Since it appears that the closing of the plaintiff's plant was not necessary to preserve order, the decision in the instant case falls within the rule of the *Constantin* case and may, perhaps, be considered indicative of judicial impatience with unwarranted assumption of power by a governor. But the court's indignation at the defendant's interference with the *lawful* operation of the plaintiff's business indicates a failure to recognize that military intervention in labor disputes normally must interfere with the rights of either employees or employer, and suggests that a greater solicitude for protection of the employers' property rights actuated the decision. A comparison of the principal case with the *McNutt* case, where an employee was denied an injunction in a representative suit, furnishes some basis for inferring that military interference with property rights of the employer will not be countenanced by the federal courts unless disorder could not have been prevented by interference with the personal rights of the employees.

Constitutional Law—Minimum Wage Law for Women—Compelling the Employer to Pay the Value of Services Rendered—[New York].—The appellant, operator of a laundry in Brooklyn, was arrested and charged with having paid to a woman employee less than the "fair" wage promulgated by the Industrial Commissioner, acting under authority of the New York Minimum Wage Law for Women and Minors. N.Y. Labor Law, c. 32 (1933). The appellant's defense consisted solely of an attack on the constitutionality of the law. The law provided for the establishment of a board to fix minimum wages for minors and women, until then working for oppressive wages in trades and industries. In fixing a fair wage for industries paying oppressive wages—defined in the act as a wage less than the fair and reasonable value of the services rendered and insufficient to meet the minimum cost of living—the commission was to (1) consider all relevant circumstances affecting the value of the services; (2) be guided by like considerations as would guide a court in a *quantum meruit* proceeding for the reasonable value of services rendered; (3) consider the wages paid in the state for similar work by an employer voluntarily maintaining minimum wage standards. The appellant contended that these provisions violated his rights under the Fourteenth Amendment of the Constitution. *Held*, under the decision of, and for the reason given by, the Supreme Court in *Adkins v. Children's Hospital of the District of Columbia* (261 U.S. 525 (1923)), the New York minimum wage law is unconstitutional. *People ex rel. Tipaldo v. Morehead*, 270 N.Y. 233, 200 N.E. 799 (1936), *cert.* granted, 80 L.ed. 653 (1936).

This decision seems both unfortunate and unnecessary; unfortunate because the opinion indicates no reluctance to nullify legislation with an object above reproach; unnecessary because it is extremely doubtful whether the New York statute contained the constitutional defects which led the Supreme Court to invalidate the District of Columbia minimum wage law for women in *Adkins v. Children's Hospital* (261 U.S. 525 (1923)). The socio-economic arguments for the minimum wage are familiar. In many trades, the majority of women workers do not receive enough wages to maintain their physical efficiency. Special investigations revealed that the conditions under which women wage-earners worked and lived forced many of them to rely on friends or charity for partial support, that others turned to prostitution, and that still others died of malnutrition. Ely, Outlines of Economics 672–7 (5th ed. 1930). The existence of evils influenced the enactment of minimum wage legislation in New York, as it had influenced similar legislation in fifteen other states; these facts were not challenged by

the majority opinion which rested its conclusion solely on the authority of the *Adkins* case.

Under the Fourteenth Amendment—as under the Fifth, relied upon in the *Adkins* case—it is forbidden to deprive any person of liberty or property without due process of law. But since few reforms can be effected without depriving someone of something that may be regarded as a property right, the American courts early conceived the doctrine of "police power" to enable legislatures to pass laws concerning great public needs. Morison and Commager, The Growth of the American Republic 713 (1930); see *Noble State Bank v. Haskell*, 219 U.S. 104, 111 (1911). Under this doctrine, liberty of contract may be subjected to restraints so long as such restraints are not "arbitrary." *McLean v. Arkansas*, 211 U.S. 539 (1908). If standards of hours may be imposed on certain industries and interest charges limited, the fixing of minimum wage standards for women, to prevent the payment of wages that lead to even worse evils than overwork and usury, could be regarded as arbitrary only under a capricious concept of freedom of contract. See Powell, The Judiciality of Minimum Wage Legislation, 37 Harv. L. Rev. 545 (1924). Nor is the New York statute arbitrarily discriminatory because it is confined to women. Not only are the physical differences between men and women sufficient to justify statutory discrimination (*Miller v. Wilson*, 236 U.S. 373 (1915)), but women are seriously handicapped in their bargaining power and hence are more often than men paid oppressive wages. Elliott and Merrill, Social Disorganization 289 (1934). A crucial objection to the statute in the *Adkins* case, and the only point disputed by the majority opinion in the principal case, concerned the provisions for fixing a minimum wage. The District of Columbia law was designed to guarantee a wage based solely on the needs of the worker. The Supreme Court considered this provision unreasonable and held that it ignored the interests of the employer by compelling him to pay a specified sum irrespective of the value of the employee's services. The New York statute sought to avoid this objection by defining a "fair wage" as one "fairly and reasonably commensurate with the value of the service or class of services rendered." N.Y. Labor Law §§ 551 (8) (1933). The employee must be paid the value of his services when a lower wage would be insufficient to meet the minimum cost of living; he need never be paid more than the value of his work regardless of his need. The justices who voted the District of Columbia act unconstitutional could quite consistently uphold another law which provided for the determination of a minimum wage with due regard to the value of the employee's work. Moreover, the New York statute falls squarely within Justice Sutherland's dictum in the *Adkins* case that "A statute requiring an employer to pay . . . . the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the services would be understandable." 261 U.S. 525, 559 (1923). And even if the Supreme Court refuses to concede this distinction, it would still be possible for the court to uphold the New York minimum wage law by recognizing that the constitutionality of legislation may be affected by subsequent economic changes. See 40 Yale L. J. 1101 (1931); *Abie State Bank v. Weaver*, 282 U.S. 765, 776 (1931) (indicting that regulations valid when made may become invalid by reason of later events). Independent of a showing that the facts and conditions attending the decision of the *Adkins* case in 1923 exist today, the *Adkins* case should not be conclusive on the constitutionality of the New York law. See *Parrish v. West Coast Hotel Co.*, 55 P. (2d) 1083 (Wash. 1936), in which this approach led the court to uphold the Washington minimum wage law, substantially indistinguishable in its provisions from the statute in the Adkins case.