

THE PUBLIC PAPERS
AND ADDRESSES OF
**FRANKLIN D.
ROOSEVELT**

WITH A SPECIAL INTRODUCTION
AND EXPLANATORY NOTES BY
PRESIDENT ROOSEVELT



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THE CONSTITUTION PREVAILS

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achieved. However, in view of the complexity of the rapidly shifting international scene at present it would be dangerous to adjust ourselves to any rigid pattern. It is doubtful whether procedure on the lines you suggest will be rewarded with that measure of success which we could justly expect were the international situation to have undergone clarification. For this reason I believe that to commit ourselves definitively at this time to a formalized course of action might well be premature and might therefore even do more harm than good, both at home and abroad.

You may rest assured that we are watching all developments in the monetary sphere with a view to making any timely contribution we can. The monetary understanding reached last September first with England and France and then with a number of other countries was rightly interpreted as being a great step forward in the attainment of the external stability of the dollar as well as in the promotion of international economic cooperation.

Our common aims in the realm of monetary policy are set forth with admirable lucidity in a talk given by the Secretary of the Treasury, at Harvard, a few months ago. I am enclosing a copy for your convenience.

Thanking you for your continuing cooperation, I am

Sincerely yours,

The Honorable Elmer Thomas,
United States Senate.

57 (The President Recommends Legislation
Establishing Minimum Wages and Maximum
Hours. May 24, 1937

To the Congress:

THE TIME has arrived for us to take further action to extend the frontiers of social progress. Such further action initiated by the legislative branch of the government, administered by the execu-

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tive, and sustained by the judicial, is within the common sense framework and purpose of our Constitution and receives beyond doubt the approval of our electorate.

The overwhelming majority of our population earns its daily bread either in agriculture or in industry. One-third of our population, the overwhelming majority of which is in agriculture or industry, is ill-nourished, ill-clad and ill-housed.

The overwhelming majority of this Nation has little patience with that small minority which vociferates today that prosperity has returned, that wages are good, that crop prices are high and that government should take a holiday.

The truth of the matter, of course, is that the exponents of the theory of private initiative as the cure for deep-seated national ills want in most cases to improve the lot of mankind. But, well intentioned as they may be, they fail for four evident reasons — first, they see the problem from the point of view of their own business; second, they see the problem from the point of view of their own locality or region; third, they cannot act unani- mously because they have no machinery for agreeing among themselves; and, finally, they have no power to bind the inevi- table minority of chiselers within their own ranks.

Though we may go far in admitting the innate decency of this small minority, the whole story of our Nation proves that social progress has too often been fought by them. In actual practice it has been effectively advanced only by the passage of laws by state legislatures or the National Congress.

Today, you and I are pledged to take further steps to reduce the lag in the purchasing power of industrial workers and to strengthen and stabilize the markets for the farmers' products. The two go hand in hand. Each depends for its effectiveness upon the other. Both working simultaneously will open new out- lets for productive capital. Our Nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can

plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.

Enlightened business is learning that competition ought not to cause bad social consequences which inevitably react upon the profits of business itself. All but the hopelessly reactionary will agree that to conserve our primary resources of man power, government must have some control over maximum hours, minimum wages, the evil of child labor and the exploitation of unorganized labor.

Nearly twenty years ago in his dissenting opinion in *Hammer v. Dagenhart*, Mr. Justice Holmes expressed his views as to the power of the Congress to prohibit the shipment in interstate or foreign commerce of the product of the labor of children in factories below what Congress then deemed to be civilized social standards. Surely the experience of the last twenty years has only served to reinforce the wisdom and the rightness of his views. And, surely if he was right about the power of the Congress over the work of children in factories, it is equally right that the Congress has the power over decent wages and hours in those same factories. He said:

I had thought that the propriety of the exercise of a power admitted to exist in some cases was for the consideration of Congress alone and that this Court always had disavowed the right to intrude its judgment upon questions of policy or morals. It is not for this Court to pronounce when prohibition is necessary to regulation if it ever may be necessary — to say that it is permissible as against strong drink but not as against the product of ruined lives.

The act does not meddle with anything belonging to the States. They may regulate their internal affairs, and their domestic commerce as they like. But when they seek to send their products across the state line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have

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upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the Nation as a whole. . . . The national welfare as understood by Congress may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command.

Mr. Justice Brandeis, Mr. Justice Clarke, and Mr. Justice McKenna agreed. A majority of the Supreme Court, however, decided 5-4 against Mr. Justice Holmes and laid down a rule of constitutional law which has ever since driven into impractical distinctions and subterfuges all attempts to assert the fundamental power of the national government over interstate commerce.

But although Mr. Justice Holmes spoke for a *minority* of the Supreme Court he spoke for a *majority* of the American people.

One of the primary purposes of the formation of our federal union was to do away with the trade barriers between the states. To the Congress and not to the states was given the power to regulate commerce among the several states. Congress cannot interfere in local affairs but when goods pass through the channels of commerce from one state to another they become subject to the power of the Congress, and the Congress may exercise that power to recognize and protect the fundamental interests of free labor.

And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.

These rudimentary standards will of necessity at the start fall far short of the ideal. Even in the treatment of national prob-

lems there are geographical and industrial diversities which practical statesmanship cannot wholly ignore. Backward labor conditions and relatively progressive labor conditions cannot be completely assimilated and made uniform at one fell swoop without creating economic dislocations.

Practical exigencies suggest the wisdom of distinguishing labor conditions which are clearly oppressive from those which are not as fair or as reasonable as they should be under circumstances prevailing in particular industries. Most fair labor standards as a practical matter require some differentiation between different industries and localities. But there are a few rudimentary standards of which we may properly ask general and widespread observance. Failure to observe them must be regarded as socially and economically oppressive and unwarranted under almost any circumstance.

Allowing for a few exceptional trades and permitting longer hours on the payment of time and a half for overtime, it should not be difficult to define a general maximum working week. Allowing for appropriate qualifications and general classifications by administrative action, it should also be possible to put some floor below which the wage ought not to fall. There should be no difficulty in ruling out the products of the labor of children from any fair market. And there should also be little dispute when it comes to ruling out of the interstate markets products of employers who deny to their workers the right of self-organization and collective bargaining, whether through the fear of labor spies, the bait of company unions, or the use of strike-breakers. The abuses disclosed by the investigations of the Senate must be promptly curbed.

With the establishment of these rudimentary standards as a base we must seek to build up, through appropriate administrative machinery, minimum wage standards of fairness and reasonableness, industry by industry, having due regard to local and geographical diversities and to the effect of unfair labor conditions upon competition in interstate trade and upon the maintenance of industrial peace.

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Although a goodly portion of the goods of American industry move in interstate commerce and will be covered by the legislation which we recommend, there are many purely local pursuits and services which no federal legislation can effectively cover. No state is justified in sitting idly by and expecting the federal government to meet state responsibility for those labor conditions with which the state may effectively deal without fear of unneighborly competition from sister states. The proposed federal legislation should be a stimulus and not a hindrance to state action.

As we move resolutely to extend the frontiers of social progress, we must be guided by practical reason and not by barren formulae. We must ever bear in mind that our objective is to improve and not to impair the standard of living of those who are now undernourished, poorly clad and ill-housed.

We know that over-work and under-pay do not increase the national income when a large portion of our workers remain unemployed. Reasonable and flexible use of the long established right of government to set and to change working hours can, I hope, decrease unemployment in those groups in which unemployment today principally exists.

Our problem is to work out in practice those labor standards which will permit the maximum but prudent employment of our human resources to bring within the reach of the average man and woman a maximum of goods and of services conducive to the fulfillment of the promise of American life.

Legislation can, I hope, be passed at this session of the Congress further to help those who toil in factory and on farm. We have promised it. We cannot stand still.

NOTE: Pursuant to the foregoing message, legislation was introduced in both Houses of the Congress on May 24, 1937, carrying out generally the recommendations contained in the message. Extensive hearings were held and various

amendments were offered; but no final action was taken during this session of the Congress.

I again called attention to the necessity for this type of legislation in a speech at St. Paul, Minn. (see Item 127, this volume), in my

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radio address of October 12, 1937 (see Item 135, this volume), and again in my message to the extraordinary session of the Congress on November 15, 1937 (see Item 152, this volume).

In the extraordinary session many amendments were again offered; but no final action was taken.

At the next session of the Congress, January 3, 1938, in my annual message I again recommended the passage of this legislation (see Item 1, 1938 volume). During this session further hearings were held and various amendments were introduced.

But the bill struck a snag in the Committee on Rules of the House of Representatives. This powerful committee, under the chairmanship of the reactionary Representative John O'Connor (see Item 104, 1938 volume), bottled up the bill, until I successfully urged that it be allowed to come to a vote (see Item 60, 1938 volume).

Finally the bill was passed, June 14, 1938, and was approved by me, June 25, 1938, as the Fair Labor Standards Act, Public No. 718 (52 Stat. 1060).

During the three sessions of the 76th Congress, in which it was under consideration, seventy-two proposed amendments to the bill had been introduced. All but a very few of these were designed to broaden the exemptions for certain industries and occupations from the bill, or to narrow its cov-

erage of workers in some special way.

As finally passed, the Act is in substantial accord with the principles contained in my original message; although with respect to details and administration it differs somewhat.

The chief controversial features over which the long legislative battle was chiefly concerned were: the executive machinery for administering the Act, the amount of minimum wages and the number of maximum hours, and the provisions with respect to child labor.

The law as finally enacted set up a Wage and Hour Division in the Department of Labor under the direction of an Administrator, to be appointed by the President, with the advice of the Senate. The dispute in the Congress was whether or not the administration of the Act should be vested in an independent board of five members to be appointed by the President, or in the Labor Department.

The Act as passed provides for the establishment of minimum hourly wages and maximum hours per week for employees engaged in interstate commerce, or in the production of goods for interstate commerce. Twenty-five cents and 30 cents are fixed for the first and second year respectively as minima per hour. After a period of seven years a minimum of 40 cents per hour is fixed; except in the case of an industry where it is definitely established by the preponderance

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of evidence that a rate of 40 cents would substantially curtail employment. After the second year, however, the absolute floor of 30 cents per hour is fixed.

Superimposed, however, upon these definite minima is a provision which enables industry committees, appointed for each industry by the Administrator, to require, with the approval of the Administrator, higher minimum rates in their own particular industry not exceeding 40 cents per hour, providing that substantial curtailment of employment will not result.

During the legislative debate on the bill, various kinds of proposals had been submitted for fixing these minimum wages, including proposals giving the board, after notice and hearing, the discretion to fix minimum wages within certain limits.

The Act as passed fixes definite maximum hours of employment at 44 hours per week for the first year, 42 hours a week for the second year, and 40 hours a week thereafter; with overtime work permitted upon the payment of one and one-half times the regular wage rate. Exemptions are permitted for certain weeks in seasonal industries, and for employees engaged in first processing of certain agricultural commodities, under specified conditions.

During the legislative history of the Act, various proposals had been offered, vesting jurisdiction in the board to fix maximum hours.

In the Act as passed, all interstate commerce in goods manufactured by child labor is prohibited. Child labor is defined as the labor of a person under 16, or between the ages of 16 and 18 in certain hazardous occupations.

The Act specifically exempts certain occupations, such as agricultural workers, employees in intrastate retail and servicing establishments, seamen, street railway employees, fishermen, employees of smaller newspapers, and others.

The Act makes it unlawful for goods manufactured in violation of its provisions to be shipped in interstate commerce; and prohibits all employment which is in violation of its terms.

In the case of *Hammer vs. Dagenhart*, 247 U.S. 251, the Supreme Court of the United States, in a five to four opinion, had in 1918 invalidated a statute prohibiting the interstate shipment of goods made by child labor, under conditions considered sub-standard by the Congress of that day.

I pointed out, however, in the foregoing message that, in the twenty years which had passed since that decision, all concepts of social decency as well as enlightened economics had shown the wisdom and rightness of the dissenting opinion of Mr. Justice Holmes in that case.

The recent opinion of *United States vs. Darby Lumber Co.*, 85 Law Ed. 395, decided February 3, 1941, by the Supreme Court of the United States, sustaining the con-

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stitutionality of the Act, has at last overruled the case of *Hammer vs. Dagenhart*. It has established the power of the Congress to outlaw child labor and the chiseling of workers' wages, and the stretching of workers' hours beyond modern American standards. There has been established at last the definite principle, which is essential to any self-respecting democracy, that the Congress has the right to impose decent standards of wages and hours in any factory which manufactures merchandise passing through the channels of commerce from one State to another. In this way, backward States, which are willing to permit their children to work instead of going to school, and are willing to subject helpless labor to intolerable working hours and starvation wages, will not be permitted to send their merchandise into other more enlightened States, which are willing to respect the minimum standards of a free laboring class.

Of course, after certain minima are fixed, the Act permits, as is proper, some differentiation in standards between different industries and different localities. Gradually, it is hoped that those differences can be made to disappear over a period of time without creating undue hardship.

But once and for all, certain rudimentary standards, deserving of universal observance, have been set as minimum conditions for a free people seeking to live an American life.

As of April, 1939, a survey of the Bureau of Labor Statistics showed that there were approximately 12,652,000 workers covered by the wage and hour law, employed by more than 250,000 employers. It is undoubtedly true that since this survey, the number of workers has increased considerably and is now in excess of 13,000,000. An idea of the low wages prevailing before the statute was passed, may be gained from the fact that about 700,000 workers received increases when the statutory rise from 25 cents to 30 cents an hour became effective in October, 1939.

Since the Act was passed, the Administrator has issued seventeen wage orders on the recommendations of individual industry committees, increasing the minimum wage above the 30 cents statutory minimum. These minima will be applicable until the seven years have elapsed, that is, until October 24, 1945, when a 40 cents minimum becomes effective for all industries. The industry committees do not have authority at present to recommend wage rates in excess of 40 cents an hour.

In addition to these wage orders, recommendations have been made to the administrator by five additional industry committees, recommending wage increases above the 30 cents minimum; and these recommendations are now under consideration (as of January 1, 1941) by the Administrator. In addition, three industry committees have

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recommended higher minimum wages for industries that are already operating under earlier wage orders.

The total of these twenty-five issued and proposed wage orders apply to an estimated 3,867,000 employees in these industries; and of these about 980,000 have received, or will receive, wage increases.

Since the Act was passed, only two amendments have been en-

acted, both of which were sponsored by the Administrator of the Wage and Hour Division. One of these permitted the payment of wages less than 30 cents an hour to workers in Puerto Rico and the Virgin Islands.

American industry has become increasingly cooperative with the aims, objectives, and operation of the statute. It has been generally accepted as part of the fundamental law in the field of labor relations.

58 ¶ The Three Hundred and Sixty-ninth Press Conference (Excerpts). May 25, 1937

(Helium—Social Security Act—Liberal Supreme Court decisions.)

THE PRESIDENT: I have only one thing. I have sent to the two Chairmen of the Military Affairs Committees of the House and Senate a copy of the report on helium from the Secretary of the Interior, and the Secretaries of State, War, Navy and Commerce, in which they point out that the United States Government is virtually the only large producer in the world, and that there is only one more private company.

They recommend that, if satisfactory terms with this small private company can be arranged, the Government buy it, thereby giving it a practical monopoly on helium. They recommend that we continue to sell it for experimental use, which is mostly medical use, and that in regard to lighter-than-air craft, we should, in accordance with the Good Neighbor policy, let other nations have any unneeded surplus for the promotion of commerce, and for the safeguarding of lives of passengers, on condition that this use in commerce be properly guarded against military use. That report is going