

*Law School of Harvard University,
Cambridge, Mass.*

June 5, 1936

Dear Stone,

Here is a batch of comments which I will trouble you to return. Twenty or thirty years from now, they may have an antiquarian interest -- at least let us hope it will be antiquarian. The nub of the matter I think was most succinctly put by Irving Brant in the St.

Louis Star-Times:

“Because five is a larger number than four and for no other reason, the law is unconstitutional.”

You will agree, I think, that Heywood Broun this time writes in a vein that Voltaire would not have disowned.

It really is too awful. As a wise conservative correspondent of mine puts it:

“The New York Minimum Wage decision was like a ton of straw on the broken back of a camel. I didn't expect it. There were limits to what I was willing to grant the Court in its capacity of self-revelation.”

You are, of course, profoundly right in wondering why, when the issue was so stark, the Chief should have gone off on a meticulous bit of case-matching. More than that; at least so far as Roberts is concerned, the Chief must bear a very considerable part of the responsibility in having encouraged the process of disregard of the judicial function that lies between the *Nebbia* and the *Tipaldo* cases.

I hope the historian of the future will search out this record and make it luminous. It requires neither clairvoyance nor the opening of archives. It merely needs saturation in the work of the Court, forthrightness in analysis, and the art of eloquent lucidity.

*Law School of Harvard University,
Cambridge, Mass.*

-2-

I have talked with Pound, and he is entirely agreeable to my taking you for dinner on August 19th. It will be at our house, for you won't mind summer undress. So please keep the evening free and I will have a few congenial spirits to meet you.

I am very sorry that Mrs. Stone should have had this mishap. I know how resilient and energetic she is, and therefore how impatient she will be for the need of patience. But tell her that one has need of extreme conservatism in such matters.

It was a great joy to have caught you on the wing and have had once more the feel of your serene passion for the judicial spirit at its best. Your final labors will soon be over, and I hope for you a refreshing out-of-doors. I shall be seeing you again the latter part of August.

Very sincerely yours,

F. F.

Hon. Harlan F. Stone