

Davis-Bacon and the Connecticut Prevailing Wage Law

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Background of the Davis-Bacon Act

- There was no federal statute that required payment of prevailing wages to workers on federal construction projects prior to enactment of the Davis-Bacon Act in 1931.
- Early in the 20th century, it was not at all clear the Federal Government had authority to regulate wages and conditions of work in the private sector. When Congress attempted to deal legislatively with hours of work, child labor or minimum wages, its enactments were often found by the courts to be in violation of its constitutional authority.
- In 1891, Kansas adopted the first prevailing wage statute.
- Through the next several decades, other states followed suit, enacting a variety of labor-protective statutes covering workers in contract production.
- Legislation to require payment of locally prevailing wages on federal construction projects was introduced in 1927, 1928 and 1930 without success.

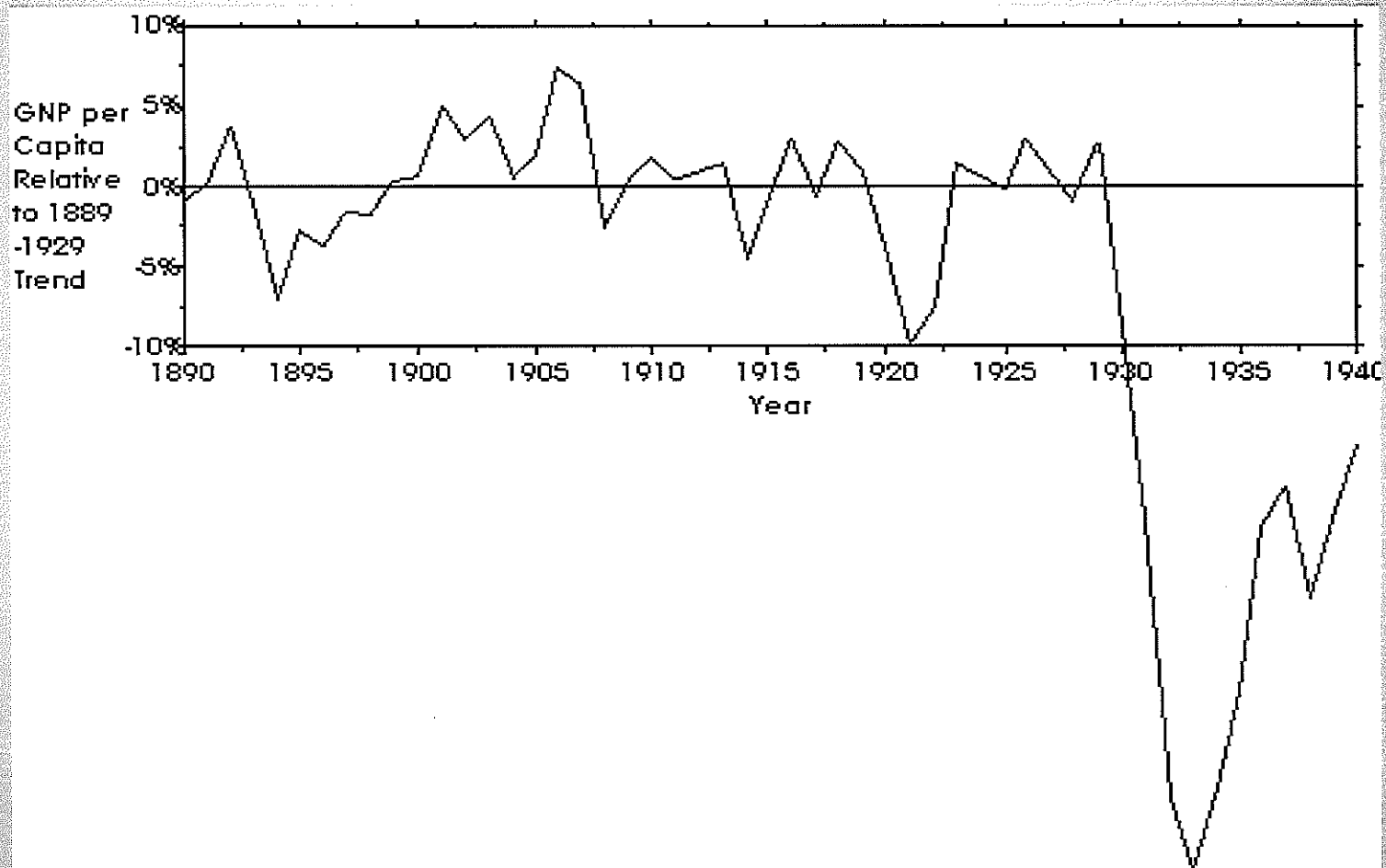
The Stock Market Crash - 1929



Bread Lines in New York



Gross National Product Per Capita

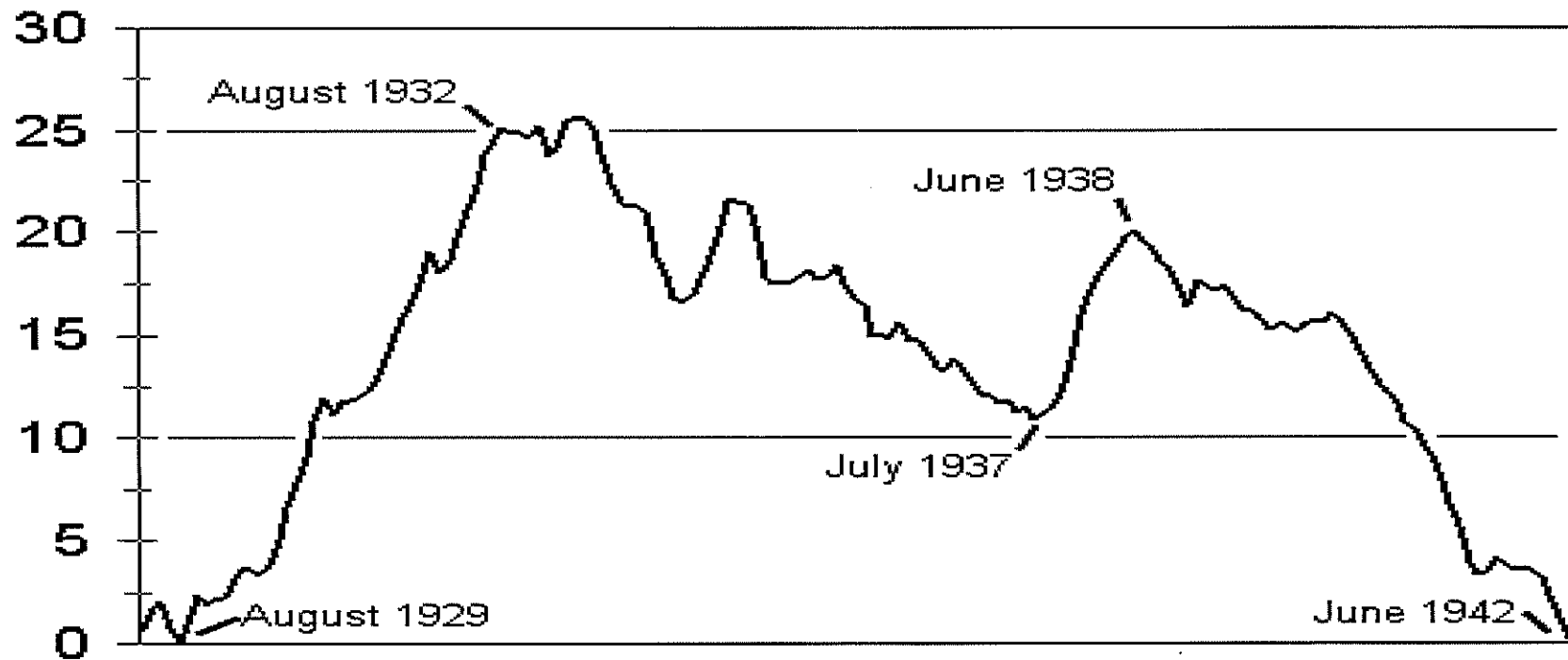


Unemployment



Unemployment Rates During the Depression

U.S. Unemployment Rate



Effects of the Depression

- The Federal Government created large public works construction programs in an effort to stem the decline in GDP and rise of unemployment.
- It soon became apparent that local contractors' and workers' wages and living standards had to be protected from unfair competition with low-wage migratory labor.
- Lower wages also led to labor strife and to broken contracts by contractors who speculated on the labor market unwisely, thus preventing "the most economical and orderly granting of Government contracts."

Response of the Hoover Administration

- Republican President Herbert Hoover asked the Comptroller General whether federal contracting agencies could put a provision in their contracts requiring contractors to pay prevailing wages.
- The Comptroller General advised there was no federal statutory authority to impose a prevailing wage requirement on federal contractors.
- Accordingly, Senator James J Davis of Pennsylvania and a former Secretary of Labor under three presidents, and Representative Robert L. Bacon of New York, both Republicans, sponsored the bill that became the Davis-Bacon Act, and President Hoover signed it into law in 1931.

Purpose of the Davis-Bacon Act

- Virtually every element of society agreed the U.S. Government should not be a party to depressing local labor standards while awarding Government construction contracts.
- To overcome this situation, Congress adopted the prevailing wage principle for federal construction.
- The Davis-Bacon Act was designed to provide equality of opportunity for contractors, to provide for the employment of local craftsmen, to protect prevailing living standards of construction workers, and to prevent disturbance of the local economy.

Requirements of the Original Davis-Bacon Act

- The original Davis-Bacon Act required that federal contractors on certain, but not all, federal projects valued at more than \$ 5,000 pay the prevailing wage in the area, **as determined by the contractors.**
- Any disputes over the contractors' prevailing wage determinations were to be referred to the Secretary of Labor for resolution.
- Almost immediately upon passage in 1931, both unions and contractors expressed dissatisfaction with key components of the Act as widespread violations and abuses were discovered.

Efforts to Fix the Davis-Bacon Act

- Unions claimed that the Davis-Bacon Act lacked enforcement teeth, while contractors pointed out that it was impossible to know beforehand what the prevailing wages were when submitting bids.
- Under pressure both from labor and employers, Congress commenced oversight hearings on the recently adopted Davis-Bacon Act in January 1932; but, just as the hearings began, President Hoover issued Executive Order No. 5778, generally strengthening the enforcement and administration of the Act; and Congress passed an amended Davis-Bacon Act later that year, which the President vetoed in July 1932.
- Congressional committees once again investigating these issues in 1933 and 1934 found the “statute was inadequate to cope with many of the practices to which contractors have resorted, a finding with which the departments of the Government entrusted with the administration of the existing act, fully concur.”

Amendment of the Davis-Bacon Act in 1935

The Davis-Bacon amendments of 1935, based on legislation proposed by Senator David Walsh of Massachusetts, were designed to address perceived administrative problems:

- **Reduced the threshold for coverage from \$5,000 to \$2,000;**
- Provided coverage for all federal contract construction of whatever character to which the United States and the District of Columbia might be a party;
- Established a requirement of *predetermination* of the wage rates by providing that solicitation for bids for contracts covered by the Act must state “the minimum wages to be paid various classes of laborers and mechanics.”

The Connecticut Prevailing Wage Law

- The Connecticut Prevailing Wage Law, Conn. Gen. Stat. § 31-53, was enacted in 1933 during the Great Depression,
- Not surprising, the Connecticut Prevailing Wage Law, Conn. Gen. Stat. § 31-53, is modeled after the Davis-Bacon Act.
- Accordingly, the Prevailing Wage Law requires contractors who contract for work on public works projects must pay their laborers an hourly wage that is the same as the local prevailing wage for the same work.
- General Statute § 31-53(d) of the Act authorizes the State Labor Commissioner to "adopt and use *such appropriate and applicable prevailing wage rate determinations* as have been made by the Secretary of Labor of the United States" (Emphasis added.) The plain language of the statute authorizes the commissioner to adopt only those federal regulations pertaining to the prevailing wage rated determinations.

Similarities and Differences Between the Davis-Bacon Act and the Connecticut Prevailing Wage Law

- The Connecticut Prevailing Wage Law, Conn. Gen. Stat. § 31-53(d), is the only state PWA in the country that permits adoption and use of prevailing wage rate determinations issued by the U.S. Department of Labor under the Davis-Bacon Act.
- The Davis-Bacon coverage threshold amount is \$ 2,000 while the threshold for application of the Connecticut Prevailing Wage Law is \$ 400,000 for new public works projects, and \$ 100,000 for remodeling, refinishing, refurbishing, rehabilitation, alteration or repair of any public works project.

Determining Prevailing Wage Rates

- Under a regulatory procedure in effect since 1935, the Secretary followed a three-step process to determine the prevailing wage for a given class of workers in a given area.
 - First, if any single wage is paid to a majority of the workers in that class, that is deemed the prevailing wage.
 - Second, if there is no single wage paid to a majority of workers, any wage paid to at least thirty percent of the workers is the prevailing wage.
 - Third, if no single wage is paid to a thirty-percent plurality, then a weighted average becomes the prevailing wage.
- The new regulation adopted during the Reagan Administration for defining the term "prevailing wage" eliminated the second step: if a majority of the workers in a given class did not earn a single wage, then a weighted average would be used.
- The new regulatory definition has made it much more difficult to recognize a collectively-bargained wage rate as the "prevailing wage rate under the Davis-Bacon Act.