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The Court, the Minimum Wage Ruling and the Holy  
Ghost

David Adler

The Supreme Court, in a landmark ruling in *West Coast Hotel v. Parrish* (1937), set against the backdrop of President Franklin D. Roosevelt's controversial court-packing plan, shocked the nation when it upheld state authority to impose a minimum wage law, less than a year after it had declared that such laws violated the freedom of contract protected by the Due Process Clause of the 14<sup>th</sup> Amendment.

The New Deal Court's abrupt about-face marked the beginning of the High Tribunal's rapidly changing jurisprudence. In the early and mid-1930s, the Court, dominated by the so-called "Four Horsemen," a cadre of judicial conservatives who, with the support of Justice Owen Roberts, struck down as unconstitutional numerous laws designed to lift the nation from the depths of the Great Depression. A frustrated president and angry public brought immense pressure on the Court which, contemporary observers said, influenced Justice Roberts' decision to reverse his voting pattern in favor of sustaining governmental programs.

Justice Robert's famous reversal, the so-called "switch in time that saved nine," spared the Court from further pressure and persuaded Democrats in Congress to reject FDR's legislative plan to pack the Court through appointment of a new Justice for every member of the Court who was 70 years old. If FDR's plan had succeeded, he would have named to the Court, at least

in theory, Justices who were sympathetic to New Deal programs and legislation.

Defenders of Justice Roberts argue that his switch was not attributable to public pressure, but rather a change in his thinking, a realization that the damage to the nation inflicted by the Depression, could not be tamed through traditional laissez-faire approaches to governing but required an active federal government generating new programs to restore Americans' lives and opportunities. There may be something to this defense since FDR's program was introduced in February of 1937, one month after the Court had decided the case, and one month before the Court announced its decision in March. However, it has been alleged, with considerable merit, that Chief Justice Hughes informed Roberts of FDR's proposal in December of 1936 and persuaded him to switch his vote to uphold a Washington state minimum wage law and spare the Court from further attacks.

The Court, in 1936, in *Morehead v. New York*, by a 5-4 majority that included Justice Roberts, had struck down a state minimum wage law for women and children on the premise, set forth in *Lochner v. New York* (1905), that the Liberty of Contract Doctrine, grounded in the Due Process Clause of the 14<sup>th</sup> Amendment, prohibited the government from interfering with the right of employees to work for wages they found acceptable. That doctrine, it may be recalled, was harshly criticized by Justice Oliver Wendell Holmes's famous dissent in *Lochner*, as a judicial invention without foundation in the Constitution. As it turned out, Holmes was vindicated by Justice Roberts, who had changed his mind about state authority to pass minimum wage laws, and Chief Justice Charles Evans Hughes's historic 5-4 opinion for the Court in *West Coast Hotel v. Parrish*.

"What is this freedom?" Hughes asked. "The Constitution does not speak of freedom of contract."

Hughes stated that the Constitution protects freedom, but subject to reasonable regulation and the interest of the community. In this instance, the police power of the state to pass laws to protect the health, morals, welfare and safety of citizens, was justifiably exercised to protect women and children from exploitation.

Chief Justice Hughes explained that states were entitled to consider "the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances." The Court also took "judicial notice" of the public relief needed during the Great Depression. Inadequate wages for women had placed demands on state agencies for public assistance: "The community is not bound to provide what is in effect a subsidy for unconscionable employers."

The Court's landmark decision to uphold minimum wage laws helped to stabilize the economy in the years following the Depression. It created a minimum standard of living for the purpose of protecting the health of employees, stimulated consumer spending and demand and contributed to the expansion of the economy.

John Selden, a 17<sup>th</sup> Century English jurist and scholar, wrote about the talk among councilors serving in high office. "They talk (but blasphemously enough) that the Holy Ghost is President of their General Councils when the truth is, the odd Man is still the Holy Ghost." The catalyst for the Court's decision to reverse historical tides and sustain state minimum wage laws was Justice Owen Roberts. Indeed, it was his switch that made him the "odd Man."