



T H E R E V I E W
O F

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The Labour Bill

Socialism and the Rule of Law
by Joan Thompson

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and
More...



The Institute is an independent non-political non-profit institute that promotes economic growth, employment and entrepreneurial activity. It believes that this can best be achieved with a free market economy and a society that embraces the rule of law, the right of private property and the values of family, learning, honesty and hard work.

These beliefs lead to the following policy positions:

- For a balanced budget
- For the rule of "the law"
- For the privatization of the public corporations
- For a smaller government and lower taxes
- For an efficient justice system
- Against government management of the labor market
- Against a minimum wage
- Against price controls

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This issue is devoted entirely to The Labour Bill that apparently was drafted by the International Labour Office of the United Nations in the early 1990s. The article by Joan Thompson first appeared in the Institute's Newsletter and the balance of the articles were printed as Letters to the Editor in the daily newspapers.

Socialism and the Rule of Law

by Joan Thompson

The Institute for Economic Freedom is the result of recognition that arbitrary power in the hands of elected representatives...men of good will but with little or no economic understanding...is as dangerous as if it were in the hands of declared despots.

The Industrial Court legislation and the Minimum Standards Labour Act are two "political socialist" Acts that deprive law abiding citizens of their right to make choices freely in the conduct of their daily lives. That there has been so little resistance must be attributed to an understandable ignorance of the effects and consequences of such laws. A government dedicated to "transparency" has the obligation to inform its citizens of laws intended to change their economic behaviour.

As an economic idea socialism has been defeated...as a political idea socialism lives. Almost everywhere Socialists have openly embraced private market economies, innovation and economic growth, at the same time favouring expansion of government power to protect individuals from bad corporations, relieve poverty, protect the environment and promote "equality." It is in such a guise that the Minimum Standards Labour Bill will be written into the law of the land. The irony is that such "compassionate" legislation will cause "bad" corporations to get worse, poverty to increase and less capital for environmental improvements.

Socialism

A.V. Dicey states the Rule of Law “means in the first place the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power.” It excludes “the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of government.” (“The Rule-of-Law”, *The Law of the Constitution*, 8th Edition, p. 198) A thoughtful review of Bahamian history over the past thirty years is witness to the gradual replacement of the rule of law by arbitrary power in the hands of a government intent on achieving an ideal of “social justice.” The Industrial Court legislation and the proposed Labour Bill together become the critical mass that moves the country from the “rule of law” to “the rule of men.”

What is Economic Freedom anyway?

It is not a term frequently used, and its importance to civil society not generally understood. Usually economic freedom is only recognized by its absence. We are so named in order for Bahamians to become familiar with the term and learn to identify policies that erode economic freedom. It is economic freedom that protects citizens against the tendency of well-meaning governments to promote the interests of specific citizens at the expense of all citizens.

The central elements of economic freedom are personal choice, protection of property and freedom of exchange. Individuals have economic freedom when –

- The property they acquire without the use of force, fraud or theft is protected from physical invasions by

- others.
- They are free to use, exchange or give their property to another so long as their actions do not violate the identical rights of others.

Three Surveys

The Institute for Economic Freedom recently conducted three surveys on the December 1998 draft of the Minimum Labour Standards Act. The objective was to assess private sector views on provisions like the proposed Minimum Wage and to determine whether the business community had enough information to respond effectively to such far-reaching legislative proposals. The surveys use representative samples and the results range from interesting to astonishing.

Survey #1 - Minimum wage

Forty businesses responded to the March survey including retailers and wholesalers, professional services, banking and insurance firms, contractors, tour operators, automotive companies, petroleum retailers and publishers.

The results showed that while most respondents were aware that the government was going to introduce a new labour law, almost 60% of them did not have enough information on the provisions. But the overwhelming majority of respondents are concerned enough about the Bill to express their opposition to their Member of Parliament.

Five percent of the respondent's employees earn less than the mandated minimum wage of \$4.12 per hour proposed in the

Three Surveys

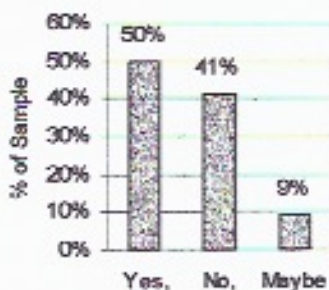
Present Severance Payments
per Year of Service



Need for Severance Reserve



Expected Staff Cuts



Bill. The survey defined the minimum as \$175 per week including commissions. Of the 2,132 workers covered by the Survey 109 were below the minimum. It should be noted that these employees are concentrated in fast foods, retail household sundries and gasoline stations.

Survey #2- Severance Pay

In April, the IEF surveyed businesses on their awareness of the employee severance provisions contained in the proposed Bill. Responses were received from 22 businesses. These included wholesalers and retailers, professional services, bankers, contractors, tour operators, automotive and marine firms, manufacturers, realty companies, and petroleum retailers.

The Bill states that an employee is eligible for redundancy pay if he is dismissed because of redundancy or natural disaster, or is laid-off or kept on short time as spec-

Three Surveys

ified in the Bill. He is entitled to, and the employer is liable to pay, a sum equal to 4 weeks pay for each year of service up to 33 years of service.

Two thirds of respondents paid one week per year of service (with variations) and only one firm, a financial management company, paid the 4 weeks contained in the proposed Bill. These results showed that a free market existed in terms of severance pay, with businesses paying more or less what they can afford, which by and large conform the to policy and practice customarily suggested by the Labour Board.

The proposed Bill will make companies liable for severance pay. Most respondents said they would have to accrue funds to meet those requirements and half said they would have no choice but to downsize if the Bill becomes law. If this result is extrapolated across the entire business sector, the results for unskilled workers could be disastrous.

Survey #3 - Dismissal, Reinstatement, etc.

The third survey had 55 respondents, the largest of the three. The survey identified the new powers given to politicians such as the unlimited power of the Minister of Labour to set minimum wages and the Industrial Tribunal's power to order employee reinstatement or re-engagement. It also showed how unfairness in dismissal would now relate to "the size and administrative resources of the employer's undertaking" without mention of either employer rights or employee obligations.

Very strong and unanimous opposition that ranged from 90 to 100% was expressed on all these issues.

The Warning Label

All legislation that is dangerous to a county's economic health should come with a warning label.

The proposed Minimum Fair Labour Standards Bill...specifically, the draft dated December 1998...is a good example. In this case the government intervenes in what the Minister of Labour of the New Zealand Labour Party refers to as "what consenting adults wish to do with regard to wage rates, periods of notice, severance pay...or job-specific health and safety arrangements." It requires employers to pay a wage or other benefit or provide a condition of employment that it deems fair or just.

The law is a charade unless it causes true changes...and it is hypocritical and duplicitous if it does not state the unintended consequences of those true changes.

The Bill is patterned after legislation implemented elsewhere decades ago. The promise of that legislation and the reality of the outcome should be known by all. Fortunately there is a mountain of scientific work done on the subject and virtually all of it demonstrates that such legislation does not produce what it promised.

Freedom and growth.

Freedom is a big word and economic freedom is not much smaller. To talk about economic freedom is easy...but to measure it and examine its implications is difficult. Two research institutes have done just that and the Institute for Economic Freedom has reported the findings for the past

Warning Label

two years.

There is a positive relationship between economic freedom and growth. It is as simple as that...more freedom means more growth and less freedom means less growth. In the past "as freedom declined in the Bahamas so did the annual growth in real Gross Domestic Product per person."

The proposed labour legislation substantially decreases economic freedom; and based on the experience in 119 other countries, it will depress the economic growth potential of the Bahamas.

OECD labour markets.

One of the most widely accepted principles...one embraced even by the International Monetary Fund...is that countries should increase labour flexibility rather than decrease it. In fact, the IMF in its 1998 Report to the Bahamian Government recommended "greater flexibility in labour arrangements." Such policies are referred to in international circles as "second generation reforms."

In 1998 two economists from Florida completed a study of the labour markets of the Organization for Economic Co-operation and Development (OECD). This study covered a 40-year period from 1956 to 1996. The countries were divided into two groups:

- **Centrally planned labour markets.** These are characterized by a centralized wage setting process, unemployment pay, mandated dismissal and severance pay and government benefits to the unemployed. This is descrip-

Warning Label

tive of continental Europe, Australia and until 1984 New Zealand.

- **Market-directed Labour markets.** Wages and working conditions are determined largely by agreements at the company level. All unemployment benefits are smaller in number and scale. The United States, Japan and New Zealand after 1984 fall into this class.

The conclusions of this study are –

- While unemployment rose in all OECD countries, the U.S. unemployment rate grew up to 1980 and declined thereafter. In Japan the rate grew steadily; but at 2.7% in 1996 it was the lowest in the OECD. The centrally planned markets that started below Japan in 1956 and were 10% to 21% in 1996.
- Increased benefits to the unemployed increase the incentives to remain unemployed and raise the long-term unemployment rate.
- Unemployment in southern Italy is three to four times higher than in northern Italy. The minimum wage rates acceptable to northern industry are much too high for southern Italy creating much higher unemployment levels there.
- Changes in labour markets from centrally planned to market orientated ones can produce significant improvement in economic growth and employment. Great Britain and New Zealand are good examples of this.

Warning Label

The businessmen's survey.

Two economists, one from Harvard and the other from the University of Bonn, took a different approach. As reported by *The Economist* in its February 6, 1999 issue they used surveys of businessmen and economic data over a seven-year period ending in 1990. The logic of this approach is that businessmen ought to know how job-security rules affect their business. The study used complex statistical techniques to construct a numerical index of labour market flexibility.

The study concluded that labour-market inflexibility does increase unemployment. For instance, France had a flexibility index 41.7% below that of the United States and an unemployment rate of 10% versus 6% for the United States.

The label.

The proposed Labour Bill dated December 1998 clearly would establish in the Bahamas the type of legislation that has had serious adverse consequences elsewhere. Countries have already moved away from it with good results. It is at odds with the consensus of international lenders and advisors.

If this Bill is proposed, it should prominently display a warning label...

This law is dangerous to employment!

Rhetoric and Reality

The proposed Minimum Labour Standards Bill...specifically the December 1998 draft...is intended to help the worker. This is an admirable objective. The problem is that such legislation often has significant unintended consequences. The difference between the promise of this legislation and the actual results is the cost or price paid by society for its political illusions.

To illustrate this point let us look at the provisions in the Bill that raise labour costs.

The minimum wage.

The Bill grants the Minister of Labour authority to fix a minimum wage of not less than \$4.12 per hour.

The businessman is concerned primarily with his own profit and will hire labour if the value produced by that labour exceeds its cost of employment. Yes...there are exceptions but these are short-term and limited. According to Dr. Walter Williams, the economist, "the first fundamental law of demand, to which there are no exceptions, says - "When prices rise, people tend to buy less, and when they fall, people tend to buy more...Labour services are not different." There is no concrete data that contradicts this conclusion...no one has repealed the "law" of supply and demand as it applies to labour services.

The Institute's survey covered 40 companies in 13 distinct lines of business. Five percent or 109 of the 2,132 workers

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covered are paid rates (including commissions) below the proposed minimum. They worked in multi-store chains selling fast food and household goods and three gasoline retailers. It is these companies that will have to make the adjustment to the minimum wage in the Bill.

Severance pay.

Under the Bill any employee who is dismissed because of redundancy or natural disaster or is laid-off or kept on short time is entitled to and the employer is liable for a severance payment. The rate is 4 weeks pay for each year of service up to 33 years of service. It is due --

- If the employer has ceased, or intends to cease operations, or
- If the employer's requirements for work have ceased or diminished or are expected to cease or diminish.

The Institute's survey of severance pay practices showed an extreme variation. In addition, the Bill's 4 weeks provision is two to four times the current levels in 95% of the companies.

The severance provision has other consequences that businessmen readily perceived. If the Bill is passed, it will --

- 1 Create a specific legal employee claim against corporate assets and place this claim ahead of the shareholders and on a par with the creditors.
- 2 Require a financial reserve if accepted accounting principles in the Bahamas change to follow the practice of other

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countries.

- 3 Diminish the real value of the enterprise and the willingness of bankers to lend.
- 4 Will likely trigger labour litigation...and possibly bankruptcy...when business is bad and reduce the incentive to expand when business is good.

A severance pay provision of the type in the Bill is exactly the labour "benefit" that reduces business flexibility, restrains economic growth and increases unemployment.

The businessman's response.

The Bill, in effect, changes costs that will trigger managerial responses. Some of these are as follows:

- Fire low-skilled workers presently earning less than the minimum.
- Become more selective in hiring...using more formal applicant screening techniques including lie detector and psychological tests.
- Hire more temporary or part-time employees and reduce the number of full-time employees.
- Mechanize and use labour saving machinery.
- Change to self-service and eliminate full-service retailing.
- Hire more experienced people on fixed-term employment contracts that explicitly exclude a severance provision.
- Use over-time employment rather than hire additional

full-time workers.

- Operate the company on a smaller scale or forego expansion because labour management is now more critical.
- Move all or a part of the operations to other countries where the costs are lower.

Unfair dismissal.

There are many provisions that have been addressed publicly. One that is particularly corrosive of sound labour relations is the Bill's concept of "unfair dismissal."

The Bill further alters the ability of an employer to dismiss an employee for just cause. It does not restate the common law basis for summary dismissal...namely, theft of property, disobedience, misconduct, negligence and incompetence. Instead it creates the right of the employee not to be dismissed unfairly. It relates "fairness" to the employee's capability, qualifications or conduct and to the "reasonableness" of the employer's actions. That action must be substantial and must depend on the circumstances including "the size and administrative resources of the employer's undertaking."

The contrast with the old common law is significant. One can steal but the employer's actions must meet a test of reasonableness. It is not difficult to see how this language erodes the ability of managers to manage effectively.

Industrial Tribunal Lotto.

Furthermore, the employee may go to the Industrial Tribunal where the judge may order the employer to compensate the employee for all lost income and benefits. Also...the judge may order the employer to reinstate or re-engage the employee at the employee's option. And...if the employer does not comply, then the judge may make a compensatory award not to exceed \$100,000.

The net effect of these provisions is to reduce the effectiveness of the conciliation process and increase the number of labour grievances. The employee has a bigger incentive to play "Industrial Tribunal Lotto"...to nurse one's grievances, claim victimization, get a lawyer, refuse to compromise and go for the big bucks.

Bureaucratic weight.

The Bill creates two new government bureaucracies: one to inspect and process the disputes related to the labour provisions and the other to deal with occupational health and safety. Both will have the authority to inspect, examine records, take statements and require full cooperation.

The direct weight of government on the businessman and ultimately on the citizen will increase significantly as two new bureaucracies justify their existence and work to guarantee their futures. This weight will reflect not only the desire to secure the benefits enumerated in the Bill for the employee...but also...and unfortunately...the "rent-taking" objectives of individual inspectors.

Unintended consequences.

The intent of the Bill is to help the worker. This is an admirable objective. Ironically, the likely negative effect of such legislation can be perceived simply by reading the Bill. The evidence that such insights are correct can be seen in the effect of such legislation in other countries. Throughout the world such legislation has produced less employment without greater security...the unintended consequences of compassion going astray.

The Minimum Wage

The Business Editor of the *Tribune* took issue with the arguments of the Institute against the Minimum Wage in an April 16th editorial. He re-stated popular beliefs and platitudes on this subject and these are worthy of examination.

Define the problem.

Before considering the specifics it should be noted that the Institute defined the problem and The Tribune did not. It did a survey of business and in its sample 109 out of 2,132 workers covered, 5% of the total, earned wages and commissions below the proposed \$4.12 per hour/\$175 per week minimum. The companies that paid wages below the minimum were in fast food, retail household sundries and gasoline stations. This does not include, for instance, hotel maids that typically earn \$152 per week base and \$350 in gratuities. Likewise, it did not include sales women at the Bay Street perfume store in the survey. We are talking about "entry level" jobs where the most basic job skills are learned.

Can't live without them.

The Editorial contends that companies in response to the proposed minimum wage will not downsize (layoff employees) if downsizing means it cannot provide a consistent quality service or product.

This is simply not true. In his effort to earn a profit the businessman has options. For instance, gasoline stations can eliminate full-service. The customer will now

Minimum Wage

pump his own gas...quite possibly alone at night...and walk twice across the cement apron to pay for it. The product has changed and entry-level jobs have been eliminated. In other situations the employer can invest in equipment and employ a higher skilled person.

Dr. Walter Williams, the black American economist, asked more than a decade ago...“Why is it better for a youngster to be unemployed at \$3.20 per hour than to be employed at \$2.00?” The Business Editor’s answer is that he will remain employed. Dr. Williams and the Institute disagree.

Pass it on.

“If a company doesn’t like the increased cost [caused by a minimum wage], it will pass it on to the consumer.”

A company can only do this if the consumer has no alternatives including buying less. The pizza parlor won’t feel it until its customers start baking their own at home...a current theme in TV advertising. In the case of gasoline retailers, the market will accept self-service simply because there is no alternative way to buy gas. The consumer determines whether a company can “pass it on”.

Level playing field.

The Editorial states that a Minimum Wage creates a level playing field for workers. “No one potential employee can offer to do the job for less, throwing someone else out of

Minimum Wage

work.”

In fact, the minimum wage law discriminates against the less skilled since they cannot use the price of their labour as a way to get a job. The “level playing field” is a favorite trade-union theme since minimum wage legislation reduces the competition faced by unionized workers.

Cheap labour.

“Companies have set up shop in the Bahamas...for more complex reasons than the availability of a cheap labour pool.”

Yes...the Bahamas has been well endowed with sun, sand, sea and proximity to the United States. High labour rates and low productivity, however, have hurt the tourist industry in its efforts to meet the competition from other destinations and have discouraged new company formation.

Legalized theft.

The Business Editor argues that a minimum wage puts more money into workers pockets and this creates more spending. If this is such a good idea, why stop at the proposed level of \$4.17 per hour? Why not raise the minimum to \$10.00 or \$20 per hour? The answer is in the total picture.

The government in this case mandates a higher wage and the company attempts to raise prices.

Minimum Wage

- If the consumer pays the higher price, money is indirectly transferred from the consumer to the worker who in turn spends it. A consumer loss offsets a worker gain...thus no net gain.
- If the consumer does not pay, then the company loses. The company loss offsets the worker gain...once again no net gain.
- If the producer stops selling the product, the consumer loses a desired product and the worker loses a job opportunity. As in the gas station example the company's gain from lowered administrative expense is offset by worker and consumer losses...thus a net loss.

The Editorial sees only gains and misses the losses. This logic in reality can be, and is used, to justify stealing and this suggests that a minimum wage is nothing more than legalized theft.

The bad guys.

According to the Editorial there are two kinds of corporate citizens...the good guys and the more numerous bad guys. The bad guys "squeeze every dollar out of their employees and don't pay them fairly because the owner or shareholders want more money for themselves."

The Editor provides no data to support his Charles Dickens-like characterization. He cannot visualize a world where workers, in fact, have alternatives and employers have a real need for honest, hard working and skilled

Minimum Wage

employees. This is the labour market in the Bahamas today. He says nothing about entrepreneurs ...the risk-takers who create growth. Are they good guys or bad guys?

The perfect world.

"In [the Editor's] perfect world, everyone would get a wage they could live on. Businesses would still be allowed to make money because if they didn't make money or gave it all away, we would call them charities instead."

In his perfect world wages would be related to a politician's, a bureaucrat's or a business editor's definition of a "living wage." On the other hand, there would be two kinds of businesses...profitable companies and charities. In his world there are, in fact, four categories...those companies and charities that are operating and those that are not. Who determines this? Is it the consumers of products, services and ideas that determine which companies are profitable and which charities attract financial support? Or do politicians, bureaucrats and business editors perform this vital function?

In the real world...admittedly an imperfect one...it is the market that allocates resources most efficiently. Here decision-making is diffused among numerous market participants.

Ad hominum.

The Editor states that the Institute has criticized the proposed minimum wage and he alleges that this organization

does so because its members are "business people, lawyers and economists."

At this critical period in the labour-relations history of the country the Editor opens his column with an *ad hominem* argument...an argument against the man rather than the idea...and follows with observations that only provoke controversy. Hopefully the above will cause *The Tribune's* readers to re-read the recent contributions of the Institute to the public dialogue.

More on the Minimum

The Business Editor of *The Tribune* responded to the Institute again in an editorial "Tourism packages and the minimum wage." (Friday, April 23, 1999, Section B, page 1.) The first half contained a proposed tourism marketing strategy for the Bahamas; and the second took strong exception to the Institute on the Minimum Wage.

Our disagreement with the Editor has its basis in the way we look at an imperfect and changing world. On the one hand he recognizes that there is an international tourism market; and...on the other hand he seems to deny that there are markets for labour services. In these markets there are "transactors" on both sides. An employer has a real need for honest, hard working and skilled employees...and in his self-interest he pays them enough to keep them from leaving and going elsewhere. Workers...Bahamians included...do leave if it is in their self-interest to do so.

More on the Minimum

Now let's look at the quotation of Dr. Walter Williams...“Why is it better for a youngster to be unemployed at \$3.20 per hour than to be employed at \$2.00?” This question from the 1980s was not fully answered by the Institute. The Business Editor of *The Tribune* is quite right. He did not say that an unemployed youngster at \$3.20 is better off...he just doubted that he would be laid-off.

The data.

Dr. Williams was concerned with the impact of the minimum wage on disadvantaged teens and those with low skill levels. The data available at that time showed those black and white teenage unemployment rates in 1948 were about the same—9.4% for black and 10.2% for white teens. “But as the minimum wage rose in the 1960s and 1970s, the unemployment rate for blacks roughly doubled compared with whites—to 37.7 percent for black teens by 1980, compared to 18.5 percent for white teens.”

The passage of time has not altered the story. The data of the U. S. Department of Labor for the 12-year period 1983 through 1994 shows a continued strong positive relationship between the minimum wage and unemployment when the minimum wage is adjusted for price changes to produce a “real minimum wage.” The summary of this data by a Dallas based research group is as follows:

- “Teenage unemployment rates fell from the 22-23 percent range in early 1983 to less than 15 percent by the beginning of 1990, at the same time that the real minimum wage was falling from about \$5.15 to

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under \$4.00 (in late-1994 dollars).

- "The minimum wage rose in two steps in 1990-91 and teenage unemployment rose with it, peaking a few months after the new minimum peak in the second quarter of 1991.
- "Subsequently, teenage unemployment rates fell, although not to the low levels of 1989 or early 1990, coinciding with the decline in the real minimum wage because of inflation.

"On the whole, the teenage unemployment rate moves in tandem with changes in the real minimum wage."

The politics.

There is a strong contrast between the economic facts of life and the political fact that minimum wage proposals have universal appeal. Why is there a divergence of economics and politics? The answer is —

A minimum wage is something concrete that a government can do for the less fortunate. Voters demand action on their behalf and politicians respond even though the action hurts the disadvantaged...the action has unintended consequences. The desire to be compassionate is part of the Judaic-Christian ethic and the minimum wage appears as a logical derivative of that tradition. The economic results, however, are completely different.

The minimum wage is a symbol of intention but it harms its intended beneficiaries...the disadvantaged.

More on the Minimum

Wage prostitution.

The Editor urges the Bahamas to compete for the tourist dollar but he characterizes an individual's action in the labour market...including his own...as "prostitution for the almighty dollar."

A wage is simply a special price, specifically the price of labour services. The labour market works like most other markets...when other things are held constant, if prices go up, buyers will buy less. The Editor's colorful description of market activity and "bad guy" companies is grossly misleading.

The Road Less Traveled.

Should the Bahamas follow the lead of America and take the advice of the Business Editor of *The Tribune*?

A minimum wage is a political symbol and an economic illusion that politicians use to gain popular support.

It takes toughness and vision for a society to give up such symbols and illusions. The willingness of countries to take the easy and popular road in economic development...to keep their symbols and illusions...has left many of them vulnerable to great risks. Recent events in Jamaica illustrate this point. Nevertheless, this is what the Bahamas should do...it should drop the minimum wage proposal...it should take "The Road Less Traveled."

Walter Williams on The Minimum Wage

“Why is it better for a youngster to be unemployed at \$3.20 per hour than to be employed at \$2.00?”

Walter Williams was commenting on a \$3.20 Minimum Wage in the early 1980s. Then a dollar was worth a lot more. Nevertheless, he made a good point that is just as relevant today.

From this Review

As an economic idea socialism has been defeated...as a political idea socialism lives. Almost everywhere Socialists have openly embraced private market economies, innovation and economic growth, at the same time favouring expansion of government power... (page 1)

The proposed Labour Bill dated December 1998 clearly would establish in the Bahamas the type of legislation that has had serious adverse consequences elsewhere. Countries have already moved away from it with good results...[The Bill] should display a warning label...

This law is dangerous to employment! (page 10)

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