹ The tribunals' awards vary depending on the industry concerned. However, awards given under one ruling are often expanded to cover other similarly situated industries.

West Germany, like many other countries¹⁷², relies on collective bargaining to set minimum wages.¹⁷³ In West Germany, government decrees establish minimum wages by extending the collective bargaining agreements reached by unions and industry to other workers not originally covered under the agreement.¹⁷⁴ In this way, a large number of workers are guaranteed a particular rate of remuneration. In 1984, only forty percent of the German work force belonged to unions, yet collective bargaining agreements reached by unions covered over ninety percent of the German work force.¹⁷⁵ Moreover, the unions are aware that their agreements serve a societal function, and they use this knowledge during the bargaining process.¹⁷⁶

Regional legislation substitutes for a national minimum wage in Brazil, Japan, and Canada. In Brazil, the weekly minimum wage is established on a regional basis.¹⁷⁷ The Ministry of Labor adjusts it annually to meet the economic needs of workers in each respective region.¹⁷⁸ The factors the legislators consider in setting each region's minimum wage are the costs of food, housing, clothing, and transpor-

170. See generally Brooks, *supra* note 155, at 31, 88-89.

171. See K. Whitfield, *The Australian Wage System and Its Labour Market Effects*, 27 *INDUS. REL.* 149, 154-55 (1988). See also *infra* note 205 and accompanying text.

172. For example, in Finland, government decrees extend collective bargaining agreements, providing minimum wage protection for at least part of the work force. See 4 Suviranta, *IELL* (Finland) 88 (R. Blanpain ed. 1986).

173. While the West German system provides for the states to establish minimum wages, no minimum standards have been adopted, except for minimum rates for home workers. See Goldman, *Settlement of Disputes Over Interests*, *COMPARATIVE LAB. L. & INDUS. RELATIONS* 368 (R. Blanpain ed. 2d ed. 1987).

174. Summers, *The Usefulness of Unions in a Major Industrial Society—A Comparative Sketch*, 58 *TUL. L. REV.* 1409, 1412 (1984).

175. *Id.* at 1412.

176. *Id.* at 1411-12.

177. See Cesarino & Cardone, *supra* note 157, at 86.

178. See Goldman, *Comparative Study of the Determination of Worker Remuneration: A Micro-Dynamic Analysis*, 6 *COMP. LAB. L.J.* 229, 268 (1984).

tation in the particular region.¹⁷⁹ Japan also sets minimum wages on a regional basis giving "due regard" to the cost of living in each region.¹⁸⁰ Additionally, some Japanese industries must pay a higher minimum wage than those established for the regions.¹⁸¹ In general, the Japanese minimum wage regulation only affects the lower paying industries. The Japanese approach to setting minimum wages is less aggressive than the approach taken by other nations such as France.¹⁸² In Canada, the Provincial Governments set the minimum wage regulations.¹⁸³ Each of Canada's ten provinces have enacted minimum wage legislation with the statutes differing in each province.¹⁸⁴

Finally, as an alternative to a blanket national minimum wage, several nations' minimum wage laws provide for different wage rates for various industry sectors or for workers of divergent status. Portugal has three separate minimum wage rates: one for agriculture, one for domestic services, and one for the rest of the economy.¹⁸⁵ Greece sets a "blue collar" rate and a "white collar" rate, and provides a higher rate for married workers in each category.¹⁸⁶ Luxembourg applies a different rate for skilled workers as opposed to unskilled workers, and the rate is higher for any worker with dependents.¹⁸⁷ Similarly, the Brazilian system provides for a five percent bonus added to a parent's minimum wage for each child who is under fourteen years of age or who is disabled.¹⁸⁸ If both parents work, each receives a five percent wage bonus.¹⁸⁹ The employer is allowed to deduct the added cost of the five percent bonus from the payroll taxes it owes to the government.¹⁹⁰

179. *Id.*

180. *Id.* at 261.

181. *Id.*

182. *Id.* at 261. See also W. Gould, JAPAN'S RESHAPING OF AMERICAN LABOR LAW 33 (1988) (comparing Japanese Labor Standards Law to the FLSA).

183. See Arthurs, Carter, Glasbeek & Fudge, *supra* note 159, at 95-96.

184. *Id.*

185. See EEC: *Final Extracts from the Commission's "Report on Social Developments - Year 1986"*, 178 EUR. INDUS. REL. REV. 27 (Nov. 1988).

186. See *Greece: New Minimum Wage Rates*, 197 EUR. INDUS. REL. REV. 4 (Dec. 1988).

187. See *Luxembourg: New Minimum Wage Rates Rise*, 180 EUR. INDUS. REL. REV. 7 (Jan. 1989).

188. See Goldman, *supra* note 178, at 269.

189. *Id.*

190. *Id.* See generally ILO, GENEVA, LABOUR-MANAGEMENT RELATIONS SERIES NO. 67, ASSESSING THE IMPACT OF STATUTORY MINIMUM WAGES IN DEVELOPING COUNTRIES, 55-80 (1988) (discussing minimum wages in Brazil: theory, policy and empirical evidence,

B. Minimum Wage Indexation

The current United States federal minimum wage of \$3.35 per hour represents 34.4% of the national average hourly wage,¹⁹¹ its lowest relative value in forty years.¹⁹² When the \$3.35 rate went into effect, it represented 46.2% of the average wage.¹⁹³ Furthermore, since 1981, its purchasing power has declined almost 38.5%.¹⁹⁴ This slide in the minimum wage's purchasing power continues unabated, due in part to the political difficulties involved in securing a minimum wage increase.¹⁹⁵ Such political barriers are not faced by countries which have adopted indexation systems, as it is the nature of such systems that minimum wages are adjusted periodically to keep pace with the specific index.

The French minimum wage indexation scheme is perhaps the most ambitious system, attempting not only to preserve the purchasing power of its minimum wage, but also to increase its purchasing power in a manner which corresponds with gains in purchasing power made by the nation's average wage. The French minimum wage, known as the *Salaire Minimum Interprofessionnel de Croissance* (Minimum Growth Wage), or SMIC, is linked to the Consumer Price Index, guaranteeing that wages rise with inflation. Every July 1, the SMIC is adjusted to reflect changes in the Consumer Price Index.¹⁹⁶ However, an additional provision in the legislation mandates that, notwithstanding the SMIC's linkage to the Consumer Price Index, "in no circumstances shall the annual increase in the purchasing power of the minimum growth wage be less than half the increase in the purchasing power of the average hourly wages."¹⁹⁷ Thus, the SMIC is indexed to two standards, with the controlling standard being the

1940-80). For a discussion of minimum wage fixing (1974-82) in Botswana and the related implications for employment and income distribution, see *id.* at 1-54. The impact of minimum wages on the Mexican economy (1934-83) is also evaluated, *id.* at 81-110, and the Sri Lankan tea industry (1945-79), *id.* at 111-60.

191. S. REP. NO. 101-6, *supra* note 25, at 24 (1989).

192. *Id.* at 14.

193. *Id.*

194. *See id.*

195. Presently, only an 'Act of Congress' can secure a minimum wage increase in the United States. The debate surrounding the current proposals began as early as 1987 and as of June 1989, no increase has been secured.

196. *See generally* 4 Despax & Rojot, IELL (France) 93-94 (R. Blanpain ed. 1987).

197. *See id.* at 94. *See also* Act No. 70-7, Section L. 141-45 (1970), *Act to Reform the Guaranteed Minimum Wage and to Create a Minimum Growth Wage*, reprinted in Despax & Rojot, *supra* note 196, at 94.

one that yields the larger increase in the SMIC. Furthermore, in addition to the annual adjustment of the SMIC, the wage can be increased beyond the mandated rate during the year at the initiative of the government.¹⁹⁸ The value of the SMIC has reached as high as sixty percent of the value of the nation's average wage,¹⁹⁹ and the SMIC was raised as recently as May 1, 1989.²⁰⁰

The Israeli Minimum Wage Law, enacted in 1987, also employs indexation, using the average national wage as a primary index and utilizing the Consumer Price Index as a rate-adjustment tool. Under the 1987 Israeli legislation, the minimum wage is automatically adjusted whenever cost of living adjustments are granted to a majority of the nation's workers under collective bargaining agreements.²⁰¹ Furthermore, to ensure the relative worth of the minimum wage, the minimum wage is adjusted every second year, on April 1, to equal forty-five percent of the national average wage.²⁰² On April 1 of the interim year, adjustments to the minimum wage are made based upon changes in the Consumer Price Index.²⁰³ Thus, the minimum wage is reviewed at least once a year.

Other nations, such as Belgium²⁰⁴ and Australia,²⁰⁵ have also employed indexation as a means of adjusting their minimum wages. For example, in Belgium, indexation preserves the purchasing power of the minimum wage and adjustments should be made "twice a year and should give rise to percentage increases in all wage elements (except those limited to profits) equal to the percentage increase in the reference price index, with no minimum or maximum."²⁰⁶ In Australia, a recent shift has been made away from full indexation to a system of partial indexation under which industrial tribunals may grant supplementary wage increases in the form of industry-specific awards.²⁰⁷ The various indexation systems differ from country to country, but most systems employ the Consumer Price Index or the average na-

198. See Despax & Rojot, *supra* note 196, at 93.

199. See Goldman, *supra* note 178, at 256 n.98.

200. 184 EUR. INDUS. REL. REV. 6 (May 1989).

201. ILO, SOC. LAB. BULL. 69 (Jan. 1988). See generally 6 Ben-Israel, IELL (Israel) 87-89 (R. Blanpain ed. 1988).

202. ILO, SOC. LAB. BULL. 69 (Jan. 1988). See generally 6 Ben-Israel, *supra* note 201, at 88-89.

203. ILO, SOC. LAB. BULL. 69 (Jan. 1988).

204. ILO, SOC. LAB. BULL. 342 (Mar. 1988).

205. See Whitfield, *supra* note 171, at 154-55.

206. ILO, SOC. LAB. BULL. 342 (Mar. 1988).

207. See Whitfield, *supra* note 171 and accompanying text.

tional wage as the relevant index. Inherent in each indexation system is a mechanism for periodic review of the minimum wage, ensuring that minimum wage earners do not suffer a steady decline in their purchasing power while waiting for political compromises. Minimum wage earners in the United States have not yet enjoyed such protection.²⁰⁸

C. Minimum Wage and Teenage Employment

A frequent argument of opponents of the proposed increases in the United States minimum wage is that a minimum wage increase will contribute to teenage unemployment.²⁰⁹ The concern that a statutory minimum wage detracts from the employment opportunities of teenage workers is not unique to the American debate.²¹⁰ Internationally, a number of countries have provisions in their minimum wage laws which respond to this concern by providing different minimum wage levels based upon age groups.

The Belgian wage law provides for a graduated minimum wage which, beginning at age sixteen, increases with a worker's age and peaks at age twenty-one.²¹¹ Specifically, workers under twenty-one years receive a percentage, set out below, of the minimum wage that employers pay to adult workers:²¹²

<u>Age</u>	<u>Percentage</u>
20	92.5%
19	85.0%
18	77.5%
17	70.0%
16 and under	62.5%

The minimum wage law in Spain also provides for age-determined minimum wages. This system provides for one minimum wage

208. Alaska has indexed its minimum wage; however, the index it utilizes is the federal minimum wage itself. See *supra* note 67 and accompanying text (Alaska indexes its wage to keep it fifty cents above the federal minimum). Thus, the Alaskan minimum wage moves no more quickly than the federal minimum. Also, indexation is not the only alternative for securing periodic adjustments of the minimum wage. Legislation could be adopted calling for periodic review of wages with adjustments to be made in accordance with given standards. However, this approach would require that states adopt narrowly defined standards to avoid political debates over meeting those standards. Brazil is one country that employs a system of periodic review. See Goldman, *supra* note 178, at 268.

209. Roberts & Bowers, *supra* note 33, at 27-28.

210. See *supra* notes 70-103 and accompanying text.

211. See 2 Blanpain, IELL (Belgium) 105 (R. Blanpain ed. 1988).

212. *Id.*

for workers eighteen years and older, a second wage for workers between sixteen and seventeen, and another wage for workers younger than sixteen years old.²¹³ Likewise, French law allows for a reduced wage for apprentices and workers under eighteen.²¹⁴

Australia applies a different approach. The Australian system allows a worker who faces difficulty obtaining employment at the minimum wage rate, because of age, handicap, or disability, to obtain a "slow worker" permit. This permit allows an employer to employ a worker at a wage below the minimum rate.²¹⁵ The advantage of this approach is that it allows younger workers to increase their employment opportunities. However, a potential disadvantage of the approach is that it provides employers the opportunity to avoid paying a fair wage.

The argument that minimum wages contribute to teenage unemployment has prevailed in Great Britain where the 1986 Wages Act removed workers under twenty-one years from minimum wage protection.²¹⁶ Prior to this Act, Wages Councils could set distinct minimum wage levels for different categories of workers, including younger workers, within the industry covered by the given council.²¹⁷ The 1986 Act diminished the power of the Wages Councils by stating that they can no longer set separate minimum wage standards for diverse worker groups (such as different age groups) within the covered industry. Instead, only one minimum wage applies to all workers twenty-one and older who work in the industries covered by the Wages Council.²¹⁸

The concept of a sub-minimum wage for American youths has raised the concern that it would encourage employers to hire cheaper youth labor at the expense of adult workers.²¹⁹ Questions concerning the fairness of a sub-minimum wage also have arisen.²²⁰ However, as has been shown, a number of nations have provisions in their minimum wage laws which consider a worker's age. Implicit in these sys-

213. See 9 Olea & Rodriguez-Sanudo, IELL (Spain) 74 (R. Blanpain ed. 1988).

214. Goldman, *supra* note 178, at 256.

215. See Brooks, *supra* note 155, at 82; Mellor, *supra* note 70, at 34; Roberts & Bowers, *supra* note 33. See also Fair Labor Standards Act §§ 14(a & b), *supra* note 74 (U.S. law permits sub-minimum for handicapped and others "to prevent curtailment of employment opportunities").

216. Dolding, *supra* note 160, at 94.

217. *Id.*

218. *Id.*

219. See *supra* note 33, at 29 and accompanying text.

220. See *supra* notes 78-79 and accompanying text.

tems is an acknowledgement that the economic needs of workers change with increased age. The sub-minimum wage has the potential of becoming a political bargaining chip, as President Bush has indicated that he supports a "training wage" and will continue to veto any wage increases above \$4.25 per hour.²²¹ Conceivably, proponents of a larger minimum wage increase could concede the issue of a "training" or sub-minimum wage in order to secure their wage increase. Before the United States adopts a new minimum wage through these or other political tradeoffs, its policy makers should consider the experiences of other nations.

VI. CONCLUSION

What are "fair" labor standards for the 1990s? Implicit in the definition of fairness is the concept of equity. Perhaps that is one reason why the debate concerning the minimum wage relates more to ethics than to economics, and more to politics than to the law. Though the golden anniversary of the FLSA has passed, the historical arguments dating from its New Deal enactment remain the principal issues parried by the ideological opponents.

Is a "living wage" a moral imperative in the United States? Will the United States injure its international competitiveness if it raises the federal wage floor?²²² One commentator concluded:

The notion that keeping a minimum wage which is significantly below the poverty level, and significantly below the average income level of the last fifteen years, is critical to American competitiveness in the 1990s and beyond is a pretty depressing statement about where the country is headed. There is a growing recognition that the present schedule fails to meet its statutory purpose: that of providing a minimum standard of living for the working poor.²²³

The fact that *all* current earners of the minimum wage are not male heads-of-households who are working full-time as the sole earners for a family is not a reason to decry the benefit of an increase in the minimum. A measure of improvement is no less necessary because it reaches beyond those who historically and traditionally

221. See *supra* note 46 and accompanying text.

222. See Rocella, *Minimum Wage-Fixing: An Historical and Comparative Perspective*, 6 COMP. LAB. L.J. 82, 91. "In actual fact, during 1966-77, with the sole exception of the United States, the real value of the legal minimum wage in advanced industrial contexts increased substantially." *Id.* at n.36.

223. Berman, *Labor Legislation Before the 100th Congress*, 10 INDUS. REL. L. REV. 51, 57 (1988).

needed it most.²²⁴ The stereotypical Ozzie and Harriet family is no longer the prevalent economic unit in the United States.²²⁵

Although the minimum wage is neither tailored to the size of an earner's family nor strictly targeted at the poor,²²⁶ it is a positive step toward the elimination of poverty and provides a floor for those who adhere to a work ethic. At a time when the United States is moving away from higher paying manufacturing jobs, and toward the lower-paid service sector,²²⁷ who will set a standard if the federal government does not? One must not look to unions to protect the economically disenfranchised because unions are on the decline themselves.²²⁸ Many workers in the United States need some protection from the inequities inherent in the marketplace because perfect competition in the labor market does not exist.

As of this writing, the proposed revision of the federal wage floor has not occurred. President Bush's "offer" on the minimum wage is "first and final" in his own words.²²⁹ In the collective bargaining sphere, such a "take-it or leave-it" proposal would amount to an unfair labor practice because of its lack of flexibility and its tendency to disparage the opponent's function.²³⁰ In fact, Senator Kennedy has expressed frustration at the administration's "take it or leave it" attitude on the minimum wage.²³¹

Politically, it may be impossible to repeal the minimum wage law because of its continuing popular appeal. However, failure to raise the federal wage floor eventually will render the statute largely ineffective. Of course, raising the minimum wage will not cure all the

224. Cf. Burkhauser & Finegan, *supra* note 22 (Far fewer minimum wage workers in 1984 fit the stereotype of a primary breadwinner in a poor family than in 1949. The study's definition of poverty was \$11,600 income for a family of four in 1987).

225. Half of the children in the United States have a mother who works. Seventy-five percent of employed mothers work full-time. *Mother's Workday*, Boston Globe, May 14, 1989, at A34, col. 1. "Only 8 percent of families now operate in the traditional style in which Dad works and Mom stays home with the children." *Id.*

226. Bell, *What Minimum Wage?*, Boston Globe, April 25, 1989, at 32, col. 1.

227. Joint Economic Comm. of Congress (M. Kosters), 99th Cong., 1st Sess., A Symposium on the 40th Anniversary of the Joint Economic Committee, 513 (Comm. Print 1986).

228. See Klare, *supra* note 87, at 4 ("unionization covers a small and shrinking portion of the work force . . ."). See also Smith, *supra* note 141, at 206 (the demise of unions "may leave the very ranks which Blacks clamor to join unprotected.").

229. Boston Globe, May 2, 1989 at 8, col. 1.

230. See *NLRB v. General Electric Co.*, 418 F.2d 736 (2d Cir. 1970), *cert. denied*, 397 U.S. 965 (1970).

231. *Conferees Approve Raise in Minimum Wage; Kennedy Willing to Talk If Bush Relents*, Daily Lab. Rep. (BNA) No. 84, at A-11 (May 3, 1989).

social, economic, legal, and other ills implicit in our system of employment. Yet, indexing the minimum wage to fifty percent of the average hourly wage has a significant appeal.²³² The advantage of indexing is obvious. It eliminates the lengthy political battles over each increase. Even though the notion of automatic increases is abhorrent to many who fear an inflationary impact on the economy, the history of minimum wage revisions (and non-revision since 1981), as well as the indexation systems adopted in other countries, indicates that this is a more effective method than the ongoing process of legislative amendment to the FLSA.

VII. ADDENDUM

On June 14, 1989, President Bush vetoed the bill that would have raised the minimum wage to \$4.55 over three years.²³³ The President's objections to the bill included the stifling of new jobs and the sixty-day limit on the subminimum training wage instead of the six-month period that he advocated.²³⁴ The President also maintained his position that the increase should be to \$4.25 per hour, not \$4.55; and he disagreed with the bill's proposed Minimum Wage Review Board which would recommend increases to Congress.²³⁵ The subsequent House vote of 247-178 was inadequate to override the President's veto.²³⁶ As of November 1, 1989, a compromise proposal ended the lengthy impasse between President Bush and the Democrats.²³⁷ The agreement with the House and Senate leaders calls for an increase to \$4.25 per hour by April 1991, nine months earlier than the President initially proposed.²³⁸ A subminimum "training wage" for ninety days to new workers who are sixteen to nineteen years old was agreed upon, and another ninety days would be permitted if the employer institutes a specific training program for newcomers.²³⁹ The minimum wage would increase to \$3.80 per hour on April 1, 1990, and to

232. See Roberts & Bowers, *supra* note 33, at 29.

233. Seib, *Bill on Raising Minimum Wage Vetoed by Bush*, Wall St. J., June 14, 1989, at A3, col. 4.

234. *Id.*

235. *Id.*

236. Karr, *Bush's Veto on Wage Bill Survives House*, Wall St. J., June 15, 1989, at B6, col. 5.

237. Karr, *Compromise on Minimum Wage Reached*, Wall St. J., Nov. 1, 1989, at A3, col. 1.

238. *Id.*

239. *Id.*

\$4.25 per hour on April 1, 1991.²⁴⁰ The two-year scheduled phase-in also represents a change from the White House's original proposal of a three-year period.²⁴¹ The compromise plan passed the House with a vote of 382-37,²⁴² and the Senate with a vote of 89-8.²⁴³ President Bush signed the measure on November 17, 1989.²⁴⁴

240. Kranish, *Bush Agrees to \$4.25-an hour Minimum Wage*, *Boston Globe*, Nov. 1, 1989, at 1, col. 3, and at 17, col. 1.

241. *Id.*

242. Karr, *House Approves Minimum Wage Rise of 90 Cents*, *Wall St. J.*, Nov. 2, 1989, at A4, col. 1. The compromise set the training wage at \$3.35 (the current minimum) until April, 1991 when it will rise to \$3.61 per hour, 85% of the minimum wage on that date. *Id.*

243. Kramish, *Minimum Wage Bill Awaits Bush Signature*, *Boston Globe*, Nov. 9, 1989, at 84, col. 1.

244. *Bush Signed Minimum Wage*, *L.A. Times*, Nov. 17, 1989, at A2, col. 1.