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Making the New Deal Stick? The Minimum Wage and American Political History

The American welfare state has long been characterized as a "laggard" in comparative perspective.[1] The conventional wisdom suggests that a conservative coalition of southern Democrats and Republicans successfully limited the development of American social policy. Nevertheless, the American political system somehow allowed programs like Social Security, unemployment insurance, food stamps, Medicare, Medicaid, and the refundable Earned Income Tax Credit to slip through. Indeed, federal policymakers achieved a range of social policy reforms between 1935 and the present despite the nation's systematic favoring of the status quo and its fragmented political institutions.[2] This essay, focusing on the federal minimum wage, examines the conventional wisdom on the constraints and limits imposed by the conservative coalition within twentieth-century American political history.

The most well-known redistributive programs, the "big bangs" of the New Deal and the Great Society, were enacted in congresses with extraordinary Democratic majorities. A range of research holds that narrowly targeted

[1] Margaret Weir, Ann Shola Orloff, and Theda Skocpol, *The Politics of Social Policy in the United States* (Princeton, NJ: Princeton University Press, 1988).

[2] Julian E. Zelizer, *Taxing America: Wilbur D. Mills, Congress, and the State, 1945–1975* (New York: Cambridge University Press, 1998).

redistributive policies and programs are likely to enjoy only sporadic political support, as they tend to be enacted in periods of partisan imbalance and to be vulnerable to attack when elections shift the balance of power.[3] However, if the structure of Congress hampers targeted redistributive social policies with stable political support, why did the 75th Congress, well-known for the emergence of the conservative coalition majority, adopt a federal minimum wage in 1938? Why did later enacting coalitions in Congress (plus Democratic and Republican presidents) accept and expand upon this later New Deal bargain throughout the twentieth century?

It should be noted that the intent of the minimum wage is to redistribute earnings to low-paid workers. But that comes with the risk of higher unemployment. As early as 1941, economist George Stigler argued that "economists should be outspoken and singularly agreed" that the minimum wage does not reduce poverty.[4] However, recent empirical research suggests that recent minimum wage increases have had little or no adverse effect.[5] At first, the minimum wage mostly affected workers in the South (in such industries as sawmills and apparel), but today it largely affects teenagers and young adults. Balancing the gain of higher wages against the potential cost of losing jobs has made the minimum wage highly controversial in American political history.

This essay explores how political processes shaped the origins and development of the minimum wage across the twentieth century. I will argue that the minimum wage has its own distinct political logic and demonstrate how its origins in Congress had an important effect on its evolution. The historical narrative in the second half of this essay attempts to impose an order and logic on the political history, and some of the policy details, of the minimum wage since the late New Deal.

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[3] John Ferejohn, "Congress and Redistribution," in Allen Schick, ed., *Making Economic Policy in Congress* (Washington, DC: American Enterprise Institute, 1983), 131–157.

[4] George J. Stigler, "The Economics of Minimum Wage Legislation," *American Economic Review* 36:3 (1946): 358–365.

[5] David Card and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton, NJ: Princeton University Press, 1995); Richard Freeman, "The Minimum Wage as a Redistributive Tool," *The Economic Journal* 106:436 (May 1996): 639–649.

Brief Overview: Limiting Liberalism or Forging an Enduring Bargain?

Despite an interdisciplinary scholarship on social policy,[6] labor relations,[7] employment,[8] and social regulation,[9] the minimum wage remains a neglected chapter in the study of the later New Deal and in scholarship on American political history more generally.[10] This is partly because it is a hybrid: "regulatory" in design, "redistributive" in intent, and often "distributive" in terms of its final outcome. Many policy-oriented historians and political scientists either ignore the minimum wage completely because

[6] Theda Skocpol, ed., *Social Policy in the United States: Future Possibilities in Historical Perspective* (Princeton, NJ: Princeton University Press, 1995); Ira Katznelson, "Was the Great Society a Lost Opportunity?" in Steven Fraser and Gary Gerstle, eds., *The Rise and Fall of the New Deal Order* (Princeton, NJ: Princeton University Press, 1989), 185–211; Edwin Amenta, *Bold Relief: Institutional Politics and the Origins of Modern American Social Policy* (Princeton, NJ: Princeton University Press, 2000).

[7] Karen Orren, *Belated Feudalism: Labor, the Law, and Liberal Development in the United States* (Cambridge: Cambridge University Press, 1992); Karen Orren, "Union Politics and Postwar Liberalism in the United States, 1946–1979," *Studies in American Political Development* 1 (1986): 215–252; Colin Gordon, *New Deals: Business, Labor, and Politics in America, 1920–1935* (New York: Cambridge University Press, 1994); David Plotke, "The Wagner Act, Again—Politics and Labor, 1935–37," *Studies in American Political Development* 3 (1989): 105–156. For more on the National Labor Relations Act, see Irving Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley: University of California Press, 1950); Christopher Tomlins, *The State and the Unions* (New York: Cambridge University Press, 1985); James A. Gross, *The Making of the National Labor Relations Board* (Albany: State University of New York Press, 1974); James A. Gross, *The Reshaping of the National Labor Relations Board* (Albany: State University of New York Press, 1981); James A. Gross, *Broken Promises: The Subversion of American Labor Relations Policy, 1947–1994* (Philadelphia: Temple University Press, 1995); Frank McCulloch and Tim Bronstein, *The National Labor Relations Board* (New York: Praeger, 1974).

[8] Margaret Weir, *Politics and Jobs: The Boundaries of Employment Policy in the United States* (Princeton, NJ: Princeton University Press, 1992); Desmond King, *Actively Seeking Work? The Politics of Unemployment and Welfare Policy in the United States and Great Britain* (Chicago: University of Chicago Press, 1995).

[9] Peter A. Swenson, "Varieties of Capitalist Interests: Power, Institutions, and the Regulatory Welfare State in the United States and Sweden," *Studies in American Political Development* 18 (Spring 2004): 1–29; Steven Kelman, *Regulating America, Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy* (Cambridge, MA: MIT Press, 1981); Robert A. Kagan, *Adversarial Legalism: The American Way of Law* (Cambridge: Harvard University Press, 2001).

[10] For some recent scholarship on fair labor standards, see Ruth O'Brien,*Workers' Paradox: The Republican Origins of New Deal Labor Policy, 1886–1935* (Chapel Hill: University of North Carolina Press, 1998); Vivian Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton, NJ: Princeton University Press, 1994); Suzanne Mettler, *Dividing Citizens: Gender and Federalism in New Deal Public Policy* (Ithaca, NY: Cornell University Press, 1998); Landon Storrs, *Civilizing Capitalism: The National Consumers' League, Women's Activism, and Labor Standards in the New Deal Era* (Chapel Hill: University of North Carolina Press, 2000).

it does not fit neatly into prevailing historical schematics for the trajectory of the New Deal,[11] or they view it as another "missed" opportunity in the under-development of an American welfare state.[12]

Federal "fair" labor standards have a prominent place in twentieth-century economic history because of the sectional and regional interests that attempted to amend President Roosevelt's original provisions in Congress. For example, in reviewing congressional debates, scholars attribute southern opposition to the 1937–38 minimum wage proposals to concerns that a minimum wage would destroy the ability of the South to compete with the rest of nation.[13] The most well-known explanation for the split in the Democratic Party in the later New Deal relies on a protectionist thesis: the desire of constituents in high-wage regions (the North) to protect their labor rents and/or capital rents from low-wage competition in other regions (the South). Many of the historical narratives highlight regional differences: producers in the North, a higher-wage region, wanted a floor under competition, while those in the South, a lower-wage region, were eager to exploit their competitive low-labor-cost advantage. As economic historian Gavin Wright has observed, all the distinguishing differences between the South and the rest of the United States had their roots in the separateness of the southern labor market.[14]

During the New Deal, southern Democrats were initially inclined to support many of FDR's labor-related initiatives, albeit with reservations, and only after they secured protection for their regional and economic

[11] John Jeffries, "A 'Third New Deal'? Liberal Policy and the American State 1937–1945," *Journal of Policy History* 8:4 (1996): 387–409.

[12] O'Brien, *Workers' Paradox*; Vivian Hart, *Bound by Our Constitution: Women, Workers, and the Minimum Wage* (Princeton: Princeton University Press, 1994); Mettler, *Dividing Citizens*; Storrs, *Civilizing Capitalism*.

[13] Lee Alston and Joseph Ferrie, "Labor Costs, Paternalism, and Loyalty in Southern Agriculture: A Constraint on the Growth of the Welfare State," *Journal of Economic History* XLV:1 (March 1985): 95–117; Robert H. Zieger, ed., *Southern Labor in Transition, 1940–1995* (Knoxville: Tennessee University Press, 1997); Bruce Schulman, *From Cotton Belt to Sun Belt: Federal Policy, Economic Development and the Transformation of the South, 1938–1980* (New York: Oxford University Press, 1991); Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the New Deal* (New York: Basic Books, 1986).

[14] See Wright, *Old South, New South*.

interests.[15] For example, southern Democrats, responding to agricultural and other business interest groups, kept agricultural and domestic service occupations out of contributory social insurance and public assistance programs and, eventually, out of federal labor standards.[16] However, the growth and extension of labor unions and ongoing efforts to nationalize labor markets eventually posed very significant threats to the southern political economy.[17] According to many historical narratives, the emergence of the conservative coalition in 1937–38, in which southern Democrats allied themselves with midwestern Republicans to veto unwanted changes, effectively ended FDR's ability to push domestic policy reforms through Congress.[18]

During the debate of 1937–38, the House Rules Committee also emerged as a bipartisan conservative coalition rather than an arm of the Speaker and the majority party.[19] During the conservative coalition era, roughly from 1937 to 1974, southern Democrats, who had greater seniority and safer seats, controlled the Rules Committee, and for decades were able to bottle up legislation from those perches of power. Meanwhile northern Democrats controlled the substantive committees, including the labor committees with

[15] Ira Katznelson, Kim Geiger, and Daniel Kryder, "Limiting Liberalism: The Southern Veto in Congress," *Political Science Quarterly* 108:2 (1993): 283–306; Jill Quadagno, "From Old-Age Assistance to Supplemental Security Income: The Political Economy of Relief in the South, 1935–1972," in Weir, Orloff, and Skocpol, eds., *The Politics of Social Policy in the United States*, 235–263.

[16] Marc Linder, "Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal," *Texas Law Review* 65 (1987): 1336; Phyllis Palmer, "Outside the Law: Agricultural and Domestic Workers under the Fair Labor Standards Act," *Journal of Policy History* 7:4 (1995). For a similar criticism of the FLSA for leaving many women workers without protection, see Suzanne B. Mettler, "Federalism, Gender, and the Fair Labor Standards Act," *Polity* 26 (1998): 635.

[17] Katznelson, Geiger, and Kryder, "Limiting Liberalism," 283–306.

[18] David Brady, *Critical Elections and Congressional Policy Making* (Stanford: Stanford University Press, 1988); David W. Brady and Charles Bullock, "Is There a Conservative Coalition in the House?" in Joel Silbey, ed., *The Modern American Congress, 1963–1989* (New York: Carlson Publishing, 1980), 505–515; David W. Brady and Charles Bullock, "Coalitional Politics in the House of Representatives," in Lawrence Dodd and Bruce Oppenheimer, eds., *Congress Reconsidered* (Washington, DC: Congressional Quarterly Press), 187–203.

[19] Christopher M. Davis, The Speaker of the House and the Committee on Rules, H. Doc. 108–204, "The Cannon Centenary Conference: The Changing Nature of the Speakership" (November 12, 2003), http://www.gpoaccess.gov/serialset/cdocuments/hd108–204/browse.html.

jurisdiction over the minimum wage. They attempted to use the implicit gate-keeping power that came with that control to pursue an agenda by creating logrolling agreements that could survive the Rules Committee and would benefit both northern and southern Democrats. Battles about internal House rules and procedures became, in fact, battles about the federal minimum wage and who would determine its scope and amount.

While an anti-New Deal coalition of southern Democrats and Republicans are claimed to have successfully "limited liberalism,"[20] a group of moderate southern Democrats (and Republicans) were a key part of the enacting coalition—joined by liberal Democrats on the final vote—that adopted the original minimum wage and subsequent amendments. These political tradeoffs are important for understanding the logic of the minimum wage in the United States. Rather than assume that two contending political parties with opposite preferences dueled over the minimum wage, this essay views the congressional process as a compromise among three groups throughout much of the twentieth century (liberal Democrats, conservative southern Democrats, and Republicans), none of which commanded a majority in Congress.[21] A conservative coalition alliance or vote is defined based on recorded votes in which a majority of southern Democrats and Republicans voted together against a majority of northern Democrats. [22]

An enacting coalition in Congress (plus President Franklin Roosevelt) adopted a $0.25-per-hour minimum wage under the 1938 Fair Labor Standards Act (FLSA), to be increased to $0.30 (1944) and then to $0.40 (1945). The original law and the revised bargains of 1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996 (as well as the failures of 1946, 1960, 1972, 1973, 1987, and 1988) demonstrate that the policymaking had a temporal logic. In this analysis of the calculus of coalition formation, this essay argues

[20]Ira Katznelson, Kim Geiger, and Daniel Kryder, "Limiting Liberalism," 283–306.

[21]McNollgast, "Positive Canons: The Role of Legislative Bargains in Statutory Interpretation," *Georgetown Law Journal* 80 (1992): 705–742; McNollgast, "Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation," *Law and Contemporary Problems* 57:1 (1994): 3–49.

[22]For more, see Mack C. Shelley, *The Permanent Majority: The Conservative Coalition in the United States Congress* (Tuscaloosa: University of Alabama Press, 1983).

that a predictable pattern emerged between 1938 and 1993. Political agreement had to be reached among the House and Senate labor committees, the majority party leadership and majorities in each chamber, and a conference committee plus the president. Because of the constitutional separation of constituencies of elected policymakers and the absence of disciplined political parties, political coalitions had to be built separately (and repeatedly) in support of the minimum wage in 1938 and subsequently across each decade of the twentieth (and twentieth-first) century.

Every increase in the minimum wage was the result of members of Congress trading support and/or forging bargains on specific provisions with other members (and the president) in order to form an enacting coalition. Repeatedly, members of the conservative coalition—often but not always one moderate southern Democrat and one Republican—would strategically offer a substitute measure to minimize the scope and to reduce the magnitude (or phase-in the timing) of any more liberal committee-reported minimum wage increase. Except during those rare times when Democrats enjoyed overwhelming majorities in both chambers, as during much of the 1960s, such substitutes invariably passed. Liberal Democrats then were forced to accept a "diminished" minimum wage in exchange for political support from moderate southern Democrats and Republicans.

In sum, the political control was not held by liberal Democrats, but by a moderate conservative coalition of southern Democrats and Republicans who were able to use or threaten to use procedural rules to mandate the precise details of outcomes on the floor in each chamber. In the end, ardent opponents preferred the status quo over any change, so the minimum wage hinged upon the political support of a third group on the floor of each chamber—a median group of members whose preferences lay between the two ideological extremes. Moderate southern Democrats and northern Republicans joined with liberal Democrats on the final vote to adopt a minimum wage.

With the Republican takeover of Congress in 1994, a new distributive logic emerged: the conservative Republican House majority enabled a coalition of moderate Republicans and Democrats to adopt a minimum wage increase only when coupled with tax relief for small business. The 1996 agreement, the Small Business Job Protection Act, represented the first minimum wage increase to be adopted when the Republicans were in control of at least one chamber of Congress. Between 2001 and 2006, President Bush, backed by Republican leaders in Congress, refused to act on a minimum wage increase. After regaining control of Congress in 2006, the Democrats secured an increase as part of a supplemental defense appropriations bill that provided emergency funds for the war in Iraq. The final agreement between Democrats and President Bush—the 2007 Small Business and Work Opportunity Tax Act—combined a minimum wage increase to $7.25 per hour by 2009 and small business tax relief. During the 2008 campaign, Obama pledged to help low-income earners by increasing the minimum wage to $9.50 (by 2011) and indexing it to inflation, but federal policymakers have been reluctant to support an increase during the recent economic downturn.

In the final analysis, the minimum wage might prove to be one of the most important remaining New Deal programs in support of worker economic security as a declining proportion of the U.S. workforce has its wages set by collective bargaining. In 2010, the union membership rate—the percentage of wage and salary workers who are members of a union—was only 11.9 percent. In 1983, the first year for which comparable union data are available, the union membership rate was 20.1 percent.[23] In 2010, 72.9 million workers (age sixteen and over) were paid at hourly rates, representing 58.8 percent of all wage and salary workers. Among those paid by the hour, 1.8 million earned exactly the prevailing federal minimum wage of $7.25 per hour. About 2.5 million (exempted) workers had wages below the minimum wage. Together, these 4.4 million workers with wages at or below the federal minimum made up 6 percent of all hourly paid workers.[24]

The New Deal Origins of the Minimum Wage, 1933–38

The New Deal origins of regulatory solutions to labor market "problems" emerged in a sequence: the 1933 National Industrial Recovery Act (NIRA),

[23] U.S. Department of Labor, Bureau of Labor Statistics, Union Members, 2010, accessed at http://www.bls.gov/news.release/union2.nr0.htm.

[24] U.S. Department of Labor, Bureau of Labor Statistics, Characteristics of Minimum Wage Workers, 2010, accessed at http://www.bls.gov/cps/minwage2010.htm.

the 1935 National Labor Relations Act (NLRA), and the 1937–38 FLSA. Congress established a federal minimum wage as part of the 1933 NIRA's Section 3, which empowered President Roosevelt to implement industrial codes to regulate weekly wages, employment hours, and minimum ages of employees.[25] After the Supreme Court struck down the NIRA in 1935, Congress chose to regulate labor relations in interstate commerce with the 1935 NLRA, which guaranteed workers the right to join unions without fear of management reprisal. It also created a National Labor Relations Board (NLRB) to enforce this right and prohibited employers from committing unfair labor practices that might discourage organizing or prevent workers from negotiating a union contract.[26]

With the original 1937–38 FLSA proposal, FDR sought to promote further economic recovery and to provide *unorganized* workers with a measure of the bargaining power afforded to union members under the NLRA. While Congress would set a national minimum wage ($0.80 per hour) to be used as a guide by a Fair Labor Standards Board (FLSB), FDR proposed to exercise direct political influence over the board by appointing five members to it (for staggered five-year terms) without Senate approval.[27] The board would recommend necessary cost-of-living adjustments and guarantee that a minimum wage kept pace with inflation. If Congress instead were to retain political control over a minimum wage, FDR predicted that members "would face intense political pressure as organized groups would request the minimum wage be raised or lowered based on economic self-interest rather than on the basis of sound investigation of changes in economic conditions or the cost of living."[28]

The House and Senate Labor committees, with agenda control over the proposed minimum wage, were composed predominantly of preference

[25] Kenneth Finegold and Theda Skocpol, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995).

[26] Terry Moe, "Interests, Institutions and Positive Theory: The Politics of the NLRB," *Studies in American Political Development* 2 (1987): 236–299.

[27] U.S. Congress, Joint Hearings Before the Senate Committee on Education and Labor and House of Representatives Committee on Labor, Fair Labor Standards Act of 1937 (pt. 1–3) (Washington, DC: Government Printing Office, 1937).

[28] U.S. House of Representatives. Committee on Labor. Fair Labor Standards Act (H.Rpt.1452) (Washington, DC: Government Printing Office, 1937).

outliers on labor/union issues who disproportionately supported labor standards.[29] However, House and Senate southern Democrats preferred regional wage differentials, and they also preferred not to delegate any authority to another New Deal board that could shift policy away from Congress (and toward the preferences of FDR).[30] Democrats, led by Senate Labor Committee Chair Hugo Black (D-Ala.), exempted "all business of a local nature" and expanded the agricultural exemption to include "all occupations involved in the delivery to market and the preparation, packaging, and storage of agricultural goods."[31] These regional differential and exemption provisions met the preferences of southern Democrats who were reluctant to support the minimum wage. The Senate adopted the amended provisions[32] with fifteen Democrats joining thirteen Republicans in voting against the measure.[33]

In the House, northern Democrats on the Labor Committee, anticipating political opposition from the conservative coalition on the powerful Rules Committee (composed of five northern Democrats, five southern Democrats, and four Republicans), amended the FDR proposal. Under the new plan, two of the five appointees would be from the South, and all presidential appointments to the FLSB would be approved only with the "advice and consent" of the Senate.[34] In addition, the committee empowered the board

[29]The two special interest committees were composed predominantly of preference outliers on labor issues and disproportionately supported the minimum wage. In the Senate vote, 75 percent of committee members supported the minimum wage, compared with 64.3 percent of nonmembers. In the two House votes, 76.2 and 95 percent of committee members supported the minimum wage compared with 46.4 and 75.3 percent of nonmembers. See Andrew J. Seltzer, "The Political Economy of the Fair Labor Standards Act of 1938," *Journal of Political Economy* 103:6 (1995): 1302–1342.

[30]See Seltzer, "The Political Economy of the Fair Labor Standards Act of 1938"; George Paulsen, *A Living Wage for the Forgotten Man: The Quest for Fair Labor Standards, 1933–1941* (London: Associated University Presses, 1996).

[31]Paulsen, *A Living Wage for the Forgotten Man*; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 I," *Political Science Quarterly* 53:4 (Dec 1938): 491–515; Paul Douglas and Joseph Hackman, "The Fair Labor Standards Act of 1938 II," *Political Science Quarterly* 54:1 (March 1939): 29–55; James T. Patterson, *Congressional Conservatism and the New Deal: The Growth of the Conservative Coalition in Congress, 1933–1939* (Lexington: University of Kentucky Press, 1967).

[32]Robert Fleck, "Democratic Opposition to the Fair Labor Standards Act of 1938," *Journal of Economic History* 62 (March 2002): 25–54.

[33]Paulsen, *A Living Wage for the Forgotten Man*.

[34]U.S. House of Representatives, Committee on Labor, Fair Labor Standards Act (H. Rpt. 1452) (Washington, DC: Government Printing Office, 1937).

to set a minimum wage above $0.40 per hour and to consider regional differences in "collective bargaining, costs of production, transportation, and local economic conditions." Despite the compromise proposal, the Rules Committee blocked floor action on the bill by refusing to report the minimum wage provisions.

After a series of legislative skirmishes, a House Labor Subcommittee (in a 1937 special session) defeated the southern Democrats' substitute to create a regional differential and approved the northern Democrats' proposal for a uniform federal minimum wage.[35] The Rules Committee would have again exercised its veto authority, but exogenous electoral shocks—the primary Senate election victory of two southern pro-New Deal Democrats, Claude Pepper (D-Fla.) and Lester Hill (D-Ala.), along with public opinion polls showing strong support for a minimum wage—transformed the calculus for other "moderate" southern Democrats. The House petitioned the minimum wage out of the Rules Committee with a discharge motion.[36] After disposing of fifty amendments, the House adopted the provisions—with 256 Democrats and forty-six Republicans in support while a small group of fifty-six southern Democrats and forty-one Republicans remained opposed.

Conferees agreed that Congress would delegate only administration and enforcement authority to a single administrator—appointed by the president and approved by the Senate—who would direct a Wages and Hours Division within the Department of Labor (DOL). They agreed to a federal minimum wage at $0.25, to be raised to not less than $0.30 (by 1944) and to $0.40 (by 1945) "without substantially curtailing employment or earning power."[37] While regional differentials were not adopted, the incremental phase-in of a minimum wage increase over a seven-year period allowed discretion and flexibility. The minimum wage would not have to increase above $0.25; Congress only specified that designated industry committees, convened by the administrator, could vary the minimum wage for specific industries.

[35] Paulsen, *A Living Wage for the Forgotten Man*.

[36] Jonathan Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage," *Monthly Labor Review* (June 1978): 22–30.

[37] U.S Congress, Fair Labor Standards Act of 1938 Conference Report (H. Rpt. 2738) (Washington, DC: Government Printing Office, 1938).

The final bargain was designed in such a way that individual members could claim credit for a popular policy while, at the same time, avoiding blame by exempting certain businesses and thereby minimizing employer costs. For example, Congress exempted "all retail and service firms doing less than 50 percent of their business in interstate commerce" and all employees "in the area of production" of agricultural and horticultural commodities (as defined by the Administrator).[38] Congress limited the scope to specific interstate industries—manufacturing, mining, quarrying, and forestry—and allowed exemptions for employees in executive, administrative, professional, or local retailing capacities.[39] After the House and the Senate accepted the agreement, FDR proclaimed: "Except perhaps for the Social Security Act, it [FLSA] is the most far reaching, far sighted program for the benefit of workers ever adopted here or in any other country."[40] The minimum wage went into effect eight days before the 1938 elections.

But lawmakers—in refusing to delegate authority to a wage-setting board—ensured that future policy change would be difficult. By retaining political control over the minimum wage, Congress could claim credit for an increase, which had strong public support across all regions, as well as minimize blame among groups who feared its impact on labor costs by limiting both coverage and the amount of the increase. Due to the multiplicity of veto gates within the congressional process, the nominal minimum wage would not be revised annually to keep pace with changes in the cost of living. Thus, its purchasing power would erode over time. In fact, by the end of

[38] See Douglas and Hackman, "The Fair Labor Standards Act of 1938 II."

[39] Although agriculture, retail trade, and domestic service employees were not considered part of interstate commerce or were specifically excluded, it is notable that these occupations had the largest proportion of the lowest-paid workers. The Labor Department (September 1938) estimated the minimum wage would affect 300,000 workers of the national labor force who were receiving less than $0.25 per hour. This was predicted to rise to 550,000 when the minimum wage was raised to $0.30 per hour and to 1,418,000 when the minimum wage was raised to $0.40 per hour. There were a total of 11 million covered workers under the 1938 FLSA minimum wage provisions, and this was approximately 20 percent of the total number of wage earners and salaried workers in the United States. For more, see Carol Daugherty, "The Economic Coverage of the Fair Labor Standards Act," *Law and Contemporary Problems* 6:3 (1939): 407–415.

[40] Grossman, "Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage."

the phase-in from $0.25 to $0.40 per hour in 1945, inflation had already "repealed" the original minimum wage.[41]

The "heavy hand" of later New Deal history would prove pivotal in shaping the way that policymakers would subsequently exert political control and influence over the minimum wage. Indeed, federal policymakers are heirs before they are choosers.[42] The key players, by the conservative coalition's instrumental design, were not bound to any single agreement across space and time. Nonetheless, this particular later New Deal bargain "endures" with its own distinct political logic through both liberal and conservative periods of American political history.

AN "ENDURING" NEW DEAL BARGAIN, 1938–60

After 1938, Congress adopted two changes to the minimum wage in the following two decades (in 1949 and 1955). In 1946, northern Democrats, in control of the Senate Labor committee, reported President Truman's proposal to expand the scope to large retail and chain stores (as well as to agricultural processing industries) and to increase the minimum wage in three annual steps.[43] However, a southern Democrat and a midwestern Republican—Allan Ellender (D-La.) and Joseph Ball (R-Minn.)—in an effort to protect rural interests and agricultural groups, used Senate rules (nongermane amendments and the filibuster) to block any attempt to repeal the exemption for industries "closely related to agriculture or agricultural production."[44] Policymakers were motivated to meet the demands of organized business and agriculture rather than just to redistribute earnings from firms to low-paid workers.

Democrats returned to the issue in 1949, after Truman won the presidential election and Democrats regained Congress following two years in

[41] Stigler, "The Economics of Minimum Wage Legislation," 358–365.

[42] Richard Rose, "Inheritance before Choice," *Journal of Theoretical Politics* 2:3 (1990): 263–291.

[43] U.S. Senate Committee on Education and Labor, Amendments to the Fair Labor Standards Act of 1938 (S. Rpt. 1012) (Washington, DC: Government Printing Office, 1946).

[44] In the 1930s and '40s, Democrats and Republicans, Southerners and Midwesterners, were strongly attuned to the policy preferences of the Farm Bureau. For more, see Christiana McFadyen Campbell, *The Farm Bureau and the New Deal* (Urbana: University of Illinois Press, 1962).

the minority. Liberal Democrats proposed an expansion of scope to include all activities "affecting" interstate commerce, the elimination of the retail-service exemption for all firms making more than $500,000 in annual sales (and with more than four outlets), and an increase in the minimum wage to $0.75 (as well as empowering industry committees to increase it up to one dollar).[45] Although Democrats held a Rules Committee majority, four southern Democrats voted with four Republicans to block the minimum wage from being considered by the House.[46]

Speaker Sam Rayburn (D-TX.), in an effort to undermine the power of the Rules Committee's conservative coalition over the minimum wage (and other legislation on the House agenda), proposed to empower committee chairs to send committee-reported bills directly to the House if the Rules Committee had voted not to grant a resolution or failed to act on a request within twenty-one days. The Speaker employed a procedure of binding Democrats through a vote of their party caucus to support the resolution that adopted the 21-day rule. The House restricted the power of the Rules Committee: 225 Democrats and forty-nine "moderate" Republicans voted to change the rules, and 112 Republicans joined thirty-one Democrats to support the status quo.[47]

The Rules Committee then supported a resolution that allowed the House to consider the Labor Committee's proposal, which was a compromise by Truman, under an open rule.[48] On the House floor, Lucas Wingate (D-TX.) proposed a temporary increase to $0.65 (until 1950), with the rate after that depending on the cost of living but not to fall below $0.50. By narrowing the definition of "produced" for interstate commerce, the substitute also

[45] U.S. Senate, Committee on Labor and Public Welfare, Fair Labor Standards Act Amendments of 1949 (S. Rpt. 640) (Washington, DC: Government Printing Office, 1949).

[46] "House Rules Change," *CQ Almanac* V (1949): 577–78; Roberta Herzberg, "Blocking Coalitions and Policy Change," in Gerald Wright, Leroy Rieselbach, and Lawrence Dodd, eds., *Congress and Policy Change* (New York: Agathon Press, 1986), 209.

[47] For more, see Christopher M. Davis, The Speaker of the House and the Committee on Rules, H. Doc. 108–204, "The Cannon Centenary Conference: The Changing Nature of the Speakership" (November 12, 2003), http://www.gpoaccess.gov/serialset/cdocuments/hd108–204/browse.html.

[48] "Wage and Hour Legislation after World War II," *Congress and the Nation, 1945–1964: A Review of Government and Politics* (Washington, D.C.: Congressional Quarterly, 1965), 633–651.

prohibited expansion of the scope to any intrastate business.[49] Another southern Democrat, Monroe Redden (N.C.), offered an amendment to the Lucas substitute to eliminate the cost-of-living adjustment and to provide a uniform $0.75 minimum wage. The Lucas substitute would reduce the scope by 850,000 low-wage workers while the Truman compromise would expand it by 650,000. A conservative coalition majority adopted the Lucas substitute, and a large House majority accepted the amendment (only the most liberal and conservative members opposed it on the final vote). Thus, the House adopted a small minimum wage increase but narrowed the scope even further.

After the Senate voted for its own version (including a $0.75-per-hour minimum wage), conferees agreed to limit the discretion of the Administrator to define employees engaged in interstate commerce to only those "engaged in the production of goods or in any closely related process or occupation directly essential to the production of goods for interstate commerce."[50] Conferees reported exemptions for laundries, cleaning, and clothing repair businesses.[51] Under the 1949 agreement—the first action since 1938—Congress narrowed the scope (reducing coverage by 500,000 low-wage workers) and agreed only to a small minimum wage increase (to $0.75 per hour). Each group within Congress could claim a partial victory: liberal Democrats won an increase, but a conservative coalition majority successfully exempted additional workers from the scope and reduced the magnitude of the increase.

After Democrats regained control of Congress in the 1954 elections, Senate (northern) Democrats in 1955 reported an increase to $1.00 and directed the Labor Secretary to issue annual recommendations based on "changes in cost of living, productivity, the level of wages paid in manufacturing, and the general ability of industries to absorb an increase."[52] According to liberal Democrats, Congress needed full information

[49] "To Provide for the Amendment of the Fair Labor Standards Act of 1938," *Congressional Record* 95:8 (8–10 August 1949): 11000–7; 11004; 11196–11203.

[50] U.S. House, Fair Labor Standards Amendments of 1949, Conference Report (H. Rpt. 1453) (Washington, DC: Government Printing Office, 1949).

[51] Ibid., 14.

[52] U.S. Senate, Committee on Labor and Public Welfare, Amending the Fair Labor Standards

to review whether the latest increase had kept pace with changes in indicators of national economic activity. Liberal House Democrats reported an expansion of the scope to large multistate retail businesses and an increase to $1.00.[53] Without the political conflict that had marked previous debate, Congress increased the minimum wage to $1.00, but (again) with no expansion of scope to intrastate activities and no annual report issued by the Labor Secretary. President Eisenhower became the first Republican to support a minimum wage increase.

In 1959, liberal Democrats pushed for an expansion of scope to include "employees of large enterprises engaged in retail trade or services and other industries engaged in activities affecting interstate commerce" as well as an increase to $1.25.[54] Eisenhower recommended only an expansion of scope in January 1960, but by February, motivated by concerns about the upcoming elections, he supported an increase to $1.10 or $1.15 in addition to extending the scope to firms engaged in interstate activities to a substantial extent.[55]

House liberal (committee) Democrats pushed an expansion of the scope to employees of large enterprises involved in "activity, business, or industry in commerce or necessary to commerce or to the production of goods for or the distribution of goods in commerce" as well as an increase to $1.25 in three steps.[56] On the House floor, A. Paul Kitchin (D-N.C.) and John Ayers (R-Ohio) offered a substitute to expand the scope only to "retail

Act of 1938 in Order to Increase the National Minimum Wage (S. Rpt. 498) (Washington, DC: Government Printing Office, 1955). Subcommittee on Labor of the Committee on Labor and Public Welfare, Amending the Fair Labor Standards Act of 1938, Hearings, 14–22 April (Parts 1 and 2) and 5–18 May (Part 3) 1955 (Washington, DC: Government Printing Office, 1955).

[53]U.S. House, Committee on Education and Labor, Amending the Fair Labor Standards Act to Make the Minimum Wage $1 An Hour Effective March 1, 1956 (H. Rpt. 1095) (Washington, DC: Government Printing Office, 1955).

[54]U.S. Senate, Subcommittee on Labor of the Committee on Labor and Public Welfare, To Amend the Fair Labor Standards Act, Hearings, 7–26 May and 4 June 1959 (Washington, DC: Government Printing Office, 1959).

[55]U.S. Senate, Committee on Labor and Public Welfare, Fair Labor Standards Amendments of 1960 (S. Rpt. 1744) (Washington, DC: Government Printing Office, 1960).

[56]U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1960 (H. Rpt. 1933) (Washington, DC: Government Printing Office, 1960); "To Amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employees engaged in activities affecting commerce, to increase the minimum wage under the act to $1.25 an hour, and for other purposes," *Congressional Record* 106:11 and 12 (30 June and 18 August 1960): 15187–227; 16708–17.

establishments having five or more outlets in two or more states," and to raise the minimum wage to $1.15 (with no subsequent annual increases).[57] A conservative coalition majority adopted the substitute, including an exemption for 700,000 agricultural processing workers who had been within the scope. Liberal Democrats joined a large House majority of moderate southern Democrats and Republicans on the final vote. Even though liberal Democrats took to the floor and called the Kitchen-Ayers substitute a "political fraud," they explained, "in light of the great hardships now suffered by our underpaid workers, a tenth of a loaf was better than none."[58]

Liberal Senate Democrats reported an expansion of scope (to employees of large retail and service firms as well as of other employers engaged in activities affecting interstate commerce) and a three-step increase to $1.25.[59] Mike Monroney (D-Okla.) offered a substitute to limit the scope only to multistate chains. In a strategic effort to defeat the substitute, John F. Kennedy (D-Mass.) and Wayne Morse (D-Ore.) agreed in advance to accept an amendment from Clinton Anderson (D-N.M.) that would reduce the expansion of scope from 5 to 4 million workers but not restrict the basic retail and service "establishment" coverage definitions supported by liberal Democrats.[60] The Senate defeated the substitute, and then adopted the compromise.

During a special August 1960 session, the House and Senate failed to reach an agreement on the minimum wage. While the Senate was willing to accept the House's minimum wage increase (to $1.15), Kennedy insisted on the Senate's proposal to expand the scope to include 4 million new low-wage workers. The House rejected offers to raise the volume-of-sales limit for retail stores to $1.5 million and to delay the increase to $1.25 beyond 1963.[61] With Congress in a stalemate between the more "liberal" Senate

[57] "To Amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employees engaged in activities affecting commerce, to increase the minimum wage under the act to $1.25 an hour, and for other purposes," 15187–227; 16708–17.

[58] Ibid., 15227.

[59] U.S. Senate, Committee on Labor and Public Welfare, Fair Labor Standards Amendments of 1960 (S. Rpt. 1744).

[60] "House Committees: Rules," *CQ Almanac* XVI (1960): 58.

[61] "Minimum Wage Bill Dies in Conference." *CQ Almanac* XVI (1960): 309–319.

and the more "conservative" House, Kennedy, who was the Democratic presidential nominee, concluded: "I plan to take this directly to the American people. I am sure that they will support me in November in my goals of a minimum living standard of $1.25 an hour for millions of Americans."[62] Republicans took the floor in protest, suggesting that Congress had no power to regulate what were essentially local activities by reasoning that they "affected" interstate commerce.[63]

For the House Democratic leadership, with political control in every congressional session but four between 1938 and 1960, majority party status did not translate into significant political influence and control over the U.S. minimum wage. From the New Deal through the early 1960s, House Speakers and majority leaders would find the Rules Committee to be, at least on major controversial issues, an independent and competing power.[64] Northern Democrats repeatedly tried to increase the minimum wage and expand its scope, only to find their efforts "moderated" by the conservative coalition on the floor of each chamber. The 1938 bargain remained stable between 1945 and 1960: enacting coalitions adopted small increases while defeating any expansion of scope to agriculture and intrastate retail and service industries.

Liberal Democrats Seek to Expand Coverage, 1961–68

The 1960 election handed political control of the White House to the Democrats and greatly bolstered Democratic majorities in the House and the Senate. Moreover, moderate Democrats made gains in the South at the expense of conservatives. In 1961, Speaker Rayburn proposed to expand the Rules Committee from twelve to fifteen members in order "to add more moderate southern Democrats" who would support Kennedy's agenda.[65]

62 "House Rules Committee." 1961. *CQ Weekly Report* XIX:2 and 4 (13, 27 January): 31; 109; "Wage and Hour Legislation After Word War II," *Congress and the Nation*, 633–651; "House Committees: Rules," *CQ Almanac* XVI (1960): 58.

63 "To Amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employees engaged in activities affecting commerce, to increase the minimum wage under the act to $1.25 an hour, and for other purposes," 15187–227; 16708–17.

64 See H. Doc. 108–204, "The Cannon Centenary Conference: The Changing Nature of the Speakership."

65 "Kennedy Wins Minimum Wage Victory," *CQ Almanac* XVII (1961): 471–482.

A moderate House coalition (forty-seven southern Democrats and twenty-two moderate Republicans) joined liberal Democrats in approving the change in the rules.[66] The reform would not have passed if moderate Republicans had not broken ranks with the Republican minority to restore the Rules Committee as an arm of the Speaker and House (Democratic) majority leadership.

Conditions were favorable for action on the minimum wage. Kennedy's 1961 proposal, which was similar to the one adopted by the Senate in 1960, would expand the scope to large interstate enterprises. But it would not repeal exemptions for other low-wage industries such as hotels, motels, and restaurants because Kennedy concluded there was insufficient information regarding the problems involved in a minimum wage for "tipped" and "non-tipped" employees within the service industry.[67] The proposal also would increase the wage for workers within the scope to $1.15 immediately and then to $1.25 in two years.

A change in the chairmanship of House Education and Labor—from the retired southern Democrat Graham Barden (N.C.), who as leader of the House conferees in 1960 had opposed any agreement, to liberal Democrat Adam Powell (N.Y.)—provided liberal Democrats with greater control and influence over a final agreement.[68] To preempt the Ayers-Kitchen substitute and to win support from southern Democrats, Kennedy put forth a compromise agreement to retain the $1.15 increase for two years, and $1.25 thereafter, for current workers but to reduce the scope to 3.8 million workers and to offer only a $1.00 minimum wage (with no increase to $1.25 for workers within the new scope). Kennedy's proposal would expand the scope to retail and service firms with an annual volume of sales of more than $1 million if 25 percent of the goods and services were for interstate commerce.[69] After the Rules Committee reported the amendment under an

[66] Ibid.

[67] U.S. Senate, Committee on Labor and Public Welfare, Fair Labor Standards Amendments of 1960 (S. Rpt. 145) (Washington, DC: Government Printing Office, 1961).

[68] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1960 (H. Rpt. 1933).

[69] "To Amend the Fair Labor Standards Act of 1938, as amended, to provide coverage for employees of large enterprises engaged in retail trade or service and of other employees engaged

open rule, a conservative coalition majority defeated it by one vote and then voted to replace it with the Ayers-Kitchen conservative coalition substitute, which was similar to the plan passed by the House in 1960.[70] A large House majority adopted the substitute.[71]

Meanwhile, Senate Democrats supported Kennedy's proposal. On the Senate floor, a centrist coalition of liberal Democrats and "moderate" Republicans defeated the effort of Minority Leader Everett Dirksen (R-Ill.) to adopt the House substitute as well as Monroney's substitute to limit expansion of scope.[72] This same substitute had failed by only two votes in 1960; twelve moderate Republicans voted against it in 1961.[73]

Unlike the 1960 stalemate, the House accepted the more "liberal" Senate's proposal on expansion of scope and an increase in the minimum wage.[74] The final outcome in the House was uncertain, as a conservative coalition majority had defeated these minimum wage provisions in 1960. But a group of moderate southern Democrats and Republicans supported the agreement after numerous businesses were excluded from the scope.[75] Kennedy and a large Democratic majority in Congress extended the scope to large retail and service establishments. Prior to 1961, coverage had been limited to individual employees who were themselves engaged in, or worked in occupations directly essential to, interstate commerce; the 1961 reform enlarged the scope to *all* employees of any enterprise participating in interstate commerce. Kennedy remarked: "This advance in one of our great pieces of social legislation is one of the most important domestic accomplishments so far of this administration."[76]

in commerce or in the production of goods for commerce, to increase the minimum wage under the act to $1.25 an hour, and for other purposes," *Congressional Record* 107:4–6 (22–24 March, 20 April, and 3 May 1961) pp. 4584–4591; 4773–4815; 6360–6377; 7178–7195.

[70] Ibid.

[71] "Kennedy Wins Minimum Wage Victory," *CQ Almanac* XVII (1961): 471–482.

[72] Ibid.

[73] Ibid.

[74] *Fair Labor Standards Amendments of 1961* Conference Report (H. Rpt. 327) (Washington, DC: Government Printing Office, 1961).

[75] "Kennedy Wins Minimum Wage Victory," 471–482.

[76] "Statement by the President on the Increase in the Minimum Wage" (3 September 1961), in *Public Papers of the Presidents of the United States: John F. Kennedy, 1961* (Washington, DC: Government Printing Office, 1962), 587.

Changes to the rules of the congressional "game" became an issue at the start of the 89th Congress in 1965. The Democratic majority leadership pushed for retention of the fifteen-member size of the Rules Committee as well as the restoration of the 21-day rule, which had been repealed in 1951.[77] The House leadership, again with the support of moderate Republicans, adopted a resolution further weakening the power of the Rules Committee to block consideration of proposals by the full House. The new House rule modified the 21-day rule, permitting the Speaker to empower a chairman or member to bring a measure to the full House if it had been before the Rules Committee for three weeks without being granted a rule.[78]

In 1966, President Johnson pressed for a minimum wage as part of the Great Society program.[79] To avoid an inflationary push on wages, Johnson proposed a "moderate" two-step increase.[80] Under his plan, the scope would be expanded to all enterprises engaged in interstate commerce or in the production of goods for commerce with a gross annual volume of sales of at least $250,000—a standard adopted for separate establishments within an enterprise as part of the 1961 agreement.[81]

House liberal Democrats supported a two-step increase for workers within the scope as well as federal employees.[82] They also reported an expansion of scope to an additional 7.2 million workers by expanding the gross-volume-of-sales test for enterprises,[83] but retained the exemptions for small retail and service establishments (including hotels, motels, and restaurants) with annual volume of sales less than $250,000 (and with more than 50 percent

[77] "Rules Fights Due in Both House and Senate," *CQ Weekly Report* 21:1 (4 January 1963): 9–12.

[78] "89th Congress Convenes," *CQ Weekly Report* 23:1 (8 January 1965): 30–32.

[79] Annual Message to Congress: Economic Report of the President 1964 (Washington, DC: Government Printing Office, 1965).

[80] "Expansion of Minimum Wage Law Approved," *CQ Almanac* XXII (1966): 821–830.

[81] This would include 4.6 million additional low-wage workers in specific industries.

[82] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1966 (H. Rpt. 1366) (Washington, DC: Government Printing Office, 1966), 1.

[83] This included retailing, including auto, truck, and farm implement dealerships; construction; laundering and dry-cleaning; transit and taxicab systems; restaurants and food services; hotels and motels; hospitals and nursing homes; agriculture and agricultural processing; logging; and agencies of and firms contracted by the federal government.

of their business intrastate).[84] The House Rules Committee reported the minimum wage under an open rule to the House floor.[85] The House adopted a substitute to delay a minimum wage increase until 1967[86] and a House majority adopted the final provisions.[87]

Senate liberal Democrats reported most of the House provisions, restricting the expansion of scope to "professional employees of elementary and secondary schools" and approving a minimum wage increase in 1968. A Senate conservative coalition majority blocked the expansion of scope to retail and service firms of less than $350,000 in annual volume of sales. The Senate defeated amendments to restore the three-year House minimum wage increase, delete the expansion of scope to agricultural workers, and block expansion of scope to retail and service firms with an annual volume of sales of less than $500,000 in 1969.

A final House–Senate agreement reduced the annual-volume-of-sales test from $1 million to $250,000 over three years and expanded the scope to agricultural workers for the first time since the New Deal.[88] Congress agreed to a phased-in increase based on whether a worker was already within the scope, accepting the Senate's two-step increase provisions (by 1968) rather than the House provision that delayed any increase until 1969.[89] Taken together, the 1961 and 1966 minimum wage agreements yielded the largest expansion in scope since the New Deal. In 1961, Congress and JFK expanded the scope beyond employees *individually* connected to interstate commerce to all employees of any "enterprise engaged in commerce or production for commerce" and increased the minimum wage by 25 percent to $1.25 (1963).

In 1966, Democrats in Congress and LBJ expanded the scope to hospitals, elementary and secondary schools, and higher education institutions, and modified the definition of "employer" so as to remove for the first time the

[84] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1966 (H. Rpt. 1366) (Washington, DC: Government Printing Office, 1966), 14–17.

[85] "Expansion of Minimum Wage Law Approved," *CQ Almanac* XXII (1966): 821–830.

[86] Ibid., 826.

[87] Ibid., 825.

[88] Ibid., 821.

[89] Fair Labor Standards Amendments of 1966, Conference Report (H. Rpt. 2004), 18.

public employee exemption of the states (and their political subdivisions). Congress agreed to increase the minimum wage by 28 percent to $1.60 (1968). This expansion of scope and new minimum wage for workers in a range of retail, service, and agricultural industries came at a time when a Democratic White House and large Democratic majorities in Congress were able to pass other "big-bang" social policies, such as Medicare and Medicaid.

Democrats, Republicans, and Incremental Increases, 1972–80

After the 1960s, the minimum wage increasingly reflected tensions between Democratic-controlled Congresses and Republican presidents. In 1972, the Democratic-controlled House and Senate approved minimum wage amendments. However, a House conservative coalition majority refused to report the bill to a conference (committee).[90] Defeat of the amendments was a major loss to the Speaker and the Democratic House majority leadership—who had pushed for changes since 1971—as well as a rebuke to the political influence of the southern Education and Labor chair, Carl Perkins (D-KY.).

In 1973, with Democrats still in the majority, House liberal Democrats pushed an expansion of the scope to federal, state, and local government and domestic employees, as well as a two-step minimum wage increase. On the House floor, Republicans offered a substitute that had been adopted by a conservative coalition majority in 1972 to amend the bill. In contrast to 1972, the House defeated the substitute and approved the more "liberal" changes. The reason for the different outcome had to do with a logrolling agreement: southern Democrats traded support for the minimum wage in exchange for urban Democrats' support for a pending omnibus farm bill.[91] In addition, a large number of moderate Republicans voted with the Democratic majority.

Senate liberal Democrats reported amendments to expand the scope according to enterprises' annual sales; eliminate the exemptions for smaller

[90] "House Vote Kills Legislation Raising the Minimum Wage," *CQ Almanac* XXVIII (1972): 361–371.

[91] Ibid.

stores of large multistate chains;[92] extend the scope to adult part-time local, seasonal agricultural laborers; and increase the minimum wage.[93] On the floor, after rejecting every Republican attempt to restrict expansion of scope and limit the amount of an increase, the Senate adopted the more liberal proposal.

Despite the president's veto threat, Congress agreed to an increase for most workers in 1973, which would take effect the following year, and to an expansion of the scope to include an additional 6.7 million workers. The Senate agreed to the House's more rapid minimum wage phase-in.[94] But Nixon, opposed to any expansion of scope that would "weaken our system of federalism," vetoed the 1973 minimum wage. The House tried to override the veto but fell short of the needed two-thirds majority.

The following year, Senate liberals reported the same changes that had been vetoed, and on the Senate floor, a Democratic majority defeated a range of Republican substitutes.[95] House liberal Democrats pushed to expand the scope according to establishments' annual volume of sales and workers' occupations and to increase the minimum wage in 1976.[96] Although they had rejected a youth subminimum wage in 1972 and 1973, House Democrats reported a pilot subminimum wage.[97] In contrast to 1972 and 1973, Republicans did not offer substitutes, and a House majority adopted the minimum wage.[98]

Congress agreed to expand the scope to employees in federal, state, and local governments;[99] accept the Senate three-step phase-out of the

[92] U.S. Senate, Committee on Labor and Public Welfare, Fair Labor Standards Amendments of 1973 (S. Rpt. 93–300) (Washington, DC: Government Printing Office, 1973).

[93] Ibid.

[94] U.S. House of Representatives. Committee on Labor. Fair Labor Standards Amendments of 1973 Conference Report (H.Rpt.93–413).

[95] "Senate Minimum Wage Bill Similar to 1973 Version," *CQ Weekly Report* 32:11 (16 March 1974): 696–99.

[96] Fair Labor Standards Amendments of 1973, Conference Report (H. Rpt. 93–413).

[97] Ibid.

[98] "Minimum Wage Veto Sustained by 23-Vote Margin," *CQ Almanac* XXIX (1973): 328–340.

[99] U.S. House, Fair Labor Standards Amendments of 1974, Conference Report (H. Rpt. 93–953) (Washington, DC: Government Printing Office, 1974).

annual-volume-of-sales establishment test;[100] and increase the wage for workers in various categories.[101] Due to increases in the cost of living, sufficient votes in the House to override a veto, and most importantly, the electoral vulnerability created by the Watergate scandal, Nixon agreed to the 1974 minimum wage. After stalemates in 1972 and 1973, Congress adopted the first minimum wage increase since 1966.

It is noteworthy that a Republican president agreed to repeal the exemption previously afforded to state and local public employees. Idiosyncratic factors often play a decisive role in policymaking, and Nixon's vulnerability during Watergate may have been instrumental to his decision to sign the 1974 minimum wage after he vetoed a nearly identical increase in 1973. In view of the historical record, Claude Pepper's primary electoral victory might also have proved critical to the adoption of the original minimum wage in 1938.

In 1977, with Democrats in control of Congress and the Carter White House, House Democrats proposed to automatically index the minimum wage annually. Liberal House Democrats supported an increase to $2.65 (1978) and to an estimated $2.89 (1979)—equivalent to 52 percent of average hourly earnings—and then to an estimated $3.15 (by 1980).[102] On the House floor, Republicans, as in 1973, offered a substitute to replace automatic indexation with a three-step increase. Despite efforts by House majority leader Jim Wright (D-Tex.) to reject it, John Ellenboro's (R-Ill.) substitute was adopted by the House. In addition, with House Speaker Tip O'Neill (D-Mass.,) casting the tie-breaking vote and moderate Republicans joining liberal Democrats, the House defeated a subminimum wage by one vote.[103]

Senate Democrats supported an increase to $2.65 for workers within the scope in 1978, and they also supported automatic indexation. Historically, because the minimum wage had been stated in nominal terms, it had been

[100] Ibid.

[101] Ibid.

[102] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1977 (H.Rpt. 95–521:2–3) (Washington, DC: Government Printing Office, 1977).

[103] Mary Eisner Eccles, "Minimum Wage: More Trouble for Labor," *CQ Weekly Report* 35:38 (17 September 1977): 1947–48.

effectively highest following an increase, and had been eroded between legislative agreements. Usually, a renegotiated bargain brought the minimum wage to about half of the average manufacturing wage, but over the entire 1938–74 period, the minimum wage averaged 43 percent of the manufacturing wage.[104] Automatic indexation lacked support in the Senate, especially since the House had defeated it. The Senate, instead, adopted a four-step increase (to $3.40 by 1981).[105]

Congress agreed to the four-step (Senate) increase over the three-step (House) increase to $3.35. For the first time, a federal minimum wage would apply to all workers regardless of the prior changes under which the scope was expanded. Congress agreed to a three-step increase in the volume-of-sales-test exemption for retail and service establishments to $500,000 (exempting 800,000 low-wage workers rather than the 3.8 million provided for by the House increase), and the creation of a Minimum Wage Study Commission to investigate specific economic and employment effects of changes in the minimum wage and to report to Congress within three years.[106] The Senate adopted it, and the House agreed, after opponents failed to send the minimum wage proposal back to conference with instructions that House conferees accept the House version of a lower minimum wage increase and a higher small business exemption.[107]

The Rise of Reagan, Republicans, and A Subminimum Wage, 1980–91

By the early 1980s, the minimum wage emerged as "political enemy number one" for Ronald Reagan and Senate Republicans. By the time Reagan took control of the White House, he was calling it an injustice, the cause,

[104] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1977 (H. Rpt. 95–521) (Washington, DC: Government Printing Office, 1977).

[105] "Four-Step Minimum Wage Increase Approved," *CQ Almanac* XXXIII:138–44 (1977); Mary Eisner Eccles, "Minimum Wage: More Trouble for Labor," *CQ Weekly Report* 35:38 (17 September) 1977): 1947–48.

[106] U.S. House, Committee on Education and Labor, Fair Labor Standards Amendments of 1977 (H. Rpt. 95–521).

[107] Mary Eisner Eccles, "Conferees Meet on Minimum Wage Increase," *CQ Weekly Report* 35:42 (15 October 1977): 2195–96; U.S. House, Fair Labor Standards Amendments of 1977, Conference Report (H. Rpt. 95–711) (Washington, DC: Government Printing Office, 1977).

in his opinion, of "more misery and unemployment than anything since the Great Depression." Between 1981 and 1987, a Republican Senate (and President Reagan) allowed inflation to erode the purchasing power of the federal minimum wage. Democrats, in control of the House, blocked repeated efforts by Senate Republicans to enact a youth subminimum wage. In 1986, Democrats won back the Senate and retained a majority in the House. Both the Senate and the House Labor Committee supported an increase in the minimum wage to a "fair and equitable rate." In 1988, Vice President George H.W. Bush, the Republican presidential nominee, indicated that the White House would support a modest increase if it were paired with a youth training wage. The Senate majority leader brought the minimum wage to the floor. Despite approval to consider a minimum wage increase to $4.55, Senate action was blocked by a Republican filibuster, and Senate Democrats failed on two motions to invoke cloture (a three-fifths majority vote required to limit debate).[108]

After Bush won election in 1988, Congress agreed to increase the federal minimum wage in three steps to $4.55 by 1991, expand the scope (including coverage of House and Senate employees), and mandate a training wage of 85 percent of the minimum wage for certain types of on-the-job training.[109] Bush vetoed the bill, stating the White House would not accept an increase above $4.25 and would not adopt changes without a subminimum training wage (during the first six months of employment).[110]

In an eventual compromise, Democrats in Congress accepted a two-step minimum wage increase in exchange for a subminimum training wage and an increase in the small business exemption. The agreement also eliminated a proposed Minimum Wage Review Board, which Republicans opposed because they believed its annual reports and recommendations would move the minimum wage one step closer toward automatic indexation.[111] This agreement ended a decade of political deadlock between a Democratic

[108] "Senate Filibuster Kills Minimum-Wage Boost," *CQ Almanac* XLIV (1988): 255–263.

[109] "Minimum Wage," *CQ Weekly Report* 46:45 (5 November 1988): 3204.

[110] Macon Morehouse, "Minimum Wage Bill: Key Differences," *CQ Weekly Report* 47:16 (22 April 1989): 920–21.

[111] Alyson Pytte, "Minimum-Wage Bill Cleared, Ending 10-Year Stalemate," *CQ Weekly Report* 47:45 (11 November 1989): 3053.

Congress and Republican White House, but it did not compensate for the drop in real value of the minimum wage during the 1980s.

A New Distributive Bargain: Minimum Wage and Tax Relief, 1993–2011

With the 1992 election of "New" Democrat Bill Clinton, Democrats gained political control of the House, Senate, and White House for the first time since 1980. However, Clinton did not propose a minimum wage increase until after the 1994 elections, in which Republicans gained control of Congress.[112] Republican leaders contended an increase would hurt the people it was intended to help by destroying thousands of low-wage jobs, and they refused to bring the minimum wage to either the Senate or House floor.

In the Senate, Democrats in 1996 sought to use the nongermane amendment rule to attach a minimum wage to other legislation. Senate Majority leader Robert Dole (R-KS), who was the Republican presidential nominee, had to pull an immigration bill from the floor after Democrats maneuvered to amend it with a proposal to raise the minimum wage. He lacked the three-fifths majority needed to invoke cloture and cut off debate because eight Republicans—all but one from the heavily unionized Northeast—planned to vote with the Democrats.[113] The Democrats tried to attach an increase to nearly every bill on the floor, and filibustered those bills when their amendment efforts failed.[114]

The Republican resistance ended when minimum wage proponents made headway in the House. Two dozen House Republican moderates from northeastern and midwestern (union) states, who feared an antilabor vote would hurt their reelection prospects, sided with Democrats. With a vote becoming inevitable, Republicans tried to soften the blow for organized businesses by

[112] Clinton's plan in 1995 would have increased the minimum wage from $4.25 to $5.15 over two years. The $4.25 rate had not been increased since 1991, and its value was nearing a forty-year low in inflation-adjusted dollars.

[113] Jeff Shear, "The GOP Sings the Minimum-Wage Blues," *National Journal* (27 April 1996): 945; Jonathan Weisman, "House Wage Increase Foes Showing Battle Fatigue," *CQ Weekly Report* 54:18 (4 May 1996): 1225.

[114] Shear, "The GOP Sings the Minimum-Wage Blues."

adding a $7 billion package of tax cuts for small business (already reported by the House Ways and Means Committee) to the provision to increase the minimum wage to $5.15.[115] As Speaker Newt Gingrich (R-GA) said, "since we know that a minimum wage increase kills jobs, there ought to be a package that includes other things that create more jobs to make up."[116] This marked the origins of a new distributive bargain and it enabled the first increase to be adopted when the Republican Party controlled at least one chamber of Congress.

While Democrats have sought a minimum wage increase with several proposals after 1996, Republicans have offered counterproposals of regulatory relief and tax breaks for small business.[117] In March 2005, Democrats sought minimum wage increases in three steps of $0.70 each, to $7.25. Republicans countered with raises in two steps of $0.55 apiece, to $6.25, as well as several probusiness provisions. Both plans fell well short of the sixty votes needed to advance in the Senate, and signaled that prospects for raising the federal wage floor, unchanged since 1996, were unlikely.[118] Between 2001 and 2006, President Bush, backed by Republican leaders in Congress, refused to act on a minimum wage increase.

After regaining control of Congress in 2006, the Democrats secured an increase as part of a supplemental defense appropriations bill that provided emergency funds for the war in Iraq. The final agreement—the 2007 Small Business and Work Opportunity Tax Act—combined a minimum wage increase to $7.25 an hour by 2009 and $4.84 billion in small business tax relief. During the 2008 campaign, Obama pledged to increase the minimum wage to $9.50 (by 2011) and index it to inflation, but the Republican takeover of the House made it clear that a minimum wage increase during the economic downturn was highly unlikely. Obama might become the first Democrat not to sign an increase in the minimum wage since the New Deal.

[115] "A Minimum Wage but a Maximum Impact," *National Journal* (1 June 1996): 1217.

[116] Jackie Koszczuk and Jonathan Weisman, "GOP Bending on Raise in Minimum Wage," *CQ Weekly Report* 54:16 (20 April 1996): 1047–48.

[117] Senate Drops Minimum-Wage Boost, http://www.cbsnews.com/stories/2005/03/07/politics/main678648.shtml, March 7, 2005.

[118] Ibid.

In explaining the future of the minimum wage, it is important to highlight the role of partisan political control of the White House and Congress on the one hand and coalition politics within Congress on the other. The differences between the parties over these policies have increased in recent decades as partisan polarization has soared. According to Nolan McCarty, by almost all measures, the divide between Democratic and Republican members of Congress has widened over the past twenty-five years, reaching levels of partisan conflict not witnessed since the 1920s.[119] Polarization contributes to gridlock and stalemate, making it more difficult for Congress to respond to economic shocks and adopt measures such as minimum wage increases. Most agree that polarization leaves centrists in both political parties with the ever more important and demanding role of brokering political bargains. If political history is any guide to the future of the federal minimum wage, a bipartisan group of moderates will need to take the lead in forging a new bargain that balances partisan distributional and electoral goals.

Conclusion

The U.S. minimum wage, "enduring" beyond the later New Deal, follows a predictable political logic. The original 1938 minimum wage agreement established a particular political logic that helps explain its subsequent development. Instead of delegating authority to a wage-setting board, Congress chose to retain control over the amount and timing of any increase and the industries and occupations covered by the minimum wage. Legislators guarded this power over the following decades. By retaining control over its parameters, reluctant converts to the minimum wage were able to maximize the electoral benefits of a popular policy while minimizing the negative effects by limiting the costs imposed on business and agricultural groups.

Any particular political agreement, once made, remained uncertain because the enacting coalition would eventually leave office. While proponents (liberal Democrats) needed multiple majorities to introduce and amend the minimum wage, opponents needed to "win" in only one of multiple veto

[119] Nolan McCarty, "The Policy Effects of Political Polarization," in Paul Pierson and Theda Skocpol, eds., *The Transformation of American Politics* (Princeton, NJ: Princeton University Press, 2007), 223–255.

points. Final adoption of any minimum wage increase hinged upon the political support of a third group on the floor of each chamber—primarily a subgroup of moderate southern Democrats and Republicans (between 1938 and 1994) and moderate Republicans (from 1994 to 1996).

As a result, there is an inherent ambiguity in identifying the political "winners" and "losers" on the minimum wage. For example, on one hand, liberal Democrats "won" in the sense that they repeatedly increased the minimum wage and often broadened its scope. But they also "lost" because they failed to lock in any victory by committing the federal government to automatic indexation. Periodic adjustments allowed inflation to erode the value of the nominal minimum wage between congressional actions. Conservative Republicans "lost" because they failed to prevent these repeated increases in the minimum wage, but they "won" by allowing inflation to erode the nominal value between statutory increases. The conservative coalition majority in Congress repeatedly "won" in the sense that, except for the 1960s, it retained political control over the minimum wage and shifted it on its own terms.

While American exceptionalist analyses often characterize social policy as part of a long list of "missed" opportunities, these accounts concentrate too heavily on "the coalitions that *did not* come together or hold within political parties and in Congress."[120] While an anti-New Deal conservative coalition is claimed to have successfully limited "liberalism,"[121] moderate southern Democrats (and Republicans) were key to an enacting coalition that adopted the original minimum wage. It is time to focus more positivist (and less revisionist) analysis on the "road taken" in the political development of twentieth-century American social policy. In sum, this essay concludes that the federal minimum wage should not be viewed just as another "missed opportunity" in the American welfare state. Yes, Congress chose not to make a series of annual cost-of-living adjustments and, as a result, inflation would regularly erode the nominal value of the previous statutory increase. Yes,

[120] Weir, Orloff, and Skocpol, *The Politics of Social Policy in the United States*; Skocpol, ed., *Social Policy in the United States*.

[121] Sean Farhang and Ira Katznelson, "The Southern Imposition: Congress and Labor in the New Deal and Fair Deal," *Studies in American Political Development* 19 (Spring 2005): 1–30.

members of the conservative coalition, unable to stop a national minimum wage altogether, intentionally biased the minimum wage toward the status quo. Yes, with weak parties and the absence of cohesive party voting, this enduring cross-party majority exercised considerable political control over the minimum wage until the 1994 GOP takeover in Congress.

Perhaps, however, the repeated compromises among conservatives, moderates, and liberals should be viewed as key to the adoption of an "appropriately set" minimum wage, one that has likely done more good (in terms of redistributing income to low-paid workers) than harm (lower employment, inflation, etc.). It may be that the very structure of American political institutions, which is resistant to change, resulted in a "balancing of risk against gain" that became absolutely crucial in enabling the minimum wage to endure well beyond the New Deal. Is the minimum wage perfect? No. Because it has not been indexed to increase with the cost of living, it has not kept pace with inflation, and its real value has declined. However, without the bipartisan centrist political consensus in support of a minimum wage that endured throughout much of the twentieth century, low-wage workers, and the policies to support them, remain even more at risk in the current century.