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The erosion of public policies which support workplace justice: A review of the Davis-Bacon Act

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THE EROSION OF PUBLIC POLICIES
WHICH SUPPORT WORKPLACE JUSTICE:
A REVIEW OF THE DAVIS-BACON ACT

by

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1988

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A thesis submitted in partial fulfillment
of the requirements for the

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ABSTRACT

The Erosion of Public Policies which Support Workplace Justice: A Review of the Davis-Bacon Act

by

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This thesis explores the ethical foundations of public policies which support workplace justice, using the Davis-Bacon Act as the principle example. The thesis argues that Davis-Bacon is not best considered as “pro-union” legislation, nor is cost-benefit analysis the best approach to understanding its importance. Instead, *primary examination of the Davis-Bacon Act should be focused upon the policy’s ethical basis and should not be sacrificed in cost-benefit analysis based upon “free market” efficiency.* The Davis-Bacon Act achieves distributive justice with benefits for the general public, construction workers and their communities, and construction companies. The Davis-Bacon Act is defended as an effective method to support or expand the middle class economically and ideologically, and is an example of the Aristotelean ethos to balance conflicting interests within society to achieve social stability and harmony.

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CHAPTER ONE

INTRODUCTION

The Davis-Bacon Act is a prevailing wage law which regulates federally funded construction projects, and was passed in 1931. All bids for construction work covered by the Davis-Bacon Act must be structured to utilize the Department of Labor prevailing wage rates of the relevant area. The Act pertains to construction projects over a certain dollar threshold which are funded by federal dollars. In 1935, the dollar threshold for construction projects covered by the Act was decreased from its beginning \$5,000 to the current \$2,000. The type of projects covered by the Act have been expanded from the large public use projects, such as dams, to include highway and federal housing construction.

This legislation is one of several "prevailing wage" laws, which is not a new concept in American labor policy. In fact, various states, beginning with Kansas in 1881, had passed prevailing wage legislation. Five states had passed such legislation for state-funded projects by 1931, and by 1935, a total of 21 states had "little Davis-Bacon Acts."¹ While the Davis-Bacon Act was not specifically passed due to pro-labor influences, it has become, over the years, associated with organized labor, and because of that association, is subject to the same negative "special interest" connotation as other pro-union legislation.

This thesis will argue that Davis-Bacon is not best considered as “pro-union” legislation, nor is cost-benefit analysis the best approach to understanding its importance. The thesis will defend public policies which support or expand the middle class economically and ideologically as the best mechanism to achieve social stability and harmony. The Davis-Bacon Act is defended as an effective method of achieving these goals and is an example of the Aristotelean ethos of balancing conflicting interests within society.

Chapter Two takes a historical look at prevailing wage laws such as the Davis-Bacon Act, and the “union” label which has become attached to such legislation even though these laws were not passed as union-specific legislation. The poor record of specific “pro-union” legislation is reviewed, together with the difficulties encountered with the the Wagner Act of 1935. The conventional wisdom surrounding the passage of the Wagner Act is questioned through the work of Robert Evans, Jr. This chapter reviews the support for prevailing wage legislation from both labor and employers, together with support from the middle class core of the Progressive Movement of the 1920s. The review will show that the Davis-Bacon Act was supported by the three major constitutencies, workers, employers, and the middle class, because it met each of their agendas in some fashion.

Chapter Three covers the Davis-Bacon Act as a public policy which is subject to the current tests of public policies, such as “cost benefit analysis” and “regulatory efficiency.” The repeal argument, in particular, has focused solely upon the increased costs which are acknowledged to result from the prevailing wage rates applied to federal projects. However, these cost arguments do not quantify or take

into account all aspects of construction work, such as the tax benefit to local communities and states, the maintenance of a skilled construction workforce, and the reduced injury rate of experienced workers. The ethical base for the Act - a fair wage which protects workers and their communities - is sacrificed in cost benefit analysis to the so-called efficiency of the "free market." While examination of policies is appropriate, the emphasis, so far, has been placed upon elements of cost, but this thesis argues that primary examination should be focused upon a policy's ethical basis. This chapter also reviews the administration of the Act through the tool of regulation, and concludes that the tool is appropriate and effective, and meets the objectives of social regulation.

Chapter Four reviews the ethical and philosophical bases for distributive justice, by comparing and contrasting three philosophical theories with the American ethos of "Compassionate Capitalism." "Compassionate Capitalism" is the label given by Thomas Keunne to the Americanized market system. Keunne argues that the dualistic strands of "individualism" and "compassion" fit American values in a reasonably-well-agreed upon consensus and that the American-style competitive free market system provides for a reasonably equitable distribution of goods, resources, and rewards.² The distributive justice writings of three modern-day philosophers, John Rawls, Kai Nielsen, and Murray Rothbard, are examined for their applicability to meet society's current demands. An examination of these philosophies is used to demonstrate the kind of social or political engineering which would be required to implement their theories of distributive justice, which address only one or the other strand of the capitalistic system, as compared to the simplicity

of implementing policies supporting the working middle class, as advocated in Aristotle's Politics. Aristotle's acceptance of different views of justice and his common-sense approach towards accepting and harmonizing these differences contrasts with the three modern philosophers.

Chapter Five goes into Aristotle's ideas more deeply and addresses the growing imbalance of the American economic ethic. This thesis argues that if public policies, such as the Davis-Bacon Act, were viewed from their ethical bases first, the arguments surrounding workplace legislation could be redirected into more bipartisan and productive avenues because the underlying principles would have been agreed upon. The American work ethic is supported by policies which encourage participation in the capitalistic workplace, which then functions as a mainstay of society by providing a reasonable distribution of goods and financial rewards for its participants. Society will be more stable with a working middle class which is as populous as possible, both economically and politically, and which acts as a buffer between the extremes of rich and poor. If the American free market system operates as "compassionate capitalism," a modifier such as the Davis-Bacon prevailing wage rate is a very small distributive but nonetheless effective mechanism to bolster the working middle class, enforce fairness to employees and employers within their communities, and provide quality construction projects.

Chapter Six covers recent repeal and modification actions of the Davis-Bacon Act at federal and state levels. The chapter reviews and sums up the argument presented throughout this thesis, which is that public policies which

support the middle class are the best mechanisms to achieve distributive justice and moderate the inherent conflicts of the different economic classes.

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CHAPTER TWO

HISTORICAL BACKGROUND

Much of the opposition to Davis-Bacon is founded on the fallacious assumption that it is a special-interest pro-union law. The point of this chapter is that the law's basis meets the needs of different constituencies of society in a manner which satisfies each, and thereby promotes social stability. The Davis-Bacon Act was passed in 1931, before passage of the "New Deal" legislation, portions of which were designed to assist unions in their organizing and collective bargaining activities. Although the Davis-Bacon Act is now dubbed with a "union" label, its 1931 passage was not mainly due to union influence, but was one of a series of "prevailing wage" laws which were passed at the state level, beginning in Kansas in 1881. While the Davis-Bacon Act was passed against a backdrop of violent labor unrest after World War I and a conscious effort by business interests to curb the power of unions, these and other factors, such as the middle-class reform movement known as Progressivism, made passage of the Act possible.

In 1931, the power of organized labor was not significant enough to promote its own legislation. Although not completely powerless, due to the militant unions and labor leaders during and just after World War I,¹ union membership was in decline from a post World War I peak of 5,034,000 to 3,625,000 in 1929².

Additionally, the Samuel Gompers-influenced union movement was extremely conservative and willing to cooperate with business. Gompers did not seek governmental influence to force employers to deal with unions, fearing that this could result in the activities of unions themselves becoming regulated, which is also why unions opposed much New Deal legislation initially. Although this attitude has received criticism, the events of the union-busting 1980s have demonstrated, to the detriment of organized labor, the weaknesses connected with organizing and collective bargaining rights afforded by the Wagner Act, and to some extent validate the regulatory concerns of Gompers.

The Progressive Era

Improvements for workers during the beginning of the twentieth century were partially the result of reformers such as Robert La Follette, elected governor in 1900 in Wisconsin and later U.S. Senator, President Woodrow Wilson (1913-1921), a former president of Princeton University, and President Theodore Roosevelt (1901-1909). The ethos of the Progressive Movement was the belief that the United States political economy needed to be reformed in areas such as corruption in government, unsafe working conditions, the marketing of spoiled food, slum housing, and the business practices of the powerful monopolies. This diverse movement included Democrats and Republicans, with middle class individuals forming the core.³ This middle class interest represents its ability to perceive the needs of other classes, and to take action which improves those circumstances, without unsettling the social systems or changing ownership of property. President

Theodore Roosevelt brought progressivism to national government by filing lawsuits against trusts and establishing federal regulations in the meat packing, drug, and railroad industries.⁴

Some of the progressive reforms led to working conditions for many American workers being improved from 12 hours a day, 7 days a week in the steel industry, and the 60 to 84 hours a week for women and children in the textile industry. Between 1912 and 1917, 12 states passed minimum wage laws for women, 30 states had some kind of industrial accident insurance system, and laws that barred children from working at night were enacted in many states. The 1911 Triangle Shirt Waist factory fire prompted several state legislatures to tighten factory safety regulations.⁵

The Republican Congresses and Presidencies of the 1920s tried to establish a less antagonistic approach to labor. President Harding (1921-1923) had campaigned for the votes of working people, promising the Republican party would protect high wages through wise tariff policies and immigration laws that would protect American workers against foreign pauper labor. In his first message to Congress, Harding emphasized the indistinguishableness of capital and labor, asserting that the laborer was a capitalist and the capitalist a laborer in an effort to have the industrial unions and unorganized labor be more conciliatory.⁶

The Secretary of Commerce, Herbert Hoover, also advocated the "scientific management" theory that if labor and capital, employees and employers, cooperated to eliminate waste in industry, to use science in the service of high productivity, and to stabilize employment, they could construct a high-wage

economy, which was needed to consume the output of American mass production. However, the First Industrial Congress held in 1922 ended in a stalemate, and the second did not have any labor leaders attend. At the Second Industrial Conference held in 1923, Hoover suggested that employers should freely recognize trade unions that their employees voluntarily chose to join and that employers should bargain collectively with such unions.⁷

The attempt to reduce or eliminate union influence in the workplace had several results. One of the employer strategies, known as Welfare Capitalism, preached concern for employees, but was not followed by a majority of the large corporate employers. Instead, the fields of industrial relations and personnel management emerged to standardize workplace issues and avoid interference from unions.⁸

The Role of Business in Promoting Davis-Bacon

Given the history and legal environment of the 1920s, the impetus for prevailing wage laws, such as the Davis-Bacon Act, stemmed as much from the needs of employers (as a strategy to curb the power of unions) as workers, who benefitted from a standardized construction wage rate. In order to dismantle the power of labor, conscious efforts by business in the 1920s and 1930s resulted in slow incremental movement in industrial relations through "New Unionism," "Trade Union Capitalism," "Business Unionism," or "Job-conscious Unionism," as called by the academic and business supporters, or "Class Collaboration" as derided by the

cynics and progressive unionists who lamented the erosion of a class-conscious labor movement, which had seemed so promising before 1920.⁹

Those industries which could pass along price increases to consumers or taxpayers without encouraging imports or substitution, and employers in industries such as construction, textiles, bituminous coal, trucking, printing, glass and pottery, began in the 1920s the gradual building of industrial relations. A number of factors made this development in industrial relations a priority for both sides. The interests of both labor and business were met through mechanisms which brought more standardization and less likelihood of sharp downturns or unemployment.

1. Sharp conflict between employers and unskilled, unorganized workers was increasingly prominent in many industries;
2. Skilled workers retained considerable managerial and organizational power in many others;
3. Employers across the industrial economy were able to roll back most of the wartime gains made by the labor movement;
4. The success of the open-shop movement eroded business's fear of organized labor and the perceived need for employers to organize to fight labor;
5. Employers retreated into their respective corners of the economy and began to regard labor relations as simply a function of industrial structure and competition;
6. Collective bargaining (where it existed) was narrowly defined by employer, employee, and union concerns over industrial competition and organization; and
7. Patterns of labor organization were determined not only by workers' activism and management's response but also by the latter's calculus of the costs and benefits of organization itself.¹⁰

In other words, it was now in the employer's best interests to utilize the consistency of prevailing wage rates, because the wage rates weakened the opportunity of unions to organize or to stimulate economic unrest. This perspective was not based upon any reform or progressive sentiment, but merely reflected the

realities of the economic landscape. These developments were the forerunner of the New Deal legislation of the 1930s but did not reflect the pro-labor policy of the 1932 National Industrial Recovery Act and the subsequent 1935 Wagner Act. The Depression, which threw millions of workers onto the streets, was viewed with anxiety by business interests who sought strategies to quell or forestall labor unrest; therefore, passage of the Wagner Act was supported by business interests.

The Fate of Pro-Union Legislation

While the union influence in the Davis-Bacon Act was not significant in its early days, since the 1940s the Davis-Bacon Act has had a “union” label attached to its continuation. This has been both a blessing and a curse. Although union support for the Davis-Bacon Act has helped to counter the arguments for repeal, having union support does not necessarily guarantee success, and often draws opposition just because of the perception that unions benefit from the legislation. Legislation which carries a “special interest” label is usually viewed with distaste and suspicion by Americans, and unions have had to confront that animosity, even though much of their effort has been devoted to workers in general.

During its short history, American pro-union legislation has been a mixed blessing for workers. Passage of the Wagner Act in 1935, considered the Magna Carta for unions, ostensibly gave unions the right to organize workers and be recognized by employers. However, the right of the individual to refrain from joining any union is equally protected as a result of the Taft Hartley Act of 1947, which effectively precludes any “closed shop” or union power situation.¹¹ Robert Evans,

Jr., addresses labor policy passage of the Wager Act, and questions the conventional interpretation of why and how passage occurred.

The coming of the New Deal and the subsequent passage of the Wagner Act is often viewed as a major turning point in public policy. The explanations range from the triumph of civil over property rights through the failure of the business mythology, to the access of labor to political power. There are two problems in these explanations. One is, that despite the profound impact of the Wagner Act, its passage marked no great break with the past. The other is that they provide no basis upon which to explain the seeming reversals contained in the Taft-Hartley and Landrum-Griffin Acts. The Wagner Act, it should be recalled, follows the National Industrial Recovery Act and Public Resolution 44. The former was primarily a business bill with Section 7A tossed in because one-fourth of the labor force was unemployed. Public Resolution 44 hardly represented a victory for organized labor since it did not correct the major problem, the lack of enforcement power. The Wagner Act was then essentially an accident.¹²

Taking this point of view, the New Deal Wagner Act passage era then becomes a one-time, dubious, victory for organized labor, to be soon followed by defeats in the form of the Taft-Hartley Act in 1946-47 and the Landrum-Griffin Act in 1957, which imposed substantial requirements on unions.

Enforcement of the Wagner Act through the National Labor Relations Board (NLRB) has been difficult, and at times, nearly impossible, due to the conservative political appointments to that Board. NLRB elections favor employers who can use technicalities to stall elections for years. In addition, the NLRB appeal process can extend the time for employers to be non-compliant or guilty of unfair labor practices without significant redress for the damaged workers, as so well

demonstrated in the local six-year plus strike at the Las Vegas Frontier Hotel. Other examples include the 1980 PATCO strike and the 1983 Phelps Dodge Arizona mine strike, when striker replacements were hired and strikers were permanently replaced.

Enforcement of labor laws has proven to be extremely difficult and business benefits to a greater extent than labor because of this ineffectiveness. Since Davis-Bacon regulation acts as an effective enforcer of prevailing wage laws, but limits the potential profit margin to some extent, it is understandable that business interests desire to repeal or weaken this law which benefits unions to some degree.

The policy toward organized and unorganized labor in America has been such that legislation supporting unorganized working people has been passed, with examples such as minimum wage laws, industrial accident support, and Social Security becoming part of the "Social Safety Net." While organized labor has supported these policies, it was not the direct or only beneficiary. In fact, the legislative record for organized labor when attempting to pass union-specific legislation has been remarkably poor. Despite continuous agitation at varying levels, for example the failed attempt of 1977-78 to pass labor reform, neither the Taft Hartley nor Landrum-Griffin Acts which were passed to curtail the power of unions have been repealed, nor has the striker replacement language of the Wagner Act. It would appear that organized labor is a successful supporter of pro-worker legislation, but an unsuccessful protagonist for pro-union legislation. The

end result has been greater benefits for workers in general and also for business and society due to a reduction in potential social unrest.

Freeman states that "...while unions would like to pass laws that enhance union strength, they represent too small a proportion of the population and engender too great business opposition to succeed. Through no virtue of their own, their main political success is as the voice of workers and the lower income segments of society, not as a special interest group enhancing its own position."¹³

Because of the limited success demonstrated by unions in advancing their own legislation and because the Davis-Bacon Act now has a union label attached to it, the fight against repeal and reform has an additional burden maintaining the continued viability of the Act. Rather than using pro-union argumentation, some recent support has rested on an ethical premises, but it has not been powerful enough to counteract the emphasis placed upon the cost benefit analysis argumentation addressed in Chapter III.

In its more recent history, the Davis-Bacon Act appears to be suffering from its perceived union affiliation, which then brings with it the difficulties encountered by so-called pro-union legislation.

The Movement to Repeal the Davis-Bacon Act

Since 1931, there have been twenty-two Congressional hearings pertaining to the administration of the Davis-Bacon Act (per Appendix A), with the latest in 1995 being a proposal to repeal the Act. Not content with the numerous changes which have been made since 1931 - to compute the wage rate to more accurately

determine the locality's prevailing wage rate (now estimated to be lower than the union wage rate, but higher than the average wage rate), to redefine the classifications of workers used on Davis-Bacon projects (using apprentices rather than journeymen at a higher ratio), reducing the administrative overhead of construction companies for reporting wages - the construction industry nevertheless wants to eliminate the even playing field of prevailing wage rates and let the market set the wage rate in order to "save" the taxpayers' dollars.

So far, the repeal movement has not been sufficient to bring the issue to a committee vote and the inertia of federal administrative agencies involved in the enforcement of the Act has protected it against any sudden changes. However, the downward pressure of construction wages caused by the influx and growth of immigrant and non-union workers is becoming stronger. Repeal of nine "little Davis-Bacon Acts" during the 1980s has already occurred,¹⁴ and conservative representatives from those states, principally Utah, are anxious to extend the repeal movement to the federal level. Whether organized labor has developed enough political power and popular support to fend off these attacks remains to be seen. Certainly, the union-busting strategies of the 1980s did not seem to engender any public outcry or sympathy for the union movement.

The historical background of the Davis-Bacon Act indicates that having been "tagged" as a piece of union legislation will not help its proponents from the forces seeking to repeal the Act at both the federal and state levels. The historical facts reveal that Davis-Bacon Act passage was as much in the interests of business as for labor, and was supported by middle class Progressive sentiments,

which helped to achieve social harmony and class conflict reduction at the same time. Reorienting the argumentation surrounding the Davis-Bacon Act to emphasize its beneficial aspects for all the affected parties, and its mediating influence upon the oppositional forces of labor and business, as espoused in Aristotle's Politics, would facilitate resolution at future modification or reform hearings.

The goal of this thesis is to address the underlying ethical base of the Act, and to argue for hearings which would result in the reorienting of the Act as a policy which supports and strengthens the working middle class. Since "values" have become so important in recent political debate, reframing the Act as a means to support working society and its middle class aspirations would seem more likely to result in continued support for continuity of the Act. However, this background has not received its due credit in recent years, and the anti-union, cost benefit perspective has been used, successfully in nine states so far, to redefine the Act as not in the best interests of the public.

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CHAPTER THREE

COST BENEFIT ANALYSIS

The Davis-Bacon Act was passed in 1931 to provide stability to wage rates and local communities where federal funds were being used for construction projects. Since 1931, twenty two congressional hearings have been held addressing various aspects of the Act, principally the determination of prevailing wage rates, the administration of the Act, and what types of work would be covered by prevailing wage legislation. The threat of repeal was first raised in 1975, and most recently in February of 1995.

The repeal movement is fueled by cost benefit analyses prepared by the General Accounting Office and the Congressional Budget Office, as well as by various special interest groups. The focus of the repeal argument is the increased cost to the government/taxpayers caused by application of the Davis-Bacon prevailing wage rates. Proponents of repeal testified in 1995 that repeal of the Davis-Bacon Act would save \$3 billion over a five year period. Even if this estimate could be considered accurate, the analyses do not account for the beneficial aspects of Davis-Bacon implementation, such as revenue-producing tax bases (both national and state) caused by local Davis-Bacon construction workers, the use and perpetuation of a skilled labor force, or the higher productivity and lower

accident rates which result from the use of skilled labor. In addition, the use of free market principles as a premise in the repeal debate is not appropriate, given the realities of the cyclical work experienced by construction workers, which will be discussed in this chapter.

Rational decision making casts problems as a choice between alternative means for achieving a goal, and rationality means simply choosing the best means to attain a given goal. Stone defines these models of decision as prescriptive, rather than descriptive or predictive; they define policy problems as decisions, and they purport to show the best decision to solve a problem.¹ But, as argued by Stone, Fischer and Majone, this so-called rational decision making process does not adequately integrate and address the complexity of qualitative and ethical factors.² Decision making which does not include the ethical considerations implicit in public policies is flawed and is likely to produce harmful effects because usually only cost considerations are addressed and other factors are ignored.

This chapter will address cost, work force perpetuation and free market factors to show that a cost benefit analysis of a multifaceted public policy such as Davis-Bacon is a difficult task with many peripheral considerations, which are hard to quantify with any degree of certainty or accuracy, such that the analyses used thus far are flawed. The conclusion of the chapter will argue in favor of a reorientation of the debate concerning public policies which support workplace justice, away from the divisive and inconclusive cost benefit analysis approach and toward a reevaluation of the ethical values implicit in the policy itself. If and when consensus can be reached as to the values which are sought to be upheld and

promoted by the policy, the decision makers could then more easily fashion or amend the policy to achieve those values.

The Repeal Arguments

Proponents of Davis-Bacon repeal argue that the prevailing wage rates are artificially high and are based more upon union wage rates than upon the true prevailing wages paid in the relevant area. If prevailing wage rates were no longer required, repeal proponents state over \$3 billion in a five year period would be saved. Another argument used by repeal proponents is that the Act is too restrictive in its use of helpers and trainees; if more helpers and trainees were allowed to work, the costs of Davis-Bacon projects would be considerably less. In addition, repeal proponents argue that the Davis-Bacon Act weekly payroll requirement is administratively burdensome and expensive, and acts as a barrier to smaller construction companies who cannot afford to maintain full-time clerical staff to handle this task. These arguments are addressed and refuted in the following sections. "Free market" assumptions which underlie cost benefit analysis are also challenged, and the value of Davis-Bacon regulation as an example of the Aristotelean ethos, is examined.

Income Lost and Gained

The construction industry is the second largest industry in the United States, second only to the health care industry. However, the earnings of skilled construction workers are affected by the cyclical, seasonal and intermittent aspects

of construction.³ In addition, because of these factors, the number of hours worked per year by construction workers are usually only 1,400 - 1,500, compared to the average 2,000 hours per year of the manufacturing worker. The hourly wages of skilled construction workers are still higher than those of manufacturing workers, but have been declining since the 1970s. In 1970 construction wages were 147 percent of manufacturing wages; in 1980 construction wages were 127 percent of manufacturing wages; in 1990, construction wages were 103 percent of manufacturing wages.⁴ The 1983 Congressional Budget Office report calculated a weighted average showing that nonunion construction workers who work 50-52 weeks per year earn \$14,125 compared to union construction workers who earn \$16,820, while manufacturing workers earn \$16,690. The weighted average for other private wage and salary workers was calculated at \$13,390.⁵ Thus, for the average construction worker working 1,400 - 1,500 hours per year, the salary level is substantially lower than any of these other categories of worker.

Since it is unanimously agreed repeal of the Davis-Bacon Act would lower the wage rate paid to construction workers, the tax income to both the federal government and state governments would immediately be reduced. The University of Utah study, "Losing Ground: Lessons from the Repeal of Nine 'Little Davis-Bacon' Acts" calculated the lost revenue to the state of Utah at \$8.2 million, at the rate of \$1,477 per year per worker. Using a construction savings rate of 3 percent and a tax rate of 29 percent, this same study calculated the federal tax revenues lost in 1994 at \$572 million.⁶

The loss of income to families, communities, local retailers and service providers through the macroeconomic “multiplier” effect is harder to calculate but is soon evidenced by communities which have lost their economic base, such as the cities of the Rustbelt states. The demise of manufacturing in these states has been and is the subject of intensive study and efforts to reconstitute the economic base. If Davis-Bacon were repealed, similar effects would be produced in areas where federal construction projects form the major component of the community’s economic base. The cost benefit analyses used thus far in the repeal debate have not taken into account these types of factors and have concentrated only on showing how increased “cost” is attributable to Davis-Bacon regulation, without indicating that a cost to one party is also a benefit to other parties.

The debate on “cost” is couched in language of attempting to save taxpayer dollars, but the reality of the situation is that the reduced costs gained through lower wage rates would immediately benefit the contractors. Any benefit to taxpayers would be gained only through a significant cost reduction to the federal government and some tax rebate for taxpayers, based upon that cost reduction. Since there is no standard profit margin established in the bid process, only that the lowest qualified bidder must be awarded the project, even if cost reduction can be demonstrated, the beneficial impact for taxpayers is not likely to reach taxpayers through reduced tax rates. Taxpayers, now in the roles of community dwellers, would be worse off as their economic base deteriorates around them due to declining wage rates, and would receive far less than is possible from the benefits communities receive from a stable, well-paid workforce.

The testimony given at the February 1995 repeal debate made it clear that in order to win federal bids, contractors would also have to reduce health coverage benefits for workers. The end result of such a change would be a cost shifting of expensive health care from private insurers to costly government programs, as workers qualify for more of the social “safety net” programs such as unemployment insurance benefits and Medicaid, or rely upon public hospitals. Such a scenario has not been quantified at the federal level but is a significant state/local government cost when compared to the 3.7 percent cost increase attributable to Davis-Bacon prevailing wages. At the local level in Clark County, Nevada, the cost of uninsured, nonunion construction workers using the public hospital, University Medical Center of Southern Nevada, for unpaid, unreimbursed inpatient care was calculated to be \$10 million in fiscal year 1997-98.⁷ As health care costs continue to increase, this type of cost shifting implicit in Davis-Bacon repeal would only escalate the burden of local and state governments where taxpayer dollars are utilized to fund public health care programs.

Perpetuation of a Skilled Workforce

Provisions of the Davis-Bacon Act require contractors to offer apprenticeship positions, which are paid at a lower rate than those of the journeymen craftsmen. The history of the Davis-Bacon Act is replete with appeals for reform of the “helper” regulations so that more helpers per journeyman can be utilized on the construction projects. The use of helpers necessarily lowers the overall cost of the project and in most labor markets, there are greater numbers of helpers than there are skilled

journeymen. Therefore, for contractors, the lower wage rate is a sufficient incentive to maintain and promote the apprenticeship programs.

Again, it is unanimously agreed by all interested parties that repeal of the Davis-Bacon Act will cause contractors to reduce the number of journeymen utilized on a project and to increase the number of unskilled workers, and it is also agreed there would no longer be an incentive to maintain and promote apprenticeship programs. In the growing nonunion construction work environment, there are increasing numbers of unskilled workers available to work at lower rates, and since federal bidding requirements call for the lowest bid to be accepted, contractors would have no other choice than to reduce cost to the lowest level possible. This would inevitably result in the decimation of apprenticeship programs on these types of construction projects.

Only recently, due to improved automation, has it become possible to provide comparative statistics. During the years before 1980, data collection was much more difficult and estimates relating to productivity using skilled labor were usually guesstimate. However, in recent years computers have now allowed for these areas to yield accurate statistics as outlined in the February 1995 repeal hearing. For highway projects during the years 1987 to 1990, in those high wage states where the wage rate was 20 percent higher than average, the actual labor costs were 10 percent less than the average per mile cost and averaged 44 fewer construction hours per mile.⁸ This productivity factor, completely unaddressed in the Congressional Budget Office report, was also corroborated by the University of Utah study, Losing Ground which ascertained that following repeal of the Utah

prevailing wage, lost work days increased by 12 percent and industrial accidents rose by 15 percent compared to data from pre-repeal years.⁹ These factors are directly attributable to a skilled workforce in the case of the high wage highway construction states, and to an unskilled Utah workforce.

While the future contractor will eventually benefit from the availability of such skilled labor, the consumers of construction projects are the greater beneficiaries. Since Davis-Bacon regulations apply to construction projects such as highways and roads, power plants, and large federal installations, the lives and well-being of many Americans are dependent upon the skill used in these types of construction. Forcing contractors to use lower skilled, lower paid workers in order to win the federal contracts and to have to abandon apprenticeship programs as well could contribute to the lowering of the quality of federal building projects and to the erosion of a skilled construction workforce.

Since the construction industry already is beset by cyclical, seasonal and intermittent factors which make such a career inherently more unstable than other jobs, the role of apprenticeship programs is particularly important. If younger workers see a future of reasonably well paid construction work resulting from apprenticeship programs, they are more likely to complete these training programs. The American workplace is predicated upon a market economy geared toward the reward of those who contribute to society. The Davis-Bacon prevailing wage rates act as a reward for non-college educated workers in a way which is not consistent with free market principles.¹⁰ Just as farmers receive subsidies and manufacturers benefit from tariffs which act as inducements and incentives, the construction

worker is induced to engage in this cyclical, seasonal and intermittent work through the acquisition of skills and favorable wage rates.

Administration of the Davis-Bacon Act

The wage rates used by construction companies bidding on federally-funded jobs are the “prevailing wage rates” compiled by the U.S. Department of Labor and Commissioner of Labor in each state. Construction companies continue to fight the design methodology for calculating the prevailing wage rates, and complain that the data required of them is burdensome, that the rate setting unduly favors unions, and that the overall costs (to the taxpayer) are increased because of the use of prevailing wage rates.¹¹

These arguments have lost their validity over time as construction companies have been aided by the use of computer technology which makes the data requirements of the Act considerably less costly and difficult to produce. Additionally, studies have been conducted by the Department of Labor to improve the way data is used as the basis for the computation of the prevailing wage, which is now acknowledged to be higher than the non-union wage, but lower than the union scale wage.¹²

The construction industry has mounted opposition to the computation of the prevailing wage; however, the fact that the wage is set by a third party, the State Labor Commissioner, yields impartiality and veracity to the process. Even though the wage rates are not enthusiastically accepted by the construction industry, they provide the basis upon which *all* construction companies must base their wage

component of the bid. Therefore, no one construction company is advantaged or disadvantaged since the rate is the same for everyone. This aspect renders the regulation efficient insofar as consistency of the data is concerned. Similarly, the consistent wage rate, uniformly applied, allows for the wage standard to be neither “over inclusive” or “under inclusive.”¹³

Another advantage to the prevailing wage rate setting is that the rate is set before the contracts are awarded. The consistency of the wage rate thus allows for an award process which truly permits “apples to apples” comparisons of the construction bids. The prior-to-award-wage rate offers greater protection to the public, and concurrently reduces the amount of enforcement and compliance monitoring necessary during the life of the project. Even when compliance inspections are made, the inspectors rely primarily on the prevailing wage rate and do not find themselves having to play the role of either “good cop” or “bad cop” in this aspect of their duties.¹⁴ A policy tool, such as regulation, can find itself subject to opportunities for corruption, favoritism, and discriminatory behavior on the part of compliance monitors by virtue of the type of compliance required.¹⁵ This situation is lessened in Davis-Bacon compliance monitoring because of the objectivity of the prevailing wage rates.

The aspect of deterrence in regulatory efforts is likewise reduced in Davis-Bacon compliance monitoring. Since the primary focus is to ensure that prevailing wages are in fact being paid to workers, the problem of whether to treat all affected organizations being monitored as “bad apples” in order to avoid problems is reduced. These type of regulatory problems exist in situations such as the

monitoring of nursing homes and child care facilities. In those situations, inspectors must adopt the demeanor most likely to provide deterrence of wrong doing. Unfortunately, treating all providers as “bad apples” makes regulation for the organizations which do in fact comply with the regulations very unpleasant.¹⁶ In Davis-Bacon regulation enforcement, this design problem of regulation is not as pronounced.

Construction companies complain of the burdensome regulations with which they must comply; however, the distributive aspect of this increased cost is borne by the larger public, i.e., taxpayers. Since the overall outcome of the Davis-Bacon Act regulations is to ensure the greater good of the community and its workers, such a minimal impact is not an important economic factor. In some industries where “business” must assume the cost of regulation compliance, this cost is ultimately borne by the fewer user-consumers, as opposed to taxpayers in general.¹⁷ As outlined by James Anderson, where the costs are borne by the majority and the cost impact is minimized by virtue of the large population, there is a greater likelihood that the public resentment will not be sufficient to significantly change the policy.¹⁸ Such has been the case with Davis-Bacon Act enforcement.

Since the U.S. Department of Labor or the State Commissioner of Labor is not an active participant in the regulated industry, there is not the same likelihood that this rate setting entity will be “captured” by the industry itself, as sometimes happens in environmental industry regulating.¹⁹ The Davis-Bacon relationship is maintained at a proverbial arms length, and this then contributes to the integrity of the regulatory process. Another aspect of the arms length relationship between the

U.S. Department of Labor or Labor Commissioner and the construction industry is the fact that the rate setting cannot be skewed to favor one competitor against another. All construction companies bidding on federal projects must operate with the same prevailing wage rates.²⁰ The degree of standardization achieved by using prevailing wage rates also maintains an equitable base which is not subject to deviation. A construction company cannot request a different rate because of some circumstance peculiar to its operation. "While standardization does not make corruption impossible, it does make corruption harder to conceal and therefore works to discourage it. And, by ignoring differences, standardization makes rules and procedures simpler, easier to master, both for the regulated parties and for the regulators themselves."²¹ With Davis-Bacon, the associated costs borne by each construction company are the same. No one company will face compliance costs any higher than any other company.²²

Another favorable aspect of Davis-Bacon regulation is that standardization reduces the likelihood of errors of the type possible when regulating environmental conditions, where the regulating agency may either overestimate or underestimate the risk. This aspect has distributive implications because either too few potential beneficiaries are assisted by the regulation, or too many costs are incurred, probably without any corresponding social benefits.²³ The Davis-Bacon type of standardization effectively functions against this kind of regulatory problem.

Free Market Principles vs. Regulation

The proponents of Davis-Bacon repeal use a free market premise in all their arguments, but free market principles, suspect in many instances since there is no such thing as pure market freedom in America, are not applicable in this scenario. It is unanimously agreed that construction workers are underutilized, mostly because of the cyclical, seasonal and intermittent employment factors referred to above.²⁴ Therefore, construction workers are not able to adhere to pure market theory and withhold their labor until such time as equilibrium is reached whereby the right wage is set in relation to the demand.

As detailed in the 1983 Congressional Budget Office report, "The unemployment rate in construction typically exceeds that of every other major industry group, and it has often been double the national rate."²⁵ While the degree of pressure upon wages is dependent upon many other factors, including the state of the economy in general, unemployment rates, and "the degree to which market forces and other institutions in the construction labor market (collective bargaining and labor/management stabilization committees, for example) dampened any downward wage pressure,"²⁶ it is unanimously agreed that repeal of Davis-Bacon would result in decreased wage rates. Such a depression in wage rates would then put construction workers at the mercy of the market and more likely to have to resort to a "desperate exchange" in their employment options.

In economic theory, voluntary exchange where a worker willingly and rationally offers his services to an employer, or withholds his services until the desired wage rate is available, leads to market efficiency. But most economists

recognize that unconstrained markets do not always work as they should, and so it is still an open question whether voluntary exchange can ever produce efficiency, because the basic conditions of a perfectly competitive market never hold in actual societies. Stone argues that the priority of efficiency is not objectively determinable but is one of many other political claims so that the categorizing of certain data makes some people and some things look more important than others. Stone argues further that since markets are a way of organizing social activity, they also happen to be a mode of organizing social activity that gives more power to people who control money and property than to people who do not.²⁷ Free-marketeers do not take these factors into consideration and rely upon the theoretical arms-length agreements for all market actions.

Market theories share the assumption that some interests are stronger than others - ones that satisfy the most important needs of the most consumers - but they differ from democratic theories in their premise that the good interests are usually the stronger interests, and that therefore the good interests emerge naturally in market transactions, without the "artificial" protections of government. These free market principles thereby permit a small selfish concern (contractor profits) to dominate a larger, more virtuous concern, i.e., the prosperity of workers and their communities and continuity of the skilled workforce necessary for the American construction industry.²⁸ While the prospect of increased contractor profits would benefit stockholders/owners, it is not likely that increased profits would be passed onto workers if historical and current employment practices continue.

Despite the necessity for regulation to either promote a social or economic good, regulation is increasingly perceived negatively by the general public. Regulation sometimes has a bad reputation, mostly because of increased costs, such that an anti-regulatory backlash will probably persist in the future.²⁹ Additionally, regulation is viewed as a dilemma between the formalism of government and the complexity of every day life. This resulting mismatch therefore tends to picture protective regulation as clumsy.³⁰ Regulation also imposes additional costs on society and the cry is raised by conservatives that the market is a much better regulator. This certainly has been a continuous argument raised by the construction industry in its various attempts to repeal and/or reform the Davis-Bacon Act. However, as of February 1995, during the latest repeal hearing before the Senate Committee on Labor and Human Resources, Subcommittee on Labor, it would appear that the argument for maintenance of the Davis-Bacon Act on the primary grounds that it protects communities and workers has not been overcome.

The general consensus concerning regulation is that it should be modified to be as unintrusive as possible, cost efficient, and that feasible alternatives should be considered to render regulation obsolete through subsidies, grants, or another of the policy tools available to government. In the case of Davis-Bacon, however, it can be argued that regulation is, in fact, an effective tool in that it produces the desired outcome - protection for communities and its workers - at minimal cost. Also, it does not face the many design flaws of regulation such as lack of standardization, enforcement after the fact, and the other characteristics discussed above.

As a tool, regulation effectively works to produce the desired outcomes of the Davis-Bacon Act. Because of the standardization built into the administration of the Act through the prevailing wage rates, this public policy provides protection not only for individuals but also for the organizations and communities where people work and live in an integrated fashion. Construction companies are placed on an even playing field by virtue of the prevailing wage rate and are in fact subtly coerced to find improvements which will lower their bottom line cost, and thus make their bid more competitive on factors other than wages. These economic improvements benefit taxpayers as a whole, since contracts are awarded on the basis of the lowest bid, while the affected workers and their communities earn the resulting payroll and tax benefits for their area.

Davis-Bacon regulation does not produce expensive results or by products, which can be the result of costly regulation, inflicting substantial costs usually upon the hapless consumer. Instead, construction companies are able to submit bids which provide a profit margin; skilled workers are employed at reasonable wage rates; apprenticeship programs are encouraged; and federal building projects bring long-lasting benefits to the area. In administration of the Davis-Bacon Act, the tool of regulation is indeed effective and efficient in its production of the desired policy outcomes and supports the continued viability of the Act for federally funded high quality construction projects to enhance and improve the public infrastructure.

Regulation as a Policy Tool

This section reviews how the Davis-Bacon Act actually regulates the relevant contractors, using the methods of analysis used by Dr. Lester Salamon and his research team in the 1980s when they researched the human service field funded by government agencies.³¹ The tool of regulation, which has its own distinctive advantages and disadvantages, is applied and evaluated against various components of the Davis-Bacon Act. Salamon describes social regulation as (1) a body of governmentally adopted rules or standards prescribing “responsible” behavior; (2) a cadre of enforcement agents and auditors to monitor, and thereby to deter, deviations from these rules or standards; and (3) a schedule of sanctions to be applied to persons or organizations who deviate from the rules and standards to an unacceptable degree.³²

Regulatory policies, generally, have received considerable negative comment because they are seen as overly bureaucratic, burdensome, costly and inefficient.³³ The Reagan Administration, in particular, began a concerted effort to reduce the regulatory function of several government agencies, such as those monitoring the savings and loan and airlines industries. While regulation changed in these industries, whether this has resulted in the optimal societal outcome depends upon whether it is appropriate for taxpayers to pay for the billion dollar bailout of savings and loans associations, for example, or whether the available airline routes are sufficient for the traveling public. The result is privatization of profits, but socialization of losses.

The need for Davis Bacon Act legislation in 1931 and in 1999 continues to be the same, i.e., protection of vulnerable workers and their communities. If the conditions for award of the federal contracts did not specify that prevailing wage rates be used in calculating the cost of the project, an out-of-community contractor could bid the job at less than the community prevailing wage rate, bring in a “foreign” workforce at lower wage rates and upon completion of the project leave that community without having substantially distributed the payroll value of the contract throughout the area. The community will have been prejudiced because local workers would not have been able to work on the project due to the lower than normal wage rates. The “foreign” contractor then acts as a force within the community to lower wage rates in other related fields so that within a short period of time a downward economic cycle will have begun. This scenario thus negatively impacts those communities where federal construction projects are built and was the basis for the passage of The Davis-Bacon Act in 1931.

During the 1930s, with New Deal construction as a prominent economic force, accounting for approximately 60 percent of all construction, the necessity for Davis-Bacon protection was clear and bi-partisan. Federal construction spending has declined significantly since the 1930s and now accounts for approximately 25 percent of all construction, but the economic rationale - to protect vulnerable workers and their communities - remains the same.³⁴ Davis-Bacon regulations, therefore, fulfill both social and economic regulatory purposes. The “social” aspect of the regulation is needed to protect the vulnerability of communities and workers from outside contractors, and the “economic” regulatory component addresses the

forces of the free market system which would otherwise drive down the price of labor. These regulations can be described as “cross-cutting” since the use of the sanctions to deny eligibility to a construction company which does not utilize prevailing wage rates are for reasons basically unrelated to the programmatic ends for which the contracts are awarded, but which meet the broader social goals.³⁵

Conclusion

This review demonstrates that Davis-Bacon benefits the interests of the various affected parties: the general public benefits from well-constructed projects and highways; future generations will benefit from current apprenticeship programs; specific workers and their communities are benefitted from prevailing wage rates; and contractors are permitted to structure bids which contain profit margins. This kind of satisfactory outcome for all parties involved meets the Aristotelean ethos to promote the middle class, and its ability to maintain the rich and poor economic classes in a harmonious state.

The Davis-Bacon Act functions as an instrument of societal distributive justice in that it supports the ethical base of rewarding contributors to society in a manner which allows for a reasonable distribution of that reward. This manifests as prevailing wage rates and conditions which support and maintain skilled construction workers at a middle class level. Cost benefit analysis arguments have been used to try and weaken the basis for Davis-Bacon prevailing wage rates but have not taken into account the social stability achieved, the relative ease of enforcement, nor the contribution to distributive justice. This thesis takes the

position that if policies, such as Davis-Bacon, were addressed initially from an ethical position, the difficulties of administration or the political debates would be more likely to be resolved, because the ethical position provides a starting point upon which the divergent parties can agree.

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CHAPTER FOUR

DISTRIBUTIVE JUSTICE AND THE AMERICAN ETHOS

At the February 15, 1995 hearing before the Senate Committee on Labor and Human Resources, Senator Simon stated:

The Davis-Bacon Act protects the local prevailing wages for construction workers and preserves the labor standards of local communities. That principle is as important now as it was when the law was first enacted. While we should give careful consideration to responsible proposals to reform the Davis-Bacon Act, we should not abandon the basic protections provided by the Act...And while the budgetary effect of a Davis-Bacon repeal is subject to debate, there is no debate over the fact that any savings will come directly from the pockets of hard working Americans. These are the people who make up America's great middle class...[which] has been experiencing downward mobility for more than 15 years, they are working harder and earning less; they are losing their purchasing power, their health coverage and in many cases, their jobs. Even worse, they are losing their hope and their belief in the American Dream.¹

If the Davis-Bacon Act implements a policy which supports hope and belief in the "American Dream," what are the elements of that "American Dream?" Senator Mulkuski gave her opinion: "...a living wage and decent job for hard working Americans - that is the heart of the Davis-Bacon Act and goes to the core of my values. I stand strong by these values and by the values in the Davis-Bacon Act."²

The societal goals propounded in 1931 and in 1995 have not changed - a living wage and a decent job - but the policies designed to bring those values into reality are weak or are under attack, as demonstrated by the continued efforts to repeal the Davis-Bacon Act. Other policies designed to support workers are similarly affected: Collective bargaining rights protected by the Wagner Act are poorly enforced or are unenforceable, and minimum wage laws no longer guarantee a livable wage in today's economy.

The testimony of Anthony P. Carnevale, Chairman of the National Commission for Employment Policy, at the February 15, 1995, Senate subcommittee hearing addresses the ethical basis for policies which support workplace justice:

American and cultural and political values suggest to me that we need to limit "desperate exchanges" of labor for inadequate wages if we are to sustain access to the broad middle class and retain an appropriate balance between our market economy and our individualistic culture and participatory politics. They are especially important in America where union membership is not available to the vast majority of workers. Individuals by themselves are relatively defenseless against the "desperate bargain" that markets sometimes force on them...Those without unions rely on legislative provisions including Davis-Bacon to set limits on market forces and to remedy market failures. If Davis-Bacon wages fall, other workers' wages within and beyond the construction industry will fall even further. For most Americans, the Government is the union of last resort and that simple reality should not be lost as we consider Davis-Bacon and similar provisions that sustain the balance between our economy, culture and political system.

Distributive justice is an issue in many areas of today's society: access to health care; inheritance and tax laws which permit growing concentrations of wealth and power; and whether CEOs should be paid a multi-million dollar salary while workers for the same corporation earn dramatically less. While understanding and applying "distributive justice" is the goal of many philosophers, how it can be defined or accomplished is the subject of differing viewpoints, and, in today's modern society, the subject of continuing political debate.

In reviewing prominent versions of ethical bases for distributive justice, the work of John Rawls, a liberal, Kai Nielsen, a self-professed Radical Egalitarian, aka socialist, and Murray Rothbard, a Libertarian, will be discussed. The arguments surrounding distributive justice as articulated by these philosophers are reviewed, and the conclusion reached is that in light of the American ethos of "Compassionate Capitalism," each of these theories covers a partial or one-sided approach to capitalism, and is therefore inadequate. Because of the partial view, implementation of the theories would require significant social reengineering. An alternative approach, based on Aristotle's Politics, to bring together the contradictory sides of the American ethos, will be offered.

The individualistic strand of American capitalism can be traced to the work of philosophers such as John Locke, who claimed society was based upon the agreements made by men capable of understanding and acknowledging individual rights through reason. Likewise, Thomas Hobbes, although viewing the role of society as one constructed primarily for protection against one's fellow man, relied upon the ability of man, through reason, to understand and discern natural law.

Subsequent theorists such as Robert Nozick began with Locke's premise and developed theories of justice which stressed individual choice, with a minimalist role for corrective or retributive justice. These theories posit individualistic and voluntarist acts by people and emphasize the rightness of individual self-seeking, the individual's voluntary selection of goals and objects, and the ownership and transfer of property.³

American conservatives lionize the "free market" system and question the use of market modifiers primarily controlled by the federal government in the form of legislation such as minimum wage rates, the Fair Labor Standards Act, and mandatory participation in social programs such as the Social Security system. The argumentation surrounding these government controls does not lessen, regardless of which party has control of Congress. On the other hand, the application of the government modifiers can shift back and forth depending upon the power wielded by the various proponents of either a socialistic or laissez-faire economic philosophy.

Compassionate Capitalism

American style capitalism allows for the economic values of the American people to be expressed in a free market system, but which is also combined with programs of governmental transfers to people "eligible" for those benefits. Robert E. Keunne characterizes this combination as "Compassionate Capitalism" in his book, Economic Justice in American Society.⁴ Keunne argues that the dualistic strands of "individualism" and "compassion" fit American values in a reasonably-

well agreed-upon consensus through a system which is comprised of efficiency, ethos and equity.

Keunne describes the capitalistic strand of this type of economy: The market economy is a voluntaristic mechanism firmly grounded on individual rights and obligations and on a recognition of the property of agents to act solely to further their own material welfare. The market economy simply has no capability to incorporate in its decision making motivations that are social in character in the sense that they consistently include consideration of the welfare of persons other than the individual and his or her dependents. A market economy, therefore, is individualistic in these senses, at once a beneficiary and reinforcer of these traits in the culture. Its inability to provide social goods (the economist terms them public goods) and its inherent incapacity to perform charitable distributive actions require that a dual economy - the governmental - function alongside the individualistic market economy.⁵

Keunne argues that Americans have an informally accepted economic ethic, which includes equity and distributive justice for those members who are judged to be unable to assume the responsibility of providing for themselves and their dependents or who are believed to be worthy of such support for transcendent social reasons. He acknowledges that the intensity of opposition to such proposals is frequently out of all proportion to the demands they make on social resources and must be understood as the result of conflict between the two acknowledged ethical standards that find coexistence difficult.⁶ Keunne believes the growth in the compassionate strand of capitalism has not occurred because of a felt threat

concerning social stability but rather from need for reform felt by the more affluent electorate within the American ethos⁷, in other words, the middle class acting like the Progressives of the 1920s.

One of Keunne's conclusions is that the American-style competitive free market system provides for a reasonably equitable distribution of goods, resources and rewards, and that one of the causes of poverty is the lack of participation by people within that system.⁸ Keunne believes that the market system must be maintained because it conforms to the cultural artifacts and because it maximizes the freedom of choice of agents within the constraints of their genetic and acquired abilities as well as reinforcing the rightness of property ownership, without which the system could not function. He thus dismisses theories of economic justice that are grossly inconsistent with the American ethos, such as theories based upon perfection of the human race, development of supermen, or religious foundations.⁹

John Rawls

John Rawls situates his theory of "Justice as Fairness" in a hypothetical environment where rational people, with a basic understanding of human psychology, political systems, and economics, gather together to formulate a system which would guarantee that the least well-off person would not be harmed, and would in fact be assisted by policies which also enable others to prosper. In order to ensure unbiased and impartial deliberations, this system would be devised behind "a veil of ignorance" such that the policy makers have no knowledge of their position in society, historical era, or political system. The theory is that these

“maximin” policies would be devised to benefit the worst off person in society, even though potentially greater benefits could accrue to those who are better positioned.¹⁰

The Rawlsian principle of Justice as Fairness is connected with distributive justice: “...that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.But there is no injustice in the greater benefits earned by a few provided that the situation of persons not so fortunate is thereby improved.”¹¹

This rationale could be construed to support “trickle down” economic policies, although if the least advantaged person was not harmed as a consequence, presumably the effects of 1980s and early 1990s Reagonomics would not be as devastating as they have been to the working poor and lower middle class, and it is not likely the upper strata of society in a Rawlsian society would have benefitted to the extent documented in the American 1980s and 1990s. Rawls’ theory does not assume an equal distribution of society’s scarce material and natural resources, but would at least be beneficial to those who start in a “have not” position. The “haves” may benefit to a greater degree, but it will not be at the expense of the less fortunate.

Although Rawls believes his theory would work equally well under both a capitalistic or socialistic political system, he questions the validity of capitalism: “It is evident, then, that there is no essential tie between the use of free markets and private ownership of the instruments of production. The idea that competitive prices

under normal conditions are just or fair goes back at least to medieval times."¹²

Rawls also questions the validity of the free market system as an indicator or predictor of need: "A competitive price system gives no consideration to needs and therefore it cannot be the sole device of distribution. There must be a division of labor between the parts of the social system in answering to the common sense precepts of justice."¹³

In order to bring about a synthesis of social and economic process within the framework of suitable political and legal institutions, Rawls proposes four branches:

1. The transfer branch which would "...guarantee[s] a social minimum either by family allowances and special payments for sickness and unemployment, or more systematically by such devices as a graded income supplement (a so-called negative income tax)."
2. The allocation branch..."to correct the more obvious departures from efficiency caused by the failure of prices to measure accurately social benefits and costs."
3. The stabilization branch..."to bring about reasonably full employment," and;
4. The distribution branch whose "...task is to preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments in the rights of property...to correct the distribution of wealth and to prevent concentrations of power detrimental to the fair value of political liberty and fair equality of opportunity..."¹⁴

Rawls' system would then be tested by "...whether the total income of the least advantaged (wages plus transfers) is such as to maximize their long-run expectations consistent with the constraints of equal liberty and fair equality of opportunity."¹⁵

Despite this reformulated social/economic system designed to achieve "Justice as Fairness," Rawls leaves the essential distributive question still a question: "The taxes and enactments of the distribution branch are to prevent this

limit from being exceeded. Naturally, where this limit lies is a matter of political judgment guided by theory, good sense, and plain hunch, at least within a wide range. On this sort of question, the theory of justice has nothing specific to say. Its aim is to formulate the principles that are to regulate the background institutions.”¹⁶ The policies to achieve a “just” distribution under a Rawlsian system have, apparently, as wide a range as exists in today’s systems, and the methodology to resolve the issue of the appropriate compensation for labor contributed to the good or service, assuming the absence of the current political legislatures, is not outlined.

Rawls emphasizes the “compassionate” strand of the American ethos, but his theory of distributive justice does not allow for the strong property rights position of the “capitalist” strand. Therefore, the likelihood of implementation of such a distributive system is slight.

Kai Nielsen

Nielsen advocates a universal and equal distribution of material and natural resources - everyone would own a pro rata percentage of all the resources existing in the world. Everyone would be as well situated as everyone else because the world would have an abundance of resources and this abundance would negate the need for competitive acquisition beyond the equal distribution. Nielsen states: “...in such a society of abundance everyone will be well off and secure. In such a society people are not going to be very concerned about being a little better off than someone else.”¹⁷ Nielsen recognizes the “slide between wants and needs,”¹⁸ and the possibility of scarcity by describing a distributive system according to first,

stringency of need, second, according to the strength of unmanipulated preferences, and third and finally, by lottery.¹⁹ Who would determine and administer the distributive criteria is not made clear and appears to be more complicated than the current market and somewhat government modified system that now exists.

Nielsen argues for a utilitarian egalitarianism: "Minimally, classlessness is something we should aim at if we are egalitarians...Beyond that, we should also aim at a statuses society, though not at an undifferentiated society or a society which does not recognize merit...where well-being and satisfaction are not only maximized (the utilitarian thing) but as well, a society where this condition, as far as it is achievable, is sought equally for all (the egalitarian thing)."²⁰ If everyone has equal shares of everything, how differentiation, interpreted as entitlement or desert, can occur is not explained.

Nielsen and Rawls agree on principles of justice which would give unfettered and equal political liberties. Nielsen's egalitarian principles of justice read as follows:

1. Each person is to have an equal right to the most extensive total system of equal basic liberties and opportunities (including equal opportunities for meaningful work, for self-determination and political and economic participation) compatible with a similar treatment of all. (This principle gives expression to a commitment to attain and/or sustain equal moral autonomy and equal self-respect.)
2. After provisions are made for common social (community) values, for capital overhead to preserve the society's productive capacity, allowances made for differing unmanipulated needs and preferences, and due weight is given to the just entitlements of individuals, the income and wealth (the common stock of means) is to be so divided that each person will have a right to an equal share. The necessary burdens requisite to enhance human well-being are also to be equally shared, subject, of course, to limitations by differing abilities and differing situations. (Here he refers to different natural environments and the like and not to class position and the like.)²¹

The difference between Nielsen and Rawls occurs in the principle of justice aligned with distributive justice. Rawls sees inequality of economic wherewithal as a societal norm, and argues for a system which benefits the least advantaged. Nielsen argues for a socialistic equality where everyone has the same amount of economic goods.²² Nielsen adopts a Marxian attitude towards justice,²³ and predicates implementation of his system upon the existence of worldwide abundance: "...my radical egalitarian principles are meant actually to guide practice, to directly determine what we are to do, only in a world of extensive abundance where, as Marx put it, the springs of social wealth flow freely."²⁴ However, even if this new society becomes a reality, Nielsen warns that some institutional restrictions will still exist: "But justified or not, they still plainly constitute a restriction on our individual freedom. However, what we must also recognize is that there will always be some such restrictions on freedom in any society whatsoever, just in virtue of the fact that a normless society, without the restrictions that having norms implies, is a contradiction in terms...The relevant question is which of these restrictions are justified."²⁵ Assuming that a "restriction" results in a Rawlsian "inequality," the utilitarian egalitarianism of Nielsen cannot be accomplished.

Nielsen utilizes a utilitarian approach which has no downside where a minority could or would suffer for the greater benefit of the majority: "The underlying rationale is to seek compossible sets of needs so that we approach as far as possible as great a satisfaction of needs as possible for everyone."²⁶ Additionally, Nielsen assumes a society which is mainly composed of equally endowed persons: "Thus, *ceterus paribus*, where questions of desert, entitlement and the like do not

enter, it is only fair that all of us should have our needs equally considered and that we should, again *ceterus paribus*, all be able to do as we wish in a way that is compatible with others doing likewise. From the formal principle of justice and a few key facts about us, we can get to the claim that *ceterus paribus* we should go for this much equality...However, how do we know that *ceterus* is *paribus* here?"²⁷ The questions not satisfactorily answered by Nielsen are those concerning the obvious inequality of people in society, whether because of intellect, physical attributes, or parents.

When Nielsen does refer to the inequalities of society, he does not offer a definitive method for resolving them and achieving utilitarian egalitarianism but appeals to relative subjectivism: "There are without doubt genuine entitlements and a theory of justice must take them seriously, but they are not absolute. If the need is great enough we can see the merit in overriding them, just as in law as well as morality the right of eminent domain is recognized."²⁸

Nielsen outlines a society which does not yet exist, and which may never exist - worldwide abundance, even assuming a better distribution of the earth's resources, may not be a possibility with an ever-increasing global population. Assuming Nielsen attributes the desire to obtain more as a capitalistic outcome, he does not offer psychological arguments for his theory to take into account the characterological differences which cause some people to be over-achievers and over-wanters. Assuming Nielsen argues for a centralized public ownership of the means of production, the recent fate of Communism in the Soviet bloc countries does not encourage confidence in his theory.

Nielsen's distributive theory is even more "compassionate" than that of Rawls. Since property rights are completely abandoned in the Nielsen society, the likelihood of implementation is nil.

Murray N. Rothbard

Rothbard offers the opposite view from Nielsen, and argues for a personal responsibility which contradicts Rawls' belief that each person in society should be guaranteed some minimum economic existence. He takes the Libertarian view that each person can do whatever is necessary for oneself, particularly when government interventions are withdrawn. Rothbard adopts the natural rights position²⁹ and does not address the issue of people who, for whatever reason (physical or mental disability for example) are not self sufficient. No provision for the "needy" is made in Rothbard's interaction of individuals. Because Rothbard argues that each person has the "right of self ownership....[T]here is no existing entity called "society;" there are only interacting individuals,"³⁰ he objects to an entity such as "society" or to "society" owning anything: "To say that 'society' should own land or other property in common, then, must mean that a group of oligarchs - in practice, government bureaucrats - should own the property, and at the expense of expropriating the creator or the homesteader who had originally brought this product into existence."³¹ He does not, however, address the oligarchs who now own most of the means of American production.

Based upon this reasoning, Rothbard sees the benefits for all contributions to goods or services to be personal: "It is then, to the human being, the creator of

all wealth, that we must come back...it is by labor that man impresses his personality on matter. It is labor which cultivates the earth and makes of an unoccupied waste an appropriated field; it is labor which makes of an untrodden forest a regular ordered wood; it is labor, or rather, a series of labors often executed by a very numerous succession of workmen, which brings hemp from seed, thread from hemp, cloth from thread, clothing from cloth; which transforms the shapeless pyrite, picked up in the mine, into an elegant bronze which adorns some public place, and repeats to an entire people the thought of an artist..."³²

Using this personal property right system, Rothbard justifies and describes the free market system as a complex series of transactions between persons who offer for sale the product or service they have contributed towards: "From this corollary right to private property stems the basic justification for free contract and for the free-market economy."³³..."The developed market economy, as complex as the system appears to be on the surface, is nothing more than a vast network of voluntary and mutually agreed-upon two-person exchanges such as we have shown to occur between wheat and cabbage farmers, or between the farmer and the teacher."³⁴ While bestowing upon the producer of the goods or services "the fruit of his personal labor,"³⁵ he does not elaborate on the pro rata share of profits which are attributable to the worker during this process, nor to distribution among workers of collective products, relying instead upon the free market mechanisms for price and labor compensation.

Rothbard does not detail principles similar to Rawls and Nielsen required for the effective functioning of his social system, because he sees a "personal right"

and a “property right” as essentially the same right, and if a person has those rights, he has freedom: “Freedom and unrestricted property right go hand in hand.”³⁶ He argues against a separation of human and property rights: “The basic flaw in the liberal separation of ‘human rights’ and ‘property rights’ is that people are treated as ethereal abstractions.”³⁷

Rothbard defines the libertarian position in comparison to the egalitarian: “The libertarian, then, is clearly an individualist but not an egalitarian. The only ‘equality’ he would advocate is the equal right of every man to the property in his own person, to the property in the unused resources he ‘homesteads’ and to the property of others he has acquired either through voluntary exchange or gift.”³⁸ Rothbard sees no need to provide for a “social minimum” as does Rawls, or an “equal share” as does Nielsen, but rather the freedom to pursue, or not pursue, one’s own ends, provided that pursuit does not violate the rights of another: “The right to self-ownership asserts the absolute right of each man, by virtue of his (or her) being a human being, to ‘own’ his or her own body; that is, to control that body free of coercive interference.”³⁹

Rothbard does not address whether corrective action is required to bring everyone into a position of “property in his own person” given the centuries of acquisition of all types of property by individuals or corporate entities.

At the other end of the spectrum, Rothbard has completely neglected any of the “compassionate” strand and exclusively focuses on the “capitalistic” strand. This one-sided reliance is as unlikely as that proposed by Nielsen, whose theory puts him on the opposite end of the continuum.

Conclusion

The three philosophers employ different ethics upon which to base their theories of distribution. Rawls argues for a social minimum to allow all people to have a reasonable standard of living, and policies having no harmful effect upon the most disadvantaged persons in society, which also, at the same time, permit inequalities such that some other persons may prosper at a greater rate. Nielsen, however, takes a strictly Marxian approach and advocates a pro rata equal share of all the resources for all people, predicated though upon a society which provides for an abundance so that all people have an equal, maximized existence and would, therefore, not need to achieve more. Rothbard takes the ultra Libertarian approach and sees interacting individuals who have self-ownership of themselves and their contributions to a product or service acting within a free market economy. While Rothbard acknowledges the contribution of the worker in exacting detail, he does not address the distributive share applicable to the contribution, relying instead upon free market mechanisms. Since the free market, left unmodified, results in driving down the price of labor, this reliance does not address the essential question either.

None of these three philosophers covers the actual how-to of determining distributive justice. They discuss social and economic systems and institutions designed to bring about their version of a "just" society, but leave open critical questions which affect exactly how distribution is accomplished. Rawls is specifically non-committal on the subject; Nielsen assumes that the "abundance" will take care of everyone, or a three-tiered distribution system for scarcity situations; and Rothbard assumes everyone is self-sufficient and able.

Rawls and Nielsen would not object philosophically to the Davis-Bacon Act, because of the distributive aspects of the policy, but Rothbard would view the Act as an intrusion into a system which must be administered through individual action. Even though Rawls and Nielsen would not disapprove of the Davis-Bacon Act, creation and administration of their “just” society would require such extensive social reengineering, that it is hard to imagine how such policies could be integrated within these systems. Because these three philosophers have based their distributive justice argument upon only one aspect of capitalism - free market or compassionate only - the theories do not reflect the complexity of American-style capitalism. They are, therefore, not able to satisfactorily balance the opposites contained within the system in ways which are likely to promote social harmony between or for the rich, poor, and middle classes.

In the Politics Aristotle argued that the basis for a successful society is a large middle class, sufficient to maintain a balance between the rich and the poor. Policies such as the Davis-Bacon Act are designed to encourage and preserve the working middle class, and this ethical base needs to be acknowledged and supported by the political decision makers. Aristotle promoted the well-being of the middle class to act as a buffer between the rich and the poor in order to achieve social stability. He recognized that the complexities of society, or interacting economic classes, particularly in relation to the distribution of the so-far scarce resources, is greater than can be accomplished through a reengineering of society. Similarly, distributive policies such as the Davis-Bacon Act, which would support the working middle class, act as a strong buffer against the depredations of the rich or

the revolutionary potential of the masses of the poor, are in the best interests of the United States.

End Notes

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CHAPTER FIVE

ARISTOTLE AND THE GROWING IMBALANCE OF THE AMERICAN ECONOMIC ETHIC

Against the backdrop of the philosophical and economic theories discussed in Chapter IV, the American economic system has resulted in a society which is reputed to be the most unequal of all Western industrialized nations. The statistics paint a picture of a society which is increasingly becoming a "have" and "have not" country where the rich have been getting rich faster, the middle class is being squeezed downward, and the legions of the poor are increasing. The latest census data can be interpreted to show that the wealthiest one percent and wealthiest 20 percent of American households have a larger portion of the nation's wealth than they used to have, and a larger portion than the wealthiest households in other industrial nations have. Additionally, the least wealthy 20 percent of Americans have a smaller portion of the nation's wealth than the bottom 20 percent have in other industrialized nations. But at the same time, the Census Bureau's study indicates that 5.1 million people moved out of poverty between 1990 and 1991 and 6.2 million became poor, while 18.8 million people who were poor in 1990 remained poor in 1991.¹

The Gini coefficient used by economists measures the degree of inequality which exists in society. The Gini measurement uses primarily government income data and revealed that in 1987 the lowest 20 percent of family income recipients received less than five percent of the total national income, while the highest five percent obtained approximately 17 percent, or almost four times as much.² The revised 1998 Center for Budget and Policy Priorities report used Census Bureau data to find that from the mid-1980s to the mid-1990s, the income gap widened in 37 states, so that in September 1997 the top 20 percent of American families earned 49 percent of the nation's income, up from 43.8 percent in 1967, and those in the bottom 20 percent earned just 3.7 percent of the nation's income, down from 4 percent in 1967.³

The Shrinking Middle Class

Despite economic recovery in the 1990s, referred to as one of the most robust periods of economic growth in the postwar period in the United States, the benefits of this strong economy have not turned around the longer-term trend toward increasing income inequality. The average incomes of families in the middle of the income distribution fell in 46 states, compared to the average incomes of families in the top quintiles which grew in nearly three-quarters of the states. As shown in the table in Appendix II, in all but three states, families in the middle of the income distribution did worse than families at the top of the distribution between the mid-1980s and the mid-1990s.

In only three states - Alaska, Nevada, and Vermont - families with children in the middle fifth of the distribution did marginally better than families with children in the top fifth. In these states, average incomes of families with children in the middle fifth of the distribution increased by a slightly greater percentage than the average incomes of the top fifth of families. In five states - Arizona, California, Delaware, Indiana, and New York - the gap in income inequality between high- and middle-income families increased more than 25 percent. The share of total income held by middle-class families has fallen in 47 states over the past decade.⁴

Factors contributing to the increasing inequality are identified by the Census Bureau as:

1. The wage distribution has become considerably more unequal with more highly skilled, trained, and educated workers at the top experiencing real wage gains and those at the bottom real wage losses;
2. The shift in employment from those goods-producing industries that have disproportionately provided high-wage opportunities for low-skilled workers, towards services that disproportionately employ college graduates, and towards low-wage sectors such as retail trade;
3. Within-industry shifts in labor demand away from less-educated workers is eroding wages;
4. Downward pressure on the wages of less-educated workers are intensifying global competition and immigration;
5. The decline of the proportion of workers belonging to unions;
6. The decline in the real value of the minimum wage;
7. The increasing need for computer skills; and
8. The increasing use of temporary workers.

Also, long-run changes in living arrangements have taken place which exacerbate differences in household incomes, such as divorces, and separations, births out of wedlock, and the increasing age at first marriage have led a shift away from married-couple households and toward single-parent and nonfamily

households, which typically have lower incomes. The increasing tendency for men with higher-than-average earnings to marry women with higher-than-average earnings has contributed to widening the gap between high income and low-income households.⁵

The inequality situation is generally acknowledged to be true by both the Left and the Right, but the difference is that the Right argues the poor are poor because they won't join the free market system while the Left argues the free market system is not accessible to all, and especially not accessible to those who lack education, training or residence in areas where there are appropriate job markets.⁶ Certainly, the continuing transition from a manufacturing economy to a service economy has severely decreased the types of jobs traditionally performed by poorly educated urban males. Additionally, the low-end service economy jobs do not pay the relatively high wages of the smokestack industries. Outgoing Labor Secretary Robert Reich used statistics from the Office of the Chief Economist in 1997 to support his views of the growing American inequality. Even though structural changes, technological advances, and global economic integration are factors in the increasing inequality, Mr. Reich stated, "It has never been economics alone that defines America. If we choose, as a culture, to push back against the economic forces that would otherwise divide us, it is within our power to do so."⁷ Keunne supports Robert Reich's belief that policy changes can be undertaken to alleviate inequality. Keunne states that the post-World War II period represents a watershed between the extreme depression of the 1930s and the prosperous years that followed have permitted a variety of experiments in government policies.⁸

Policies, such as the Davis-Bacon Act, which support a reasonable distribution of the wage to create middle class workers are the simplest methods by which distributive justice can be achieved. They require no dramatic social reengineering or new political mechanisms; they are consistent with and achievable within the market-based capitalism of America; and they support the American work ethic. Benefits are distributed to business, labor, and society, as demonstrated historically since 1931 implementation of the Davis-Bacon Act.

Since the numbers of rich and poor are growing, in wealth for the former and in number for the latter, the Politics of Aristotle offer a better grounding for solutions to our contemporary problems. Aristotle's realistic approach to politics recognizes the existence of the rich and the poor, and instead of taking an either/or position, promotes the use of state machinery to reinforce a strong middle class which moderates the influences of the extremes represented by the rich and the poor. In the Politics, Aristotle states, "...extreme poverty lowers the character of the democracy; measures therefore should be taken which will give them lasting prosperity; ... as this is equally the interest of all classes..."⁹

Aristotle's Politics

Aristotle's discussion of oligarchy and democracy, the "perversions" of aristocracy and constitutional government respectively, results in his stating that, "For the real difference between democracy and oligarchy is poverty and wealth. Wherever men rule by reason of their wealth, whether they be few or many, that is an oligarchy, and where the poor rule, that is a democracy. But as a fact the rich

are few and the poor many ...”¹⁰ Therefore, as a practical matter, Aristotle sees politics as a practical, not a theoretic science with the best state (practically, though not ideally) a polity. A polity is defined as a state which mixes rule by the rich with rule by the poor. Ideally, a polity requires existence of a significantly entrenched middle class, whose interests moderate the extremes and receive furtherance through the state’s machinery. A polity also requires a constitution which expresses elements of oligarchical interests.¹¹

Aristotle recognizes that justice means different things to different people, who see only part of the whole, depending upon their situation in society.

“For all men cling to justice of some kind, but their conceptions are imperfect and they do not express the whole idea. For example, justice is thought by them to be, and is, equality, not, however, for all, but only for equals. And inequality is thought to be, and is, justice; neither is this for all, but only for unequals. When the persons are omitted, then men judge erroneously. The reason is that they are passing judgment on themselves, and most people are bad judges in their own case. ... For the one party, if they are unequal in one respect, for example wealth, consider themselves to be unequal in all; and the other party, if they are equal in one respect, for example free birth, consider themselves to be equal in all.”¹²

This partial view results in ideas about justice and equality that have very different social results.

“Democracy, for example, arises out of the notion that those who are equal in any respect are equal in all respects; because men are equally free, they claim to be absolutely equal. Oligarchy is based on the notion that those who are unequal in one respect are in all respects unequal; being unequal, that is, in property, they suppose themselves to be unequal absolutely. The democrats think that as they are equal they ought to be equal in all things; while the oligarchs, under the idea that they are unequal, claim too much, which

is one form of inequality. All these forms of government have a kind of justice, but, tried by an absolute standard, they are faulty; and, therefore, both parties, whenever their share in the government does not accord with their preconceived ideas, stirs up revolution."¹³

Because of these differing views of justice and their propensity for social unrest, Aristotle takes the position that the best political system is one which fuses both the rich and the poor.

"Now in all states there are three elements: one class is very rich, another very poor, and a third is a mean. It is admitted that moderation and the mean are best, and therefore it will clearly be best to possess the gifts of fortune in moderation; for in that condition of life men are most ready to follow rational principle. ... Again, the middle class is least likely to shrink from rule, or to be over-ambitious for it; both of which are injuries to the state. Again, those who have too much of the goods of fortune, strength, wealth, friends, and the like, are neither willing nor able to submit to authority. ... But a city ought to be composed, as far as possible, of equals and similars; and these are generally the middle classes. Wherefore the city which is composed of middle class citizens is necessarily best constituted in respect of the elements of which we say the fabric of the state naturally consists. And this is the class of citizens which is most secure in a state, for they do not, like the poor, covet their neighbors' goods; nor do others covet theirs, as the poor covet the goods of the rich; and as they neither plot against others, nor are themselves plotted against, they pass through life safely. ... Thus it is manifest that the best political community is formed by citizens of the middle class, and that those states are likely to be well-administered, in which the middle class is large, and stronger if possible than both the other classes, or at any rate than either singly; for the addition of the middle class turns the scale, and prevents either of the extremes from being dominant. ... The mean condition of states is clearly best, for no other is free from faction; and where the middle class is large, there are least likely to be factions and dissensions. For a similar reason large states are less liable to faction than small ones, because in them the middle class is large; whereas in small states it is easy to divide all the citizens into two classes who

are either rich or poor, and to leave nothing in the middle. And democracies are safer and more permanent than oligarchies, because they have a middle class which is more numerous and has a greater share in the government; for when there is no middle class, and the poor greatly exceed in number, troubles arise, and the state soon comes to an end. A proof of the superiority of the middle class is that the best legislators have been of a middle condition..."¹⁴

Aristotle argues that stability is achieved when the middle class is included in the governing bodies, and is powerful enough to balance the inherent conflict between the rich and the poor.

"The legislator should always include the middle class in his government; if he makes his laws oligarchical, to the middle class let him look; if he makes them democratical, he should equally by his laws try to attach this class to the state. There only can the government ever be stable where the middle class exceeds one or both of the others, and in that case there will be no fear that the rich will unite with the poor against the rulers. For neither of them will ever be willing to serve the other, and if they look for some form of government more suitable to both, they will find none better than this, for the rich and the poor will never consent to rule in turn, because they mistrust one another. The arbiter is always the one trusted, and he who is in the middle is an arbiter. The more perfect the admixture of the political elements, the more lasting will be the constitution."¹⁵

Aristotle's polity acknowledges the inherent conflict between economic classes, which is moderated to some extent by the middle class.

The Unbalanced American Work Ethic

The individualistic strand in the economic and ethical values of America demands that individuals be independent and voluntarist in their work and remuneration choices. The competitive free market system provides a

reasonable distribution system with which most people agree, but public policy in America since the 1980s is a regression to the basic tenets of economic Darwinism and a return to more laissez-faire market policies. The current policies contain the implicit message that property rights and freedom of contract are near-absolutes, with a corresponding decline in the significance of personal and worker rights. Prevailing wage laws, such as the Davis-Bacon Act, support the compassionate strand with public policy goals of distributive justice and workplace justice. By supporting the above-average Davis-Bacon Act wage rates, the position of the working middle class is stabilized, as advocated by Aristotle, and the training components serve to prepare the workforce of tomorrow with high quality construction skills.

Laissez-faire policies do not take into consideration the reality of modern-day economics. Corporate America has not always played the game legally or fairly, with the Phelps-Dodge Arizona Copper industry being a prime example;¹⁶ and individuals who hold office as fiduciaries for millions of people, controlling billions of dollars, have not fulfilled their fiduciary responsibilities, resulting in financial misery wrought upon thousands of Americans in the Savings and Loan debacle. In short, economic Darwinism exacerbates the inherent conflicts within society, ignores the foibles of human nature, and self-perpetuates only in the abstract world of economic theory to the detriment of the middle class and Aristotelean-style social stability.

Economic Darwinism posits that those of greater ability will inherit the workplace, and that the role of the government is not to make policy which will

“level the playing field” but rather to “let” conditions be in the certain expectation that those who succeed do so on the strength of their product, skill, or other market-based attributes. Walter Adams charges that economic Darwinism is based upon the “post hoc ergo propter hoc” fallacy, meaning that the end result proves the original premise, and assumes that the monopolistic, oligopolistic, or conglomerate giant has succeeded because of superior performance. Empirical evidence to substantiate the “superior” functioning, however, is not required. Adams points out that economic Darwinism fails to distinguish between individual freedom and a free economic system. He contends that the Chicago School economists’ pleas not to penalize the “superior performer” address the wrong question. The relevant policy question is that of how to “maximize a bundle of freedom and opportunity, not only at a point in time, but over the long run as well.”¹⁷

The argumentation surrounding the repeal of the Davis-Bacon Act centers on the theory that progress for society can only be achieved through individual losses, in this case, the loss of earnings by construction workers.¹⁸ This thinking is being challenged through articles such as “America’s Changing Economic Landscape” written by James Fallows,¹⁹ and by the 1980 President’s Commission for a National Agenda in its report “Urban America in the Eighties: Perspectives and Prospects.”²⁰ The economic paradigm should be shifted by a theory in which government protects workers, not places, and individuals, not firms and institutions.²¹ A realistic solution is for public policies to blend protection not only for individuals but also for the organizations and communities

where people work and live in an integrated fashion so that there are no “winners and losers” but broad based benefits instead.

If the political decision makers were to address the values implicit in the Davis-Bacon Act - a livable wage and a decent job - and to agree that they will uphold and support those values, the issues concerning repeal or reform would be more likely to be resolved. The cost benefit analyses alone have not assisted with the resolution process because the premises have not taken all factors into account, or these factors cannot be quantified and defined with sufficient accuracy. However, the empirical data does yield valuable information which can be used beneficially to reform the administration of the Act in areas such as prevailing wage determination and regulation compliance. The various affected interests will have greater opportunities to fashion needed improvements by beginning with an ethical basis that is clearly understood and supported.

The Role of Organized Labor

Historically, organized labor has been in the forefront of efforts to uphold the compassionate strand of the American economic ethic in the form of more and better social welfare programs, not only for their own members, but for society as a whole. The Davis-Bacon Act and New Deal legislation of the 1930s, which were subsequently supported by organized labor, provided the impetus for reform in a number of areas. These included: Social Security benefits, unemployment benefits, and medical assistance programs. These benefits adorned the American economic stage with a safety net of programs designed

to mitigate the downturns in economic cycles, which had been part of the economic facts of life since the American economy began its industrial phase in the 1800s.

However, continuity and improvement of the safety net laws is not guaranteed. The Davis-Bacon Act repeal movement has been partially successful at the state level where nine states so far have repealed their "Little Davis-Bacon Acts." If this state-level repeal movement becomes a trend, it will ultimately affect the viability of the federal Davis-Bacon Act. The assault on state pro-worker and pro-union legislation is wide-spread, and growing, when the list of various legislative actions underway in 1995 is considered.²² The outline in Appendix III shows that proposed unfavorable legislation far exceeds proposed favorable legislation, and attacks on worker protections cover many areas.

But the most recent impediment to pro-worker legislation has become the global economy, together with rapid automation, which allows multinational corporations to freely roam the globe searching for the lowest cost combination to locate various aspects of their business. Some studies have estimated that international trade has contributed between 10 and 30 percent to the growth in wage inequality over the past 15 years.²³ Even large American unions such as the United Auto Workers (UAW) have been unable to stem the tide of this activity, and any smaller unions are even less capable of any meaningful retardation of this trend. In addition to the disinvestment strategies described by Bluestone and Harrison in The Deindustrialization of America: Plant Closings, Community Abandonment, and the Dismantling of Basic Industry²⁴ which has left

many Americans scrambling for a job at any wage rate, the influx of immigrants who are willing to work at low and lower than minimum wage rates under horrific conditions also weakens the ability of unions to organize the growing service sector workers.

It is this current phenomenon which is causing even the “regulated industry” employers to resist prevailing wage rates, such as the Davis-Bacon wage rates, because of the availability of low-cost labor. The exportation of jobs to cheaper wage areas of the world, the influx of immigrant workers with low wage demands, and the repositioning of the American economy from one of manufacturing to service/information, offer new challenges to organized labor such as had not been contemplated when the Wagner Act was passed.

American businesses can easily afford to have the Wagner Act on the books because it has proved to be no problem for them. They have reduced wages, exported the work, replaced union workers with non-union striker replacements, or conducted themselves in any way they so chose without any kind of repercussion from the U.S. Government, or - more ominously - any public outcry or increased level of public concern. Pro-union legislation could become a meaningless issue as business continues to ignore, circumvent or bust unions as it proceeds to acquire the lowest cost labor anywhere in the world and generate record profits for stockholders. Given that pro-union legislation is becoming more unlikely at all levels, argumentation based on middle class Aristotelean ethical values would appear to offer a more successful basis for

continuance of policies such as the Davis-Bacon Act which support workplace justice and the middle class.

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12. Aristotle. Politics. Book III, Chapter IX.
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14. Aristotle. Politics. Book IV, Chapter XI.
15. Aristotle. Politics. Book IV, Chapter XII.
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21. Stone, P. 86.

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CHAPTER SIX

CONCLUSION

The Davis-Bacon Act fits with the American Work Ethic - a living wage for a day's work - and it is compatible with "Compassionate Capitalism" a system of supporting vulnerable groups within the nation while, at the same time, maintaining property rights. Organized labor has supported all prevailing wage improvements, including Davis-Bacon prevailing wages, but that support does not guarantee continuation of the Act, and there still seems to be criticism for these policies, mainly because of cost and union animus. The ethical basis for these policies is submerged beneath the cost benefit analysis arguments so that doing what is "right" is less important than doing what is "cost effective." If cost benefit analysis ever becomes sophisticated enough to quantify the many peripheral issues and the way in which Davis-Bacon Act implementation affects workers and their communities, it is likely that the "right" thing to do will also be the most "cost effective."

The individualistic strand of capitalism appears to be growing stronger than the compassionate strand which allows for modification of pure market conditions in order to benefit certain groups. Assuming that capitalism and a free-market economy are recognized as the generators of efficient economic production, the essential question continues to be: can we design policies that keep incentives in

work and invest in human capital and also create a socially desirable distribution of income?¹ Since the role of organized labor in American life and in American politics has been growing less and less important, unless there is a reversal in this trend, it is likely that the individualistic trends will continue with every man/woman for him or herself, as opposed to the union position of solidarity to achieve greater good for more people.

The growing inequality is affecting the viability of the middle class and its ability to balance the inherent conflict between the rich and the poor, as advocated by Aristotle. Appendix I details a legislative history replete with hearings, reports, and controversy regarding the Davis-Bacon Act, and it also demonstrates the “uncompassionate” elements within the American economy continue to fight for repeal and/or reform.

Recent Repeal Legislation

At the 1997 Nevada Legislature, Senate Bill 210 was introduced by Senator Dean Rhoads, R-Tuscarora. The bill, which would let rural counties avoid paying the prevailing wage on projects of less than \$500,000, was supported by the Las Vegas Chamber of Commerce, which argued the exemption should be expanded to include all counties and all projects.² The perennial argumentation - to save taxpayers money - was put forward by bill proponents, and the same defenses - quality construction work which protects communities and their workers from underbidding out-of-state contractors - was raised. In February 1999, HR 736 was introduced to repeal the Davis-Bacon Act and the Copeland Act. A hearing on this

bill has not been held as of April 1999. Senate Bill 210 was not enacted, but it is obvious that repeal of prevailing wage laws, from the relatively minor \$500,000 rural county limit to outright repeal of the national Davis-Bacon Act, is an issue which is alive and well and will continue to be introduced at all appropriate forums.

The cost-benefit arguments will continue to draw the same types of conclusions, despite the comprehensive econometric findings of the University of Utah.³ This study examined the history of prevailing wage laws in the United States, the economic effects of Davis-Bacon repeals, the effect of state repeals on training, black unemployment, and minority participation in training, why prevailing wage law repeals lead to increased injury rates, and, finally, the estimated effect of a Davis-Bacon repeal. Some of the estimated effects would be a loss of \$5 billion per year in real terms every year in construction earnings, formal training in construction could fall by 40 percent, an additional 30,000 serious injuries per year, and the loss of middle class career opportunities for construction workers. These social and economic losses would result in an estimated 1.7 percent decline in state construction costs, which is significantly less than the tax revenues at state and national levels which would be lost due to the decreased wage rates. The report authors characterize this as “a poor bargain indeed.”⁴

Current Davis-Bacon Act Reform Proposals

The latest proposals are the Helpers Job Opportunity Act (HR 4546), introduced in 1998, and HR 1012, introduced in March 1999. HR 4546 sought to create a new class of Davis-Bacon worker. Welfare recipients seeking work would

become semi-skilled laborers or helpers to do low-skill tasks under the supervision of journeymen, earning lower wage rates as helpers based upon the prevailing wage rates of corresponding helpers employed in the city, town, village or other subdivision of the state. This bill estimates savings from changing wage determinations for helpers and allowing unlimited substitution of helpers for journeymen to do lower skilled tasks would be nearly \$3.76 billion, and if the wage determinations for helpers were changed, yet limited the number of helpers to two helpers for every three journeymen, the labor savings would be approximately \$2.78 billion. This bill was referred to the House Education and Workforce Committee on September 11, 1998. HR 1012 would provide for the creation of an additional category of laborers or mechanics known as helpers under the Davis-Bacon Act. Based upon these national and local legislative efforts, it appears that repeal and/or reform of the Davis-Bacon Act is still an active issue in today's political life.

The Need for a Viable Middle Class

The expansion and pervasiveness of a middle class economy and ethic could be considered one of America's claims to fame because it has created a high standard of living for a large percentage of its population, in contrast to other societies which maintain more rigid have and have-not economic systems. The dynamic American culture allows individuality to exist in much greater proportion than is available in most other countries, even those of Western Europe where centuries of history contribute to a more marked class society. The middle class has functioned as an Aristotelean style social glue which has helped to bind and

strengthen the nation; however, its efficacy must be maintained through public policies which support the middle class ideologically and economically.

America's successes in so many areas can be attributed to this freedom which has allowed contributions to be given by so many people from such diverse backgrounds, aided by a middle class ethos and policies which support that economy. A strong middle-class society is viewed as the foundation for a more socially benign environment for children and reinforcing middle-class society as the number one national priority would put America's money where its values are so that poverty is reduced.⁵ To attempt to restrain or reduce the middle class in any fashion would lead to a lessening of the qualities which America produces through its people, economy, culture, and democracy, as outlined by Kevin Phillips in his 1993 examination of the plight of the American middle-class.⁶ Therefore, attempts such as amendment or repeal of the Davis-Bacon Act designed to lower wages and community security need to be opposed so that the large American middle class does not become an aberration in the nation's history.

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APPENDIX I

LEGISLATIVE HISTORY OF THE DAVIS-BACON ACT

- 1931 On 3/15/31 the Davis-Bacon Act was passed to regulate the wages paid to laborers and mechanics employed by contractors awarded government building contracts in the United States and by contractors and subcontractors in the District of Columbia.
- 1932 Hearings on April 28, May 3, 9, 11, and 12 were held before the Committee on Labor, House of Representatives, and on March 17 before the Committee on Education and Labor, U.S. Senate, regarding the regulation of wages paid to employees by contractors awarded government building contracts.
- 1940 Reports to accompany H.R.9021 and S.3650 to extend the provisions of the Davis-Bacon Act to Hawaii and Alaska were issued.
- 1952 A staff report on labor-management relations in Federal projects involving the Davis-Bacon Act was given to the Committee on Labor and Public Welfare, U.S. Senate.
- 1955 Hearings were held February 16, March 9, April 18 - July 12 before the House Committee on Public Works on H.R.4260 and February 21 through April 15 on S.1048, S.1072, S.1160 and S.1573 before the Senate Committee on Public Works to create a Federal Highway Corporation for financing the construction of the national system of interstate highways, which would use Davis-Bacon wage regulations.
- 1956 House, Senate and Conference reports issued to accompany H.R.10660, a bill to amend and supplement the Federal Aid Road Act of 1916, to authorize appropriations for continuing the construction of highways, and to amend the Internal Revenue Code of 1954 to provide additional revenue from the taxes on motor fuel, tires, trucks and buses.
- Hearings were held February 7 - March 7 before the House Subcommittee on Roads of the Committee on Public Works on H.R.8836 to amend and supplement the Federal Aid Road Act of 1916 to authorize appropriations for continuing the construction of highways.
- 1958 Hearing was held July 10 before the Committee on Armed Services, U.S. Senate on H.R.7576 further amending the Federal Civil Defense Act of 1950 as amended, and H.R.11518, authorizing the construction of modern naval vessels.
- Hearings were held June 25 and 26 before the Senate Committee on Labor and Public Welfare on S.3069, S.3823, H.R.11378 on federally impacted areas.

1962 Hearings were held March 8, 9, and 13 before the House Committee on Education and Labor on H.R.9656 and H.R.9657 regarding amendments to the Davis-Bacon Act and a bill to establish uniformity in existing eight-hour laws, and to include fringe benefits.

Hearings were held June 6, 7, 8, 11 and 12 before the House Special Subcommittee on Labor of the Committee on Education and Labor regarding a general investigation of the Davis-Bacon Act and its administration.

1963 Hearings were held March 1 - 26 before the House General Subcommittee on Labor of the Committee on Education and Labor on H.R.404 to amend the prevailing wage section of the Davis-Bacon Act and related sections of the Federal Airport Act and related sections of the National Housing Act.

1964 Hearings were held January 22, June 23-26, and August 4-5 before the House Committee on Education and Labor on H.R.7075 regarding amendments to the Davis-Bacon Act.

Hearings were held February 21 before the Senate Subcommittee on Labor of the Committee on Labor and Public Welfare on S.450 and H.R.6041 to amend the prevailing wage section of the Davis-Bacon Act, the Federal Airport Act, and the National Housing Act.

1967 Hearing was held on October 5 before the Senate Committee on Public Works on S. 930 to apply Davis-Bacon Act provisions to Government-leased buildings.

1972 Hearings were held June 20-23 before the Senate Committee on Banking, Housing and Urban Affairs on S.3373 and S.3654 regarding improved technology and removal of prevailing wage requirements in federally assisted housing.

1975 Hearing was held April 22 before the House Committee on Education and Labor regarding building and construction trades legislative problems.

Joint hearing was held on May 19 before the Committee on Labor and Public Welfare, U.S. Senate and the Subcommittee on Manpower, Compensation, and Health and Safety of the Committee on Education and Labor, House of Representatives, on employment and federal contract practices.

1979 Hearing was held June 14 before the House Committee on Education and Labor, Subcommittee on Labor Standards, regarding oversight of the Davis-Bacon Act.

- 1981 Hearings were held on April 28 and 29 before the Senate Committee on Labor and Human Resources, Subcommittee on Labor, regarding oversight of the Davis-Bacon Act.
 - 1983 A Congressional Budget Office Study was issued. Modifying the Davis-Bacon Act: Implications for the labor market and the federal budget. A hearing was held July 7 before the Senate Committee on Labor and Human Resources, Subcommittee on Labor.
 - 1986 Hearings were held September 18 and 30 before the House Committee on Education and Labor, Subcommittee on Labor Standards, regarding oversight of the Davis-Bacon Act.
 - 1987 Hearing was held March 25 before the House Committee on Public Works and Transportation, Subcommittee on Surface Transportation, regarding the application of the Davis-Bacon Act to federal aid highway, highway safety and mass transit projects.
 - 1988 Hearing was held February 23 before the House Committee on Banking, Finance and Urban Affairs, Subcommittee on Housing and Community Development, regarding the impact of the Davis-Bacon Act on CDBG and UDAG programs.
 - 1992 Hearing was held on June 16 before the House Subcommittee on Labor Standards, Committee on Education and Labor, HR.1987, to amend the Davis-Bacon Act to revise the standard for coverage.
 - 1994 Hearing was held on July 28, 1994 before the Senate Committee on Labor and Human Resources to examine the administration's proposal to reform and strengthen enforcement of the Davis-Bacon Act.
- A report to accompany HR. 123, including the cost estimate of the Congressional Budget Office was issued.
- 1995 Hearing was held February 15 before the Senate Committee on Labor and Human Resources, on S.141, to repeal the Davis-Bacon Act.
 - 1998 H.R.4546 was introduced on September 11 to create a new class of Davis-Bacon worker. Welfare recipients would become semi-skilled laborers or helpers to do low-skill tasks under the supervision of journeymen earning lower wage rates as helpers.
 - 1999 H.R. 736 introduced on February 11 to repeal the Davis-Bacon Act and the Copeland Act.

H.R. 1012 introduced on March 4, 1999 to provide for the creation of an additional category of laborers or mechanics known as helpers under the Davis-Bacon Act.

Source: "The Davis-Bacon Act." Selected references. U.S. Government Printing Office:1979 -629-837/2400

APPENDIX II

AVERAGE INCOME TABLE

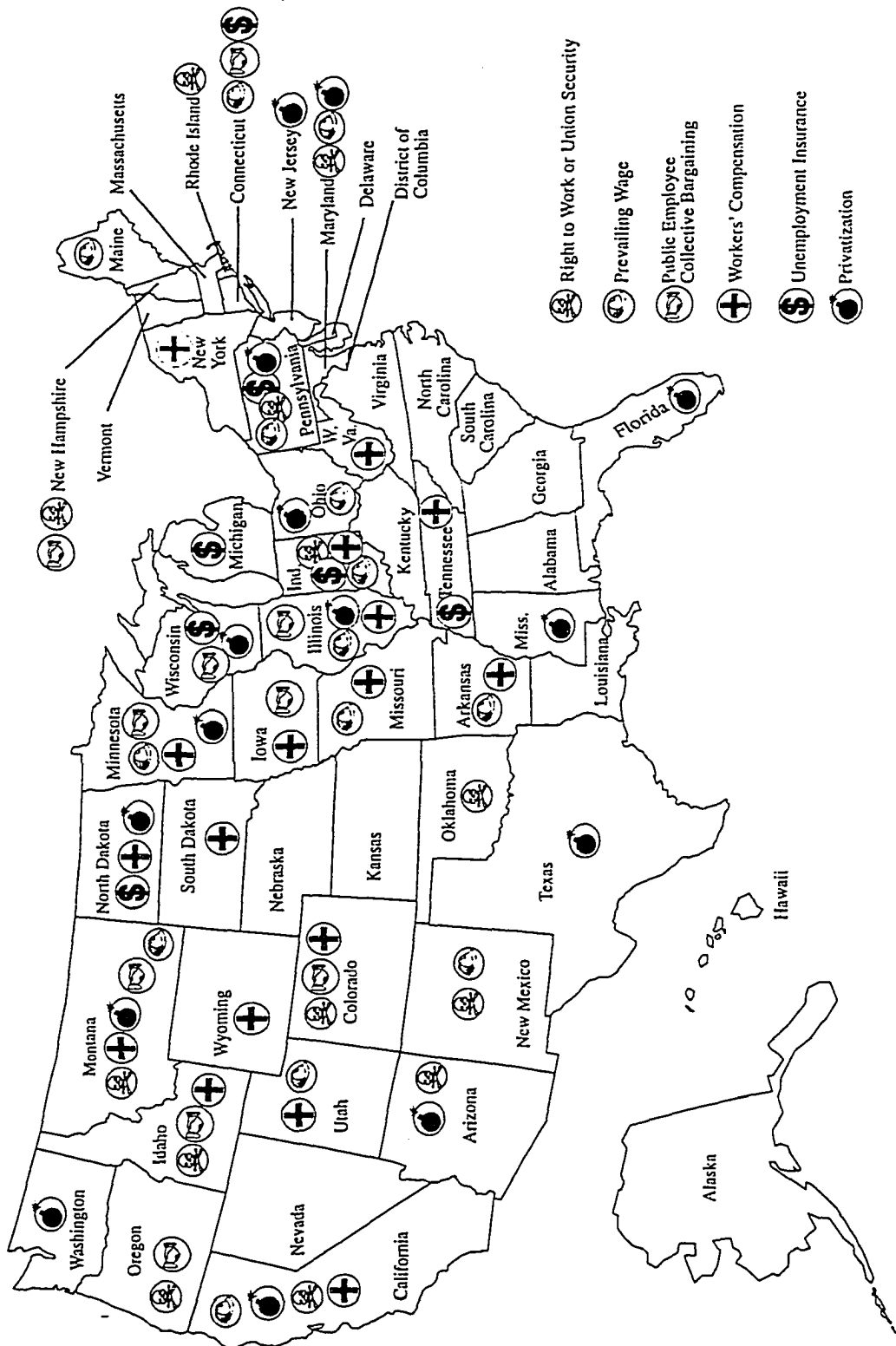
Table 12					
Percentage Change in Average Incomes of Middle and Top Fifths of Families with Children , '85-'87 to '94-'96					
State	Middle fifth		Top fifth		
<i>19 States Where the Middle Fifth Grew Poorer and the Top Fifth Grew Richer</i>					
Arizona	(\$8,445) *	-21%	\$2,597		3%
California	(\$3,957) *	-9%	\$17,093 *		15%
Connecticut	(\$3,321) *	-6%	\$14,915 *		11%
Florida	(\$894)	-2%	\$5,630		6%
Hawaii	(\$3,458) *	-7%	\$4,311		4%
Kansas	(\$2,877) *	-7%	\$14,360 *		15%
Louisiana	(\$3,908) *	-11%	\$6,088		6%
Massachusetts	(\$2,089) *	-4%	\$17,266 *		15%
Mississippi	(\$712)	-2%	\$2,341		3%
New Hampshire	(\$4,058) *	-8%	\$13,259 *		13%
New Mexico	(\$1,236) *	-4%	\$5,630		7%
New York	(\$1,702) *	-4%	\$24,721 *		23%
Ohio	(\$114)	-0%	\$13,827 *		14%
Oklahoma	(\$2,787) *	-8%	\$4,672		5%
Oregon	(\$3,259) *	-8%	\$5,118		6%
Rhode Island	(\$3,663) *	-8%	\$12,542 *		13%
South Carolina	(\$2,147) *	-6%	\$7,988		9%
Texas	(\$3,720) *	-9%	\$10,632 *		10%
Virginia	(\$4,965) *	-11%	\$5,340		5%
<i>27 States Where Incomes of the Top Fifth Grew Faster than Incomes of the Middle Fifth</i>					
Alabama	\$6,566 *	21%	\$21,429 *		28%
Arkansas	\$1,993 *	7%	\$6,072		8%
Colorado	\$5,149 *	12%	\$17,861 *		16%
Delaware	\$129	0%	\$24,377 *		26%
Georgia	\$1,089 *	3%	\$25,994 *		27%
Idaho	\$5,108 *	15%	\$24,721 *		31%
Illinois	\$2,355 *	5%	\$21,651 *		21%
Indiana	\$870	2%	\$28,403 *		34%
Iowa	\$5,694 *	15%	\$26,428 *		34%
Kentucky	\$1,785 *	5%	\$17,749 *		22%
Maine	\$1,748 *	5%	\$8,159		10%
Maryland	\$3,017 *	6%	\$31,917 *		28%
Michigan	\$1,894 *	4%	\$14,418 *		14%
Minnesota	\$5,180 *	12%	\$22,190 *		23%

Missouri	\$409	1%	\$11,868	*	13%
Montana	\$418	1%	\$7,707		9%
Nebraska	\$3,961	* 11%	\$15,712	*	18%
New Jersey	\$1,677	* 3%	\$20,348	*	17%
North Carolina	\$2,807	* 8%	\$18,662	*	21%
North Dakota	\$468	1%	\$3,991		5%
Pennsylvania	\$2,523	* 6%	\$29,161	*	31%
Tennessee	\$830	2%	\$23,054	*	27%
South Dakota	\$5,294	* 15%	\$15,459	*	20%
Utah	\$3,044	* 7%	\$19,112	*	21%
Washington	\$718	2%	\$8,371		8%
West Virginia	\$3,710	* 14%	\$14,338	*	20%
Wisconsin	\$4,481	* 10%	\$11,039	*	12%
1 State Where Incomes of the Middle Fifth Fell Faster than Incomes of the Top Fifth					
Wyoming	(\$3,604)	* -8%	(\$1,415)		-1%
3 States Where Incomes of the Middle Fifth Grew Faster than Incomes of the Top Fifth					
Alaska	\$2,739	* 6%	\$1,666		1%
Nevada	\$3,575	* 9%	\$5,404		6%
Vermont	\$2,229	* 5%	\$4,887		5%
District of Columbia	(\$2,797)	* -9%	\$36,061	*	32%
Total U.S.	(\$390)	* -1%	\$16,463	*	16%
* Dollar changes marked with an asterisk are statistically significant. The direction of the change is known with 95 percent certainty. See the footnote to Table 1 for details.					

Source: Center for Budget and Policy Priorities. Kathryn Larin & Elizabeth McNichol. "Pulling Apart: A State-by-State Analysis of Income Trends. Chapter Three. December 1997.

APPENDIX III

1995 WORKER LEGISLATION IN THE UNITED STATES



Source: State Ties. "The War on Workers, Part II." Office of State Government Liaison, Afl-CIO. Number 4. Reprint: October 1995.

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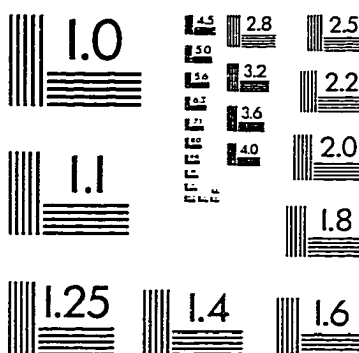
Publications:

"Challenging Amalgamation," Chapter 11, of For Labor's Sake: Gains & Pains as Told by 28 Creative Inside Reformers, Edited by Arthur B. Shostak. Lanham, Maryland:University Press of America. 1995.

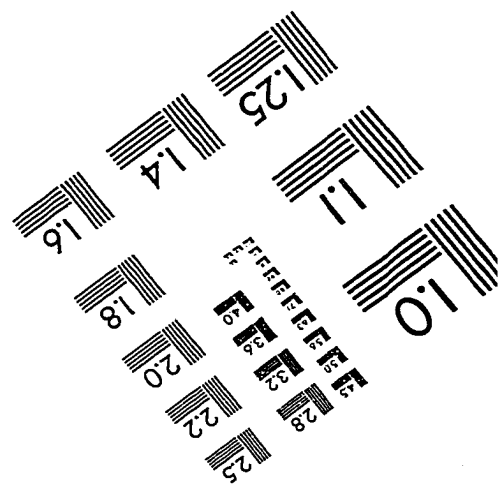
Thesis Title: The Erosion of Public Policies which support Workplace Justice:
A Review of the Davis-Bacon Act

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