IDEAS ON LIBERTY
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The Living Wage Folly

by Charles W. Baird

As of July 2001, 62 municipalities (cities, counties, and government school districts) in 24 states had enacted "living wage" regulations affecting all private and nonprofit enterprises with which they do business. California, Michigan, and Wisconsin have more living-wage ordinances (LWOs) than other states, but LWOs are spread widely over the entire country.

Moreover, there are active campaigns to establish new LWOs in all states except Alaska, Idaho, Wyoming, North Dakota, South Dakota, Mississippi, and West Virginia. It is only a matter of time before municipalities in those states are targeted. According to the Employment Policy Foundation (EPF), which is the best single source of data on LWOs, a total of 75 living-wage campaigns are now active in 37 states. There even are or have been campaigns to adopt statewide LWOs in 16 states. (EPF data and commentary on the issue can be found at www.livingwageresearch.org.)

An LWO requires that all enterprises doing business with the municipal authority pay their employees no less than the specified living wage, which differs from jurisdiction to jurisdiction. There are stiff penalties, including back-pay awards, fines, and loss of contracts, imposed on firms that violate LWOs. Typically an imposed living wage is 50–100 percent higher than the current federal minimum wage of $5.15 per hour. An LWO is nothing other than a minimum-wage regulation imposed at the local level, rather than the state or federal levels, with the exception that it applies only to firms doing business with the municipal authority that imposes it. State and federal legal minimum-wage statutes pre-empt local wage ordinances as they apply to other private firms. However, 12 private universities, including Harvard and Stanford, as well as several private enterprises, have been importuned to adopt their own living-wage policies without government mandates. LWO campaigns undertaken at private firms are modeled after the old union "corporate campaigns" of the 1970s and 1980s. They involve concerted efforts to ruin the reputations of those who do not surrender, as well as picketing, demonstrating, boycotting, and other forms of harassment. All, of course, in the name of "social justice." In all settings other than labor such actions are called extortion.

The Association of Community Organizations for Reform Now (ACORN) initiated the living wage movement in the late 1980s. ACORN calls itself a "grassroots" organization, but it is mostly a collection of 1960s radicals who, since the worldwide collapse of socialism, need other ways to pursue their anti-market agenda. Its crusade was soon joined by John Sweeney's AFL-CIO and sev-

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eral of its constituent unions together with welfare advocacy groups of various descriptions and the usual coterie of well-meaning but economically benighted religious groups.

John Sweeney has always identified himself as a proponent of democratic socialism and an opponent of free markets; so he is a natural ally of ACORN. The payoff to individual unions, such as the Service Employees International Union, is threefold. First, living-wage ordinances increase the price of union-free labor relative to unionized labor, thus increasing the demand for unionized labor. This has always been a major reason for the unions' support of legal minimum wages. The unions are impatient with the federal and state governments' slow and, to them, meager increases in legal minimum wages and are delighted to endorse the more radical increases proposed by ACORN.

Second, LWOs often include requirements that covered employers remain neutral in any union-organization campaigns. Unions have been losing market share in the private sector ever since the mid 1950s, and that decline accelerated during the 1980s and 1990s. Thus they are eager to prevent employers from being able to explain the downside of unionization to their employees.

Third, LWOs involve the creation of committees to oversee their implementation. Unions are always heavily represented on such committees, and they dominate many of them. In such cases unions effectively have veto power over both the level of the living wages imposed and the determination of which firms are eligible to get municipal contracts.

Many self-identified welfare advocacy groups—for example, Jesse Jackson's Rainbow/Push Coalition—are more interested in the preservation of their own continued existence and visibility in the press than they are in the actual welfare of low-income people. Welfare-advocacy groups that really are interested in promoting the interests of low-income people and support the imposition of living wages simply are unaware that, like all minimum-wage statutes, LWOs hurt the very people they are intended to help.

Religious groups that support LWOs are also ignorant of their actual, rather than their intended, effects. The Catholic Church and most other Christian denominations claim to have a "preferential option for the poor." Inasmuch as it is indisputable that economic systems built on private property, voluntary exchange, and the rule of law have consistently created much more wealth, and "distributed" it much more widely than command-and-control systems of all kinds, it seems to me that actually to exercise a preferential option for the poor, one must oppose LWOs and all kindred anti-market government policies.

The Alleged Need for LWOs

Proponents of LWOs start by doing some simple arithmetic. Full-time work is defined as at least 2,000 hours per year. The federal minimum wage is $5.15 per hour. This means that a full-time minimum-wage worker may earn only $10,300 per year. That figure is below the 2001 Department of Health and Human Services poverty threshold for all family sizes larger than one. The threshold for a family of four was $17,650 (see www.census.gov). Clearly, according to LWO proponents, this is unacceptable. Just to reach the poverty threshold for a family of four the wage must be $8.82 per hour, and a decent "living wage" should be significantly more than that. Following the arithmetic, living-wage proponents usually add a few uninformed words about employers exploiting labor, which amount to a definition of exploitation as a wage that is less than that of which they approve. That is essentially the whole argument offered in support of LWOs.

Living-wage proponents paint a purposefully misleading picture of the situation of minimum-wage earners. They strongly imply that the typical full-time minimum-wage earner is the sole earner in a family of four. Moreover, their peripheral rhetoric suggests that the typical full-time minimum-wage worker is a single mother struggling to make ends meet against all odds. EPF research demonstrates this is simply not the case. A household with two full-time minimum-wage workers earns $20,600, well above the

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2001 poverty threshold for a family of four. When opportunities for overtime are considered such households can easily have earnings that exceed the 2001 poverty threshold for a family of five. Only 7 percent of people who are paid between $5.15 and $7.15 per hour are single parents, and half of workers who earn $7.15 per hour or less live in households with annual incomes over $42,671. Approximately 40 percent are children or other relatives of a family head who earns much more than the legal minimum wage. And none of these figures take into account employer and government benefits received by low-income households.

The crisis to which LWOs are alleged to be the solution simply doesn't exist. Some poor will always be among us, but the force that ameliorates poverty better than any other is economic growth. Measures that impede economic growth, such as LWOs, which corrupt the information content of wages and prices and distort incentives to work and acquire marketable skills, ultimately hurt the very people the proponents of LWOs assert they wish to help.

Some Economic Effects of LWOs

It is well documented how increases in legal minimum wages affect the employment prospects of workers who are least experienced, least well trained, and who have not developed good work habits and attitudes. Each 10 percent increase of a legal minimum wage results in job losses of 1.3 to 2 percent. Moreover, as noted, LWOs impose wages that are significantly higher than ordinary legal minimums. Economic theory tells us the negative responsiveness of jobs to increases in wages (elasticity) is greater at higher wages than at lower wages. So LWOs are even more destructive to jobs than increases of ordinary legal minimum wages.

Profit-seeking employers are willing to continue the employment of a worker only if the cost to the employer of the worker's services is not greater than the amount of money the employer would lose from sales (net of the cost savings on materials and supplies no longer used) if he lays off the worker. So when increases of legal minimum wages are imposed in any form, including living wages, some workers will be let go. The ones that are always let go first are those who are the least productive. (The lost output and sales that follow on letting a worker go will not amount to much with a worker who isn't very productive.)

Not only will the least productive workers lose their jobs, every time a legal minimum-wage increases, young people just entering the labor force with little experience and training will find it more difficult to get first jobs. The surest route to becoming a productive worker for a person who has little training and education is on-the-job experience. All increases in legal minimum wages make it more difficult for the disadvantaged to follow that route.

Sometimes profit-seeking entrepreneurs will try to avoid layoffs by cutting nonwage compensation paid to workers. For example, reductions in paid vacation time, employer contributions to retirement funds, employer-paid medical insurance, and rates of sick leave accrual can sometimes offset the effect of a higher legal minimum wage. If so, affected workers will keep their jobs, but they will not be any better off than they were

before the minimum-wage increase. In fact, they will probably be worse off because more of their compensation will be taxable than before.

Profit-seeking entrepreneurs also try to avoid layoffs by attempting to pass the wage increases on to customers in the form of higher prices. In the private sector this is often difficult to do because of competition. Competition among American firms is not much of a problem in the case of an increase of the federal minimum wage, because it applies to all American firms alike. Firms affected by state minimum wages, to the extent they are not less than the federal minimum, are somewhat constrained from passing on cost increases to customers by interstate competition. It is much easier for governments to pass costs forward to consumers, because the consumers are taxpayers who do not have the option of refusing to pay. Firms affected by municipal LWOs may simply respond by raising the prices they bid for municipal contracts. Municipalities that try to offset those higher costs with higher taxes face jurisdictional competition within their own states as well as others. People can simply vote on the resulting tax burdens with their feet. But this discipline is not always effective. LWOs are often followed by municipal tax increases.

EPF researchers have pointed out a unique harm done by LWOs. The high school dropout rate of workers who earn between $5.15 and $8.15 per hour is double that of workers earning between $8.15 and $10.15 an hour. To the extent that an LWO results in increasing the number of high school dropouts receiving more than $8.15 per hour, the wrong message is sent to both groups. High school dropouts learn that in wage determination, politics trumps education and training, and the more productive learn that their training and education provide fewer advantages than before. The productivity of both groups will decline, and younger people still in school will have less of an incentive to stay there.

The living-wage folly is undoubtedly in the interests of unions, 1960s radicals, and other enemies of free markets, but it is certainly not in the interests of all the disadvantaged workers and taxpayers who are harmed. Of all the arguments of socialists and their contemporary successors, it seems that those based on confusions about labor and labor markets are most enduring. I think that is because humans everywhere are prone to envy. If A earns more than B, and B doesn't like it, there is a perverse profit opportunity for anti-market entrepreneurs to blame it on the alleged injustice of free markets.

The record is clear: The pursuit of economic equality through the political marketplace eventually results in almost everyone, except political elites, having less than they otherwise would. In contrast, individual pursuit of economic success in free markets under the rule of law never leads to equality of results for everyone, but it always results in almost everyone having more than they otherwise would have had. Let's hear it for the Tenth Commandment. □

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Sting Operations and the Separation of Powers

by Joseph S. Fulda

To detect and prosecute laws prohibiting victimless crimes, government typically curtails civil liberties and, by standing in for a real victim, creates opportunities for abuse and corruption in sting operations. Sometimes, prosecution of these crimes is furthered by offering various considerations to one member of the conspiracy at the expense of the others. This would normally be called *bribery* and *subornation of perjury* and is likely illegal, although commonplace.[1]

The easiest and most effective way to present a case against a criminal conspiracy to a jury is to capture the whole thing on tape; that way no one need turn state's evidence, and the direct participation of the officers performing the sting can be kept to a minimum. Unfortunately, this, too, has its problems: It undermines the separation of powers mandated by the U.S. Constitution and most state constitutions. "Were the power of judging . . . joined to the executive power, *the judge* might behave with all the violence of *an oppressor*," wrote "The oracle who is always consulted and cited on this subject [the separation of powers] . . . the celebrated Montesquieu."[2]

Let us see how this applies to the common sting operation where the participants' behavior is captured on tape. The fundamental search-and-seizure principle is that an executive officer is to give evidence of probable cause to a "neutral" and "detached" judicial officer, after which the magistrate will decide whether the evidence warrants search or seizure.[3] Thus, the U.S. Supreme Court overturned a conviction in which a warrant had been issued by the state's attorney general—who also happened to be a justice of the peace—since he could not possibly be and, in the facts of that particular case, was not a neutral and detached judicial officer, but rather the chief law-enforcement officer of the state.[4]

This provision, however, is rendered a dead letter under federal law and in those states—and there are many—that permit one-party taping; that is, where it is legal to record a conversation provided just one party gives consent and to introduce the resultant recording in court. Why? Since one party to the conversation is a law-enforcement agent and, of course, he permits—indeed, he arranges—his conversations with the suspects to be recorded. Out goes the necessity of a warrant, and the executive branch is thus able to act as both prosecutor and judge, thereby trampling on suspects' Fourth Amendment rights. In every sting operation involving tapes, probable cause before a judicial officer is not required. All that is required is for the executive-branch officer—a detective or an undercover

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