



Review of Social Economy >

Volume 62, 2004 - [Issue 2](#)

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Brothers and Breadwinners: Legislating Living Wages in the Fair Labor Standards Act of 1938

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Pages 129-148 | Published online: 18 Feb 2007

Cite this article <https://doi.org/10.1080/00346760410001684415>

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Abstract

Attention to the implicit and explicit wage theories articulated by economic actors and embedded in public policy reveals the underlying social norms and values in specific historical and industrial contexts. The Fair Labor Standards Act of 1938 (FLSA), the first federal minimum wage legislation in the United States, legitimated and institutionalized the idea that living standards and workers' needs matter in setting wages. They matter not simply in generating labor supply, but as the basis for government intervention in market mechanisms. Rather than viewing market mechanisms and government regulations dichotomously, economic actors debating the FLSA treated both market mechanisms and socially defined living standards as legitimate elements of wage-setting. Wage regulations also, by necessity, must grapple with issues of identity, that is, which workers (especially as defined by class, gender, and race-ethnicity) are

deserving of particular living standards. Debates over the language in the FLSA reveal the contested nature of masculinity during the period of economic crisis in the 1930s. Advocates responded by defining a multiplicity of living wages corresponding with different living standards, as well as a multiplicity of strategies for achieving them.

Keywords:

[minimum wage](#) [living wage](#) [New Deal](#) [gender](#) [masculinity](#) [economic policy](#)

ACKNOWLEDGMENTS

The research for this article was supported by a William Waters Grant from the Association for Social Economics and a Research and Professional Development Grant from Richard Stockton College. Some of the research was conducted while doing collaborative research with Deborah M. Figart and Marilyn Power; I thank them for their ideas and inspiration. I am also grateful for the helpful comments of two anonymous referees for this journal. I remain, however, responsible for any errors or omissions.

Notes

The term “race-ethnicity” is used to express the historically contingent process of defining both racial and ethnic categories. Groups defined as racially distinct in one historical time and place may be considered ethnically distinct elsewhere.

Stabile ([1997](#)) notes that this social economic view of wages traces back to the Scholastics and influenced classical political economists such as Adam Smith.

Theda Skocpol ([1992](#)) makes the argument that Civil War soldier's pensions were another precursor to twentieth-century social policy.

For in-depth discussions of the constitutional issues regarding interstate commerce, see Mettler ([1994](#)) and Levin-Waldman ([2001](#)).

The women's movement was also bitterly divided. The National Women's Party had long opposed gender-specific state minimum wage laws, based on their belief in gender

neutrality. Yet they also refused to support the FLSA since it did not meet their criteria for a “women's issue”. On the other hand, other women's organizations, most notably the National Consumers' League, actively supported the effort for a federal, gender-neutral minimum wage. The U.S. Women's Bureau, an agency of the Department of Labor that also advocated protective legislation, also worked behind the scenes to ensure passage.

Responding to their assertions, the representative from the Brotherhood of Maintenance of Way Employees documented the low wages of employees in the north as well as the south and contested the designation of track men and section men as unskilled labourers (U.S. Congress [1937](#): 1149–1161).

See Power ([1999](#)) and Prasch and Seth ([1999](#)) for discussion of the relationship between productivity, efficiency, and wage levels in the writings of early twentieth-century minimum wage advocates.

Ryan published *A Living Wage: Its Ethical and Economic Aspects* in 1906. In his second book on the topic, *Distributive Justice*, he asserted that “... the ethical value of labor is always equivalent to at least a living wage, and the employer is morally bound to give this much remuneration” (Ryan [1996](#) [1916]: 119).

Very few African Americans worked in the southern textile and other manufacturing plants until after World War II.

As discussed above, this was a partially unionized industry in which the union leadership wanted nonunion employers to be legislatively mandated to raise wages in order to protect unionized employees.

The president of a Houston, Texas, tool company also defended unequal wages by race because “there are certain tasks that are colored, and there are certain tasks that are white,” using occupational segregation to defend race-based wage differentials (U.S. Congress [1937](#): 248).

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