

LAW AND CONTEMPORARY PROBLEMS

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FOREWORD

Regulation of wages and hours and the elimination of child labor have occasioned much discussion in legal and other social science journals since the beginning of the present century. Legislation, proposed and enacted, suggested constitutional amendments, litigation and judicial decisions bearing on these subjects, all have called forth commentaries and evaluations in large number. In contrast, the Federal Fair Labor Standards Act (more generally known, perhaps, as the Wage and Hour Law), undoubtedly the most extensive program of this kind yet enacted into law in the United States, has received, thus far, surprisingly little critical treatment. It may well be admitted that the period since the Act became operative on October 24, 1938, is too brief to reveal all the problems which may be expected to develop in its administration. Nevertheless it is believed that the principal points of difficulty may now be ascertained and studied. Furthermore, in presenting such a study in a symposium at this time it should be noted that the importance of the problems considered will be heightened this October at the end of the Act's first year. After that time the present standards become inoperative and the millions of employees covered by the provisions of this legislation cannot be paid less than the new 30-cent minimum hourly wage nor can they be worked in excess of 42 hours weekly without extraordinary compensation.

In a symposium such as this there is always the risk that the value of the studies presented will be lessened by substantial change in the law under discussion. Although this legislation has quite rightly been considered more far-reaching in its implications than any federal legislation since the National Industrial Recovery Act there was, on the whole, little articulate opposition during the first six months of its existence. At the beginning of the present session of Congress Administrator Andrews himself asked for certain amendments to the Act. Subsequent legislative developments concerning amendments have indicated that opposition to wage and hour regulation in certain areas—vocational as well as geographic—if not particularly vocal, has been nonetheless real. More recently, the hearings conducted by the Administrator on the recommendation of the Textile Industry Committee have provided a sounding-board for the first intensified manifestation of antagonism to the Act. While these developments have tended to dim the roseate glow of what may have appeared to be an "era of good feeling," it does not seem likely at the moment

that substantial amendment of the Act will come at this session. Indeed, it is quite possible there will be no amendment of any sort.

The organization* of the symposium and the material covered by the articles will, in the main, be apparent from an examination of the table of contents. Professor de Vyver's article does not attempt a detailed treatment of wage and hour legislation prior to the Fair Labor Standards Act. Its purpose, rather, is to give the reader, in brief compass, a survey of what has been done in this field both by the states and the Federal Government and thus provide orientation for the more detailed consideration of the problems arising under the present Act.

It does not appear that a decision on the constitutionality of the Act is immediately in prospect, yet it may be taken for granted that the test will be made eventually and that, until that time, considerable speculation will be indulged in. Messrs. Stern and Smethurst have made use of a novel method in presenting their speculations concerning the constitutional issues. Agreeing upon a statement of facts, each of the authors has prepared an imaginary Supreme Court opinion, one upholding and the other attacking the Act's constitutionality. Neither writer is thus taking the position that his opinion is the one that will be handed down. The viewpoint of each is rather—here is a framework the Supreme Court could use in deciding the constitutional validity of the Act.

One might receive the impression that the economic angle is receiving more than its share of attention in this symposium. In comparatively brief articles, Mr. Daugherty supplies the answers to such questions as how many employees, in what industries, and in what states are covered by the Act, and Professor Nathan and Mr. Sargent point respectively to the advantages and disadvantages, economically speaking, which may be expected to flow from its existence and enforcement. The other articles as well will be found to stress economic considerations. But this is consistent with a realistic appraisal of the Act. For the root controversy is economic. Such legal and political problems as coverage, interpretation, administration, exemptions, amendments, and even repeal, all will in the long run be largely determined by economic factors—to the understanding of which it is hoped this symposium will contribute.

P. H. S.

* Because Mr. Forsythe's illness prevented the completion of his article at the appointed time, it has been placed last rather than near the beginning of the symposium as would ordinarily be indicated.